

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

PARACLETE ARMOR & EQUIPMENT, INC. )  
 )  
Plaintiff, )  
-vs- )  
EAGLE INDUSTRIES UNLIMITED, INC. )  
 )  
Defendant. )

**JURY TRIAL DEMANDED**  
Civil Action No.: 7:05-CV-63-F(3)

**FIRST AMENDED COMPLAINT**

Plaintiff, PARACLETE ARMOR & EQUIPMENT, INC. ("PARACLETE") by and through its undersigned attorneys, alleges:

**THE PARTIES**

1. Plaintiff, PARACLETE, is a corporation organized under the laws of the State of North Carolina having its principal place of business at 106 East Clark Street St. Pauls, Robeson County, North Carolina 28384.

2. Upon investigation and information, Defendant EAGLE INDUSTRIES, UNLIMITED, INC. ("EAGLE") is a corporation organized under the laws of the State of Missouri, having its principal place of business at 400 Biltmore Drive, Fenton, Missouri, 63026.

**JURISDICTION AND VENUE**

3. This is an action for patent infringement arising under the patent laws of the United States as set forth in Title 35 of the United States Code Section 271, *et seq.*, and for claims of unfair competition and false designation of origin arising under Section 43(a) of the Lanham Act 15 U.S.C. §1125(a), and 15 U.S.C. §1114.

4. This Court has jurisdiction under 15 U.S.C. §§1117, 1121 and 1125(a), 28 U.S.C. §§1331, 1332, and 1338(a).

5. Venue is proper in this Court under 28 U.S.C. §§1391(b), (c), and 1400(b).

### BACKGROUND

6. Plaintiff, PARACLETE, is a manufacturer of military and law enforcement personnel tactical vests and load bearing equipment.

7. On August 3, 2004, U.S. Letters Patent No. 6,769,137 (“the ‘137 Patent”) issued for an invention entitled “CUTAWAY VESTS”, listing Timothy B. D’Annunzio as the inventor. A true and correct copy of the ‘137 Patent is attached hereto and incorporated herein as **Exhibit “A”**.

8. The ‘137 Patent was based on an application filed on October 24, 2001 and which was published on September 5, 2002, as U.S. Patent Application Publication No. 2002/0120973 (“the ‘973 published patent application”). A true and correct copy of the ‘973 published patent application is attached hereto and incorporated herein as **Exhibit “B”**. The ‘137 Patent and the ‘973 published patent application hereinafter being referred to collectively as the ‘137 Patent.

9. On September 9, 2002, Plaintiff’s attorney sent a certified letter to Defendant EAGLE notifying Defendant of the ‘973 published patent application and enclosing a copy of same. A true and correct copy of the September 9, 2002, letter and copy of the signed receipt are attached hereto and incorporated herein as **Exhibit “C”**.

10. On June 15, 2004, a continuation patent application based on the ‘137 Patent was filed, and was published on November 11, 2004, as U.S. Patent Application Publication No. 2004/0221361 (the ‘361 published patent application). A true and correct copy of the ‘361 published patent application is attached hereto and incorporated herein as **Exhibit “D”**.

11. On July 1, 2005, Plaintiff’s attorney sent a letter to Defendant EAGLE notifying Defendant of the ‘361 published patent application and enclosing a copy of same. A true and

correct copy of the July 1, 2005, letter and copy of the signed receipt are attached hereto and incorporated herein as **Exhibit "E"**.

12. On September 27, 2005, U.S. Letters Patent No. 6,948,188 ("the '188 Patent") issued from the '361 published patent application for an invention entitled "CUTAWAY VESTS", listing Timothy B. D'Annunzio as the inventor. A true and correct copy of the '188 Patent is attached hereto and incorporated herein as **Exhibit "F"**.

13. The '137 Patent and the '188 patent have been assigned to Plaintiff PARACLETE as assignee of all of Timothy B. D'Annunzio's right, title and interest in and to the invention of the '137 Patent and '188 patent, and have been, and are still, owned by PARACLETE.

14. The '137 Patent and the '188 patent are directed to a cutaway vest in which a wearer of the cutaway vest is able to quickly cutaway, release, or remove the cutaway vest from the wearer's body by pulling a handle.

15. Upon investigation and information, Defendant EAGLE has transacted and continues to transact business in, and regularly has solicited and regularly continues to solicit business in this judicial district.

16. Upon investigation, the Defendant offers for sale and sells vests and other devices infringing one or more of the claims of the '137 Patent and the '188 Patent in this judicial district and elsewhere in interstate commerce, including via the Internet from their website located at <http://www.eagleindustries.com>. A copy of portions of Defendant's website available for viewing on or about February 8, 2005 is annexed hereto and incorporated herein as **Exhibit "G"**.

17. Upon investigation and information, Defendant's website located at <http://www.eagleindustries.com> is registered to and administered by Defendant EAGLE.

18. Upon investigation and information, Defendant's website is an interactive website that enables users, including those accessing the website from North Carolina and the jurisdiction covered by the United States District Court for the Eastern District of North Carolina, who access the website, and to order, pay for and purchase Defendant's products, including those that infringe PARACLETE's '137 Patent and '188 Patent, over the Internet.

19. Upon investigation and information, Defendant's derive substantial revenue from interstate commerce.

20. Defendant's conduct causes damage to PARACLETE in North Carolina and in the Eastern District of North Carolina where PARACLETE is located.

**FIRST CAUSE OF ACTION**  
**INFRINGEMENT OF U.S. PATENT NO. 6,769,137**

21. Plaintiff PARACLETE realleges each and every allegation set forth in paragraphs 1 through 20 above, and incorporates them herein by reference.

22. Defendant EAGLE has infringed the '137 Patent by at least making, using offering for sale and/or selling vests or other devices covered by one or more of the claims of the '137 Patent, in the United States and specifically in this Eastern District of North Carolina, and will continue such infringement unless enjoined by this Court.

23. As a result of Defendant's acts, PARACLETE has been damaged and will continue to be damaged.

24. Defendant's infringement of the '137 Patent has been knowing and willful.

25. Defendant's infringement of the '137 Patent has damaged PARACLETE in an amount that is unknown and cannot at the present time be fully ascertained.

26. Unless enjoined by this court, Defendant will continue to infringe Plaintiff's patent rights causing irreparable injury.

**SECOND CAUSE OF ACTION**  
**INFRINGEMENT OF U.S. PATENT NO. 6,948,188**

27. Plaintiff PARACLETE realleges each and every allegation set forth in paragraphs 1 through 26 above, and incorporates them herein by reference.

28. Defendant EAGLE has infringed the '188 Patent by at least making, using offering for sale and/or selling vests or other devices covered by one or more of the claims of the '188 Patent, in the United States and specifically in this Eastern District of North Carolina, and will continue such infringement unless enjoined by this Court.

29. As a result of Defendant's acts, PARACLETE has been damaged and will continue to be damaged.

30. Defendant's infringement of the '188 Patent has been knowing and willful.

31. Defendant's infringement of the '188 Patent has damaged PARACLETE in an amount that is unknown and cannot at the present time be fully ascertained.

32. Unless enjoined by this court, Defendant will continue to infringe Plaintiff's patent rights causing irreparable injury.

**THIRD CAUSE OF ACTION**  
**FALSE DESIGNATION OF ORIGIN**

33. Plaintiff PARACLETE realleges each and every allegation set forth in paragraphs 1 through 32 above, and incorporates them herein by reference.

34. Upon investigation and information, Defendant EAGLE markets, advertises, offers for sale and/or sells its vests and other devices with the representation that they were originated or created by Defendant and the fact is that they were not.

35. Defendant's activities constitute a false designation of origin and false representation as to the nature, characteristics or qualities of Defendant's said materials or products causing harm and injury to the business and goodwill of PARACLETE, in violation of Section 43(a) of the Lanham Act 15 U.S.C. §1125(a).

36. Upon investigation and information, Defendant has engaged in, and continues to engage in the aforesaid activities willfully and with the knowledge of PARACLETE's rights in and to the said vests and devices.

37. Pursuant to 15 U.S.C. §1117, PARACLETE is entitled to damages for Defendant's violations in the counting of profits made by Defendant for their actions, and recovery of PARACLETE's cost of this action.

38. The acts of Defendant makes this an exceptional case entitling PARACLETE to an award of treble damages and reasonable attorney's fees pursuant to 15 U.S.C. §1117(a) and (b).

**FOURTH CAUSE OF ACTION**  
**UNFAIR COMPETITION**

39. Plaintiff PARACLETE realleges each and every allegation set forth in paragraphs 1 through 38 above, and incorporates them herein by reference.

40. By virtue of the foregoing acts, Defendant EAGLE has engaged in, and used unfair methods of competition, and unfair or deceptive acts or practices in the conduct of a trade or commerce, all in violation of Section 43(a) of the Lanham Act 15 U.S.C. §1125(a).

41. As a result of Defendant's unfair methods of competition, and unfair or deceptive acts or practices, PARACLETE has been damaged in an amount that is unknown and cannot at the present time be ascertained.

42. Unless enjoined by this court, Defendant will continue to use unfair methods of competition, or unfair or deceptive acts or practices to PARACLETE's continuing and irreparable injury for which it has no adequate remedy at law.

43. Upon investigation and information, Defendant has engaged in, and continues to engage in the aforesaid activities willfully and with the knowledge of PARACLETE's rights in and to the said vests and devices.

44. Pursuant to 15 U.S.C. §1117, PARACLETE is entitled to damages for Defendant's violations in the counting of profits made by Defendant for their actions, and recovery of PARACLETE's cost of this action.

45. The acts of Defendant makes this an exceptional case entitling PARACLETE to an award of treble damages and reasonable attorney's fees pursuant to 15 U.S.C. §1117(a) and (b).

#### **DEMAND FOR JURY TRIAL**

46. Plaintiff PARACLETE hereby demands a trial by jury.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff PARACLETE prays for the entry of judgment from this Court ordering:

- a. A preliminary and permanent injunction against Defendant EAGLE, and all persons acting in concert or participation with them, or persons acting or purporting to act on their behalf, including, but not limited to their officers, directors, partners, owners, agents, representatives, employees, attorneys, successors, and assigns, and any and all persons acting in concert or privity with them, from infringing the '137 Patent and the '188 Patent as provided in 35 U.S.C. §283;

- b. A finding that the Defendant EAGLE has infringed the '137 Patent and the '188 Patent;
- c. An award of damages, costs and interest, as a result of Defendant's acts of infringement;
- d. An award of damages in accordance with 35 U.S.C. §154(d) for reasonable royalties from the date of publication of the '973 published patent application until the date of issue of the '137 Patent and from the date of publication of the '361 patent application until the date of issue of the '188 Patent;
- e. An award to Plaintiff PARACLETE of an accounting of its damages resulting from the infringement of the '137 Patent and the '188 Patent by Defendant as provided in 35 U.S.C. §284;
- f. An award to Plaintiff PARACLETE of treble damages as provided in 35 U.S.C. §284;
- g. An award to Plaintiff PARACLETE for its costs in this action together with reasonable attorney's fees as provided in 35 U.S.C. §285;
- h. The recall and destruction of all materials within the control of Defendant, their agents or distributors which in any way infringe upon the '137 Patent;
- i. Damages for Defendant's violation of 15 U.S.C. §1125(a) and treble damages for willful violation of same;
- j. Damages pursuant to 15 U.S.C. §1117;
- k. Plaintiff PARACLETE's attorney's fees, costs and expenses, pursuant to 15 U.S.C. §1117; and

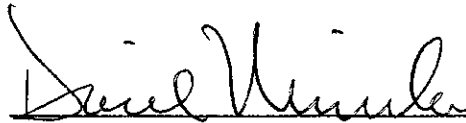


I. Such other and further relief against Defendants in favor of Plaintiff  
PARACLETE that this court deems just, equitable and proper.

Respectfully submitted,

HESLIN ROTHENBERG FARLEY & MESITI P.C.

Dated: September 28, 2005



David P. Miranda, Esq.

Brett M. Hutton, Esq.

HESLIN ROTHENBERG FARLEY & MESITI P.C.

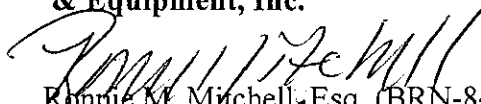
5 Columbia Circle

Albany, New York 12203-5160

Telephone: (518) 452-5600

Facsimile: (518) 452-5579

**Attorneys for Plaintiff, Paraclete Armor  
& Equipment, Inc.**



Ronnie M. Mitchell, Esq. (BRN-8423 EDNC)

Mitchell Brewer Richardson Adams

Burge & Boughman

2950 Village Drive

Fayetteville, North Carolina 28304-3815

Telephone: 910-678-7100

Facsimile: 910-678-9099

**Attorneys for Plaintiff, Paraclete Armor  
& Equipment, Inc.**

## Certificate of Service

The undersigned hereby certifies that in conformity with Rule 5 of the Rules of Civil Procedure the undersigned has caused a copy of Amended Complaint to be served upon all parties entitled or required to be served by mailing a copy of the document in a properly addressed, postage pre-paid wrapper addressed as set forth below. Alternatively, and further, pursuant to Fed. R. Civ. P. 5 and Local Civil Rules 5.2 and 5.3, EDNC, this document has been filed by electronic means in compliance with the rules and service has been effected by electronic means through the court's transmission facilities as authorized by Rule 5.3 and in conformity of these rules.

Dated: December 8, 2005

MITCHELL BREWER RICHARDSON

By: S/ Ronnie M. Mitchell - CM - ECF

2950 Village Drive  
Fayetteville, NC 28304  
Telephone: (910) 678-7100  
Facsimile: (910) 678-9099

Served upon:

Mr. Michael R. Annis  
Blackwell, Sanders, Peper, Martin LLP  
720 Olive Street  
Suite 2400  
St. Louis, MO 63101

Mr. Ted E. Corvette  
Nelson Mullins Riley & Scarborough LLP  
GlenLake One, Suite 200  
4140 Parklake Ave  
Raleigh, NC 27612