

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
KANSAS CITY

WELD RACING, LLC	)	
	)	
Plaintiff,	)	
	)	Case No. 4:09-cv-00391-GAF
v.	)	
	)	
ULTRA WHEEL COMPANY, INC.,	)	
	)	
and	)	
	)	
AUTOSALES, INC.,	)	
dba Summit Racing Equipment,	)	
	)	
and	)	
	)	
JEGS AUTOMOTIVE, INC.,	)	
	)	
Defendants.	)	

**FIRST AMENDED COMPLAINT**

COMES NOW, plaintiff, Weld Racing, LLC (“Weld”) by and through R. Mark Nasteff, Jr., Debra J. Fickler, and Mitchell, Kristl & Lieber, P.C. and for its First Amended Complaint for monetary damages and injunctive relief against defendants Ultra Wheel Company, Inc., Autosales, Inc., dba Summit Racing Equipment and Jegs Automotive, Inc. and avers and alleges as follows:

**PARTIES**

1. Plaintiff Weld Racing, LLC is a corporation organized and existing in the State of Delaware with its principal place of business at 6600 Stadium Drive, Kansas City, Missouri 64129.

2. Upon information and belief, defendant Ultra Wheel Company, Inc. (“Defendant Ultra”) is a corporation organized and existing in the state of California with its principal place of business at 570 N. Gilbert Street, Fullerton, California 92833.

3. Upon information and belief, defendant Autosales, Inc. dba Summit Racing Equipment (“Defendant Summit Racing”), is a corporation organized and existing in the state of Ohio with its principal place of business at 1200 Southeast Ave, Tallmadge, Ohio 44278.

4. Upon information and belief, defendant Jeg’s Automotive, Inc (“Defendant Jegs”), is a corporation organized and existing in the state of Ohio with its principal place of business at 101 Jeg’s Place, Delaware, Ohio 43015.

#### **JURISDICTION AND VENUE**

5. This action at law and in equity for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*

6. This is an action for willful infringement of trade dress, injury to business reputation, unfair competition and deceptive trade practices arising under the Trademark Act of 1946, 15 U.S.C. §§ 1051 *et seq.* (“Lanham Act”) antidilution under the Missouri Antidilution statute, Mo. Rev. Stat. § 417.061 and of the several states, common law unfair competition and trade dress infringement.

7. This Court has subject matter jurisdiction under the patent laws of the United States, 35 U.S.C. §1 *et seq.*, under Section 43 of the Lanham Act and pursuant to 28 U.S.C. §§1331 and 1336.

8. This Court has subject matter jurisdiction over the related state common law and statutory claims raised in this action pursuant to 28 U.S.C. §§ 1367 and 1338(b).

9. This Court may exercise personal jurisdiction over Defendants Ultra, Summit Racing and Jegs based upon their contacts with this forum because Defendants Ultra, Summit Racing and Jegs have manufactured or distributed products used or consumed within this State in the ordinary course of trade or has otherwise made or established contacts within this State sufficient to permit the exercise of personal jurisdiction.

10. This District is a proper venue pursuant to 28 U.S.C. 1391(b) because a substantial part of the events giving rise to Weld's claims occurred in this district.

**ALLEGATIONS COMMON TO ALL COUNTS**  
(Facts Pled Upon Information and Belief with Particularity in Accordance  
With the Federal Rules of Civil Procedure)

**THE WELD PATENT**

11. Weld owns various United States design patents relating to its wheel designs.

12. Weld is and has been the owner through previous successors-in-interest of all right, title, and interest to U.S. Design Patent D361,975 ("the '975 Patent") since the date each patent duly and legally issued to Richard G. Weld and subsequently assigned to Weld. [A copy of the '975 Patent is incorporated by reference as if fully set forth herein and is more particularly shown in Exhibit A.]

13. The wheels manufactured or offered for sale by Defendants Ultra, Summit Racing and Jegs are not manufactured by Weld.

14. Defendants Ultra, Summit Racing and Jegs are not connected or affiliated with, or authorized by Weld in any way to manufacture or offer for sale the wheels in question.

15. The wheels manufactured and/or offered for sale by Defendants Ultra, Summit Racing and Jegs are likely to cause confusion, deceive consumers and the public regarding the

source of the wheels, and dilute and tarnish the distinctive quality of Weld's trade dress and innovative patented designs.

16. For many years, Weld has engaged in the development, manufacture, and sale of premier aluminum race and performance aftermarket automotive wheels.

17. Weld has taken steps to protect its innovative designs, including the faces of performance and race wheel designs.

18. Defendant Ultra is willfully manufacturing infringing and confusingly similar imitations of Weld's unique wheels including Weld's 975 Patent.

#### **THE DRAGLITE, PROSTAR, AND MAGNUM TRADE DRESS**

19. In the late 1970's Richard "Greg" Weld designed and manufactured a drag racing and high performance street wheel widely known as DRAGLITE made of aluminum and having a smooth face with a raised center portion and round holes concentric with the outer circumference of the wheel.

20. Weld publishes catalogs featuring the distinct and non-functional smooth face with a raised center portion and round holes concentric with the outer circumference of the wheel commonly known as the DRAGLITE [A copy of Weld's catalog page depicting the DRAGLITE is incorporated by reference as if fully set forth herein is more particularly shown in Exhibit "B".]

21. These features, to wit: the distinct and non-functional smooth face with a raised center portion and round holes concentric with the outer circumference of the wheel, identify to consumers that the origin of the wheel lies with Weld.

22. As early as 1987, Weld began using the embossed square-tipped star on its 96 Series of wheels widely known as PROSTAR.

23. Weld publishes catalogs featuring the PROSTAR 96 Series of wheels bearing the distinct and non-functional embossed square-tipped star. [A copy of Weld's catalog page depicting the PROSTAR is incorporated by reference as if fully set forth herein is more particularly shown in Exhibit "C".]

24. These features, to wit: the distinct and non-functional embossed square-tipped star, identify to consumers that the origin of the wheel lies with Weld.

25. In the mid-1990's, Weld designed and manufactured a unique wheel widely known as MAGNUM having a face with large round holes concentric about the center axis that form triangular cut-outs at the outer circumference of the wheel.

26. Weld publishes catalogs featuring the MAGNUM Series of wheels bearing a face with large round holes concentric about the center axis that form triangular cut-outs at the outer circumference of the wheel. [A copy of Weld's catalog page depicting the MAGNUM is incorporated by reference as if fully set forth herein is more particularly shown in Exhibit "D"].

27. The highly distinctive MAGNUM wheel is well known in the drag racing and sprint car racing circuits.

28. These features, to wit: a face with large round holes concentric about the center axis that form triangular cut-outs at the outer circumference of the wheel, identify to consumers that the origin of the wheel lies with Weld.

29. Since introducing its DRAGLITE, PROSTAR, and MAGNUM Trade Dress and wheels protected by the '975 Patent, Weld has spent hundred of thousands of dollars promoting the products, their appearance and trademarks.

30. As a result of Weld's continuous and exclusive use of the DRAGLITE, PROSTAR and MAGNUM Trade Dress in connection with its products, the trade dress of these wheels enjoy wide public acceptance and association with Weld.

31. The DRAGLITE, PROSTAR and MAGNUM wheels and their distinct designs have come to be recognized widely and favorably by the public as indicators of the origin of Weld's goods.

32. As a result of Weld's extensive use and promotion of its DRAGLITE, PROSTAR and MAGNUM Trade Dress, Weld has built up, acquired and now owns valuable goodwill that is symbolized by the unique Trade Dress.

33. The purchasing public has come to associate the DRAGLITE, PROSTAR and MAGNUM Trade Dress with Weld.

34. Weld's Trade Dress is distinctive and non-functional and has achieved significant secondary meaning to the consuming public.

#### **WELD'S TRADEMARKS**

35. [Stricken by agreement and intentionally left blank].

36. [Stricken by agreement and intentionally left blank].

37. [Stricken by agreement and intentionally left blank].

38. [Stricken by agreement and intentionally left blank].

39. [Stricken by agreement and intentionally left blank].

40. [Stricken by agreement and intentionally left blank].

41. [Stricken by agreement and intentionally left blank].

42. [Stricken by agreement and intentionally left blank].

43. [Stricken by agreement and intentionally left blank].

## **DEFENDANTS' INFRINGING ACTIVITIES**

44. Without Weld's authorization or knowledge, Defendant Ultra has manufactured and sold in the United States wheels having designs that are covered by the WELD '975 Patent and the DRAGLITE, PROSTAR and MAGNUM Trade Dress (hereafter "Infringing Wheels I").

45. Defendant Ultra has knowingly and intentionally manufactured and continues to manufacture and offer for sale in interstate commerce Infringing Wheels I that are confusingly similar imitations of Weld's wheels.

46. Defendants Summit Racing and Jegs have knowingly and intentionally sold and offer for sale in interstate commerce Infringing Wheels I that are confusingly similar imitations of Weld's wheels.

47. Chart 1 below demonstrates Defendant Ultra's infringement by comparing images of Infringing Wheels I manufactured by Defendant Ultra.

48. Chart 1 below demonstrates Defendant Ultra's Summit Racing's and Jegs' infringement by comparing images of Infringing Wheels I sold by Defendants Ultra, Summit Racing and Jegs with the DRAGLITE, PROSTAR and MAGNUM Trade Dress and Defendant Summit Racing's and Jegs' names for Infringing Wheels I.

**Chart 1: Weld Trade Dress and Defendants' Products**

Weld	Defendant Summit Racing Equip.	Defendant Jeps Automotive
<p data-bbox="186 451 349 483">DRAGLITE</p> 	<p data-bbox="617 451 779 483">Sport Wheel</p> 	<p data-bbox="1079 451 1242 483">Sport Lite</p> 
<p data-bbox="186 945 349 976">PROSTAR</p> 	<p data-bbox="617 945 779 976">Star Wheel</p> 	<p data-bbox="1079 945 1242 976">Sport Star</p> 
<p data-bbox="186 1417 349 1449">MAGNUM</p> 	<p data-bbox="617 1417 779 1449">Magg-Num</p> 	<p data-bbox="1079 1417 1242 1449">Sport Mag</p> 

49. Infringing Wheels I distributed, offered for sale and sold by Defendants Ultra, Summit Racing and Jegs are not manufactured by Weld.

50. Infringing Wheels I distributed, offered for sale or sold by Defendants Ultra, Summit Racing and Jegs are not manufactured by anyone associated or connected with Weld, or licensed, authorized, sponsored, endorsed or approved by Weld in any way.

51. Weld used the DRAGLITE, PROSTAR and MAGNUM Trade Dress extensively and continuously before Defendants Ultra, Summit Racing and Jegs began using confusingly similar imitations of Weld's wheels.

52. Infringing Wheels I manufactured and/or sold by Defendants Ultra, Summit Racing and Jegs are similar to and compete with wheels sold by Weld, and are sold through overlapping channels of trade.

53. Defendant Ultra's, Summit Racing's and Jegs' use of confusingly similar imitations of Weld's DRAGLITE, PROSTAR and MAGNUM Trade Dress is likely to deceive, confuse and mislead prospective purchasers and into believing that wheels sold by Defendants Ultra, Summit Racing and Jegs are manufactured by Weld, which they are not.

54. Defendant Ultra's, Summit Racing's and Jegs' use of confusingly similar imitations of Weld's DRAGLITE, PROSTAR and MAGNUM Trade Dress is likely to deceive, confuse and mislead prospective purchasers and into believing that wheels sold by Defendants Ultra, Summit Racing and Jegs are authorized by Weld, which they are not.

55. Defendant Ultra's, Summit Racing's and Jegs' use of confusingly similar imitations of Weld's DRAGLITE, PROSTAR and MAGNUM Trade Dress is likely to deceive, confuse and mislead prospective purchasers and into believing that wheels sold by Defendants Ultra, Summit Racing and Jegs are associated with Weld, which they are not.

56. The likelihood of confusion, mistake and deception engendered by Defendant Ultra's, Summit Racing's and Jegs' misappropriation of Weld's trade dress is causing irreparable harm to the goodwill symbolized by the DRAGLITE, PROSTAR and MAGNUM Trade Dress and the reputation for quality that they embody.

57. Defendant Ultra's, Summit Racing's and Jegs' activities are likely to cause confusion before, during and after the time of purchase because purchasers, prospective purchasers and others viewing Infringing Wheels I at the point of sale or on a vehicle are likely, due to Defendant Ultra's, Summit Racing's and Jegs' use of confusingly similar imitations of the DRAGLITE, PROSTAR and MAGNUM Trade Dress, to mistakenly attribute the product to Weld.

58. The activities set forth herein by Defendants Ultra, Summit Racing and Jegs in using, manufacturing or selling Infringing Wheels I is particularly damaging with respect to those persons who perceive a defect or lack of quality in Defendant Ultra's, Summit Racing's and Jegs' products.

59. By causing a likelihood of confusion, mistake and deception, Defendants Ultra, Summit Racing and Jegs are inflicting irreparable harm to the goodwill symbolized by the DRAGLITE, PROSTAR and MAGNUM Trade Dress.

60. By causing a likelihood of confusion, mistake and deception, Defendants Ultra, Summit Racing and Jegs are inflicting irreparable harm to Weld's reputation for quality that Weld's DRAGLITE, PROSTAR and MAGNUM trade dress embody.

61. Defendant Ultra, Summit Racing and Jegs continue to use confusingly similar imitations of Weld's DRAGLITE, PROSTAR and MAGNUM Trade Dress in connection with the sale of wheels that are directly competitive to those offered by Weld.

62. Defendants Ultra, Summit Racing and Jegs began selling these imitations well after Weld established protectable rights to its DRAGLITE, PROSTAR and MAGNUM Trade Dress.

63. Defendants Ultra, Summit Racing and Jegs knowingly, willfully, intentionally and maliciously adopted and used confusing similar imitations of Weld's DRAGLITE, PROSTAR and MAGNUM Trade Dress.

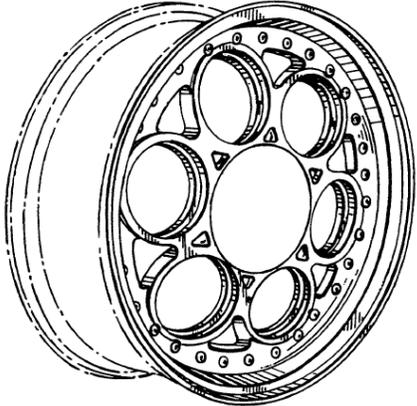
64. Without Weld's authorization or knowledge, Defendant Ultra has manufactured and/or offered for sale and sold in the United States wheels having a design that is protected by Weld's '975 Patent (hereinafter "Infringing Wheels II").

65. Defendants Ultra, Summit Racing and Jegs knowingly and intentionally sold and continue to sell Infringing Wheels II as simulations of Weld's wheels.

66. Chart 2 below demonstrates Defendant Ultra's infringement of Weld's '975 Patent by comparing an image of Infringing Wheels II manufactured or sold by Defendant Ultra with the claimed design of the Weld '975 Patent.

67. Chart 2 below demonstrates Defendant Ultra's, Summit Racing's and Jegs' infringement by comparing images of Infringing Wheels II sold by Defendants Ultra, Summit Racing and Jegs with the Weld '975 Patent and Defendant Summit Racing's and Jegs' names for Infringing Wheels II.

**Chart 2. Images Depicting Infringement of Weld’s Design Patent D361,975 by Defendants**

<p><b>D361,975 MAGNUM</b></p>	<p><b>Defendant Summit Racing Equip. MAGG-NUM</b></p>	<p><b>Defendant Jegs Automotive SPORT MAG</b></p>
		

68. Defendants Ultra, Summit Racing and Jegs have infringed and continue to infringe Weld’s ‘975 Patent within the meaning of 35 U.S.C. § 271(a) by making Infringing Wheels II without Weld’s authorization or license.

69. Defendants Ultra, Summit Racing and Jegs have infringed and continue to infringe Weld’s ‘975 Patent within the meaning of 35 U.S.C. § 271(a) by selling the Infringing Wheels II without Weld’s authorization or license.

70. Defendants Ultra, Summit Racing and Jegs have infringed and continue to infringe Weld’s ‘975 Patent within the meaning of 35 U.S.C. § 271(a) by offering to sell Infringing Wheels II without Weld’s authorization or license.

71. Weld has sold and is currently selling its MAGNUM wheels bearing the design claimed in the ‘975 Patent.

72. As contemplated by the Patent Act, 35 U.S.C. § 287, Weld has provided notice of its ‘975 Patent by marking the ‘975 Patent number on literature and packaging of MAGNUM product lines since the time of acquiring Weld and its intellectual property assets.

73. Defendants Ultra, Summit Racing and Jegs' infringement of the '975 Patent has been and continues to be intentional and willful.

**FIRST CLAIM FOR RELIEF**  
**(Patent Infringement '975 Patent)**

74. Weld hereby realleges and incorporates by reference the allegations and averments in paragraphs 1-73 as if more fully set forth herein.

75. Defendants Ultra, Summit Racing and Jegs have made, used, offered to sell, sold and/or imported into the United States, and still are making, using, offering to sell, selling, and/or importing into the United States, wheels having a design that infringe Weld's '975 Patent without Weld's authorization.

76. Defendant Ultra's, Summit Racing's and Jegs' infringement has been intentional and willful, making this an exceptional case.

77. Weld has been and will continue to be irreparably harmed by Defendant Ultra's, Summit Racing's and Jegs' infringement of Weld's '975 Patent.

**SECOND CLAIM FOR RELIEF**  
**(Unfair Competition as to the DRAGLITE, PROSTAR and MAGNUM Trademarks under the Lanham Act)**

78. [Stricken by agreement and intentionally left blank].

79. [Stricken by agreement and intentionally left blank].

80. [Stricken by agreement and intentionally left blank].

81. [Stricken by agreement and intentionally left blank].

82. [Stricken by agreement and intentionally left blank].

83. [Stricken by agreement and intentionally left blank].

84. [Stricken by agreement and intentionally left blank].
85. [Stricken by agreement and intentionally left blank].
86. [Stricken by agreement and intentionally left blank].
87. [Stricken by agreement and intentionally left blank].

**THIRD CLAIM FOR RELIEF**  
**(Unfair Competition as to the DRAGLITE, PROSTAR and MAGNUM  
Trade Dress under the Lanham Act)**

88. Weld hereby realleges and incorporates by reference the allegations and averments in paragraphs 1-87 as if more fully set forth herein.

89. Weld's DRAGLITE, PROSTAR and MAGNUM Trade Dress has acquired secondary meaning.

90. Defendant Ultra's, Summit Racing's and Jegs' use of knockoff duplicates or confusingly similar imitations of Weld's DRAGLITE, PROSTAR and MAGNUM Trade Dress has caused and is likely to cause confusion, deception, and mistake by creating the false and misleading impression that Defendant Ultra's, Summit Racing's and Jegs' goods are manufactured by Weld, or an entity affiliated, connected, or associated with Weld.

91. Defendant Ultra's, Summit Racing's and Jegs' use of knockoff duplicates or confusingly similar imitations of Weld's DRAGLITE, PROSTAR and MAGNUM Trade Dress has caused and is likely to cause confusion, deception, and mistake by creating the false and misleading impression that Defendant Ultra's, Summit Racing's and Jegs' goods are distributed by Weld, or an entity affiliated, connected, or associated with Weld.

92. Defendant Ultra's, Summit Racing's and Jegs' use of knockoff duplicates or confusingly similar imitations of Weld's DRAGLITE, PROSTAR and MAGNUM Trade Dress has caused and is likely to cause confusion, deception, and mistake by creating the false and

misleading impression that Defendant Ultra's, Summit Racing's and Jegs' goods are manufactured with the sponsorship, endorsement or approval of Weld, or an entity affiliated, connected, or associated with Weld.

93. Defendant Ultra's, Summit Racing's and Jegs' use of knockoff duplicates or confusingly similar imitations of Weld's DRAGLITE, PROSTAR and MAGNUM Trade Dress has caused and is likely to cause confusion, deception, and mistake by creating the false and misleading impression that Defendant Ultra's, Summit Racing's and Jegs' goods are distributed with the sponsorship, endorsement or approval of Weld, or an entity affiliated, connected, or associated with Weld.

94. Defendants Ultra, Summit Racing and Jegs have made false representations, false descriptions, and false designations of origin of its goods in violation of the Lanham Act and in particular 15 U.S.C. 1125(a).

95. Defendant Ultra's, Summit Racing's and Jegs' activities have caused and, unless enjoined by this Court, will continue to cause a likelihood of confusion and deception of members of the trade and public and, additionally, injury to Welds' goodwill and reputations as symbolized by the DRAGLITE, PROSTAR and MAGNUM Trade Dress, for which Weld has no adequate remedy at law.

96. Defendant Ultra's, Summit Racing's and Jegs' actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with Weld's DRAGLITE, PROSTAR and MAGNUM Trade Dress to the great and irreparable injury of Weld.

97. Defendant Ultra's, Summit Racing's and Jegs' conduct has caused, and is likely to continue causing substantial injury to the public and to Weld.

98. Weld is entitled to injunctive relief and to recover Defendant Ultra's, Summit Racing's and Jegs' profits, actual damages, enhanced profits and damages, costs and reasonable attorneys' fees pursuant to the Lanham Act and in particular 15 U.S.C. §§ 1125(a) and 1117(a).

**FOURTH CLAIM FOR RELIEF**  
**(Dilution as to the DRAGLITE, PROSTAR and MAGNUM Trademarks under the Lanham Act)**

**[Stricken by agreement and intentional left blank]**

- 99. [Stricken by agreement and intentionally left blank].
- 100. [Stricken by agreement and intentionally left blank].
- 101. [Stricken by agreement and intentionally left blank].
- 102. [Stricken by agreement and intentionally left blank].
- 103. [Stricken by agreement and intentionally left blank].
- 104. [Stricken by agreement and intentionally left blank].
- 105. [Stricken by agreement and intentionally left blank].
- 106. [Stricken by agreement and intentionally left blank].
- 107. [Stricken by agreement and intentionally left blank].

**FIFTH CLAIM FOR RELIEF**  
**(Dilution as to the DRAGLITE, PROSTAR and MAGNUM Trade Dress under the Lanham Act)**

108. Weld realleges and incorporates by reference the allegations and averments in paragraphs 1-107 as if more fully set forth herein.

109. Weld has extensively and continuously promoted and used the DRAGLITE, PROSTAR and MAGNUM Trade Dress in the United States.

110. By extensively and continuously promoting and using the DRAGLITE, PROSTAR and MAGNUM Trade Dress, it has thereby become famous and a well-known indicator of the origin of Weld's goods.

111. Defendants Ultra, Summit Racing and Jegs are making commercial use in commerce of trade dress that dilutes and is likely to dilute the distinctiveness of Weld's DRAGLITE, PROSTAR and MAGNUM Trade Dress by eroding the public's exclusive identification of these famous trade dress with Weld.

112. The actions of Ultra, Summit Racing and Jegs in diluting the DRAGLITE, PROSTAR and MAGNUM Trade Dress tarnishes and degrades the positive associations and prestigious connotations of the Trade Dress, and otherwise lessens the capacity of the Trade Dress to identify and distinguish goods of Weld.

113. Defendants Ultra, Summit Racing and Jegs actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with Weld's DRAGLITE, PROSTAR and MAGNUM Trade Dress.

114. Defendant Ultra's, Summit Racing's and Jegs' actions demonstrate and intentional, willful and malicious intent to cause dilution of the DRAGLITE, PROSTAR and MAGNUM Trade Dress to the great and irreparable injury to Weld.

115. Defendant Ultra's, Summit Racing's and Jegs' conduct has caused, and is likely to continue cause substantial injury to Weld's goodwill and business reputation, and dilution of the distinctiveness and value of Weld's famous and distinctive DRAGLITE, PROSTAR and MAGNUM Trade Dress in violation of the Lanham Act and in particular 15 U.S.C. §§ 1125(c).

116. Weld is entitled to injunctive relief and to Defendant Ultra's, Summit Racing's and Jegs' profits, actual damages, enhanced profits and damages, costs and reasonable attorneys' fees pursuant to the Lanham Act and in particular 15 U.S.C. §§ 1125(c) and 1117(a).

**SIXTH CLAIM FOR RELIEF**  
**(Common law Trademark Infringement and Unfair Competition)**

**[Stricken by agreement and intentionally left blank]**

- 117. [Stricken by agreement and intentionally left blank].
- 118. [Stricken by agreement and intentionally left blank].
- 119. [Stricken by agreement and intentionally left blank].
- 120. [Stricken by agreement and intentionally left blank].
- 121. [Stricken by agreement and intentionally left blank].
- 122. [Stricken by agreement and intentionally left blank].
- 123. [Stricken by agreement and intentionally left blank].
- 124. [Stricken by agreement and intentionally left blank].
- 125. [Stricken by agreement and intentionally left blank].
- 126. [Stricken by agreement and intentionally left blank].
- 127. [Stricken by agreement and intentionally left blank].
- 128. [Stricken by agreement and intentionally left blank].
- 129. [Stricken by agreement and intentionally left blank].

**SEVENTH CLAIM FOR RELIEF**  
**(Trademark Dilution and Injury to Business Reputation as to the DRAGLITE, PROSTAR and MAGNUM Trademarks in accordance with state law)**

- 130. [Stricken by agreement and intentionally left blank].

131. [Stricken by agreement and intentionally left blank].
132. [Stricken by agreement and intentionally left blank].
133. [Stricken by agreement and intentionally left blank].
134. [Stricken by agreement and intentionally left blank].
135. [Stricken by agreement and intentionally left blank].
136. [Stricken by agreement and intentionally left blank].

**EIGHTH CLAIM FOR RELIEF**

**(Trade Dress Dilution and Injury to Business Reputation as to the DRAGLITE, PROSTAR and MAGNUM Trade Dress)**

137. Weld realleges and incorporates by reference the allegations and averments contained in paragraphs 1-136 as if more fully set forth herein.

138. [Stricken by agreement and intentionally left blank].

139. By Weld extensively and continuously promoting and using the DRAGLITE, PROSTAR and MAGNUM Trade Dress, the Trade Dress has become famous and well-known symbol of the origin of Weld's goods.

140. Defendant Ultra's, Summit Racing's and Jegs' unauthorized use of Weld's DRAGLITE, PROSTAR and MAGNUM Trade Dress dilutes and is likely to dilute the distinctiveness of Weld's Trade Dress by eroding the public's exclusive identification of this famous Trade Dress with Weld.

141. The actions of Defendants Ultra, Summit Racing and Jegs tarnish and degrade the positive associations and prestigious connotations of the Trade Dress.

142. Defendant Ultra's, Summit Racing's and Jegs' conduct has caused, and is likely to continue cause substantial injury to Weld's goodwill and business reputation, and dilution of the distinctiveness and value of Weld's famous and distinctive DRAGLITE, PROSTAR and

MAGNUM Trade Dress in violation of the Missouri Antidilution statute, Mo. Rev. Stat. § 417.061, as well as the antidilution laws of the several states, include Alabama, Ala. Code § 8-12-17 (1993); Arkansas, Ark. Code Ann. 4-71-113 (Michie 1996); California, Cal., bus. & Prof. Code 14330 (West 1987 & Supp. 1998); Connecticut, Conn. Gen. Stat. Ann. 35-11i(c) (West 1997); Delaware, Del. Code Ann. Til. 6, § 3313 (1993); Florida, Fla. Stat. Ann. 495.151 (West 1998); Georgia, Ga. Code Ann. 10-1-451 (1994); Idaho, Idaho Code 48-512 (1997); Illinois, 765 Ill. Comp. Stat. Ann. 1036/65 (West 1998); Iowa, Iowa Code Ann. 548.113 (West 1997); Louisiana, La. Rev. Stat. Ann 51:223.1 (West 1987); Maine, Me., Rev. Stat. Ann. Tit. 10 1530 (West 1996); Massachusetts, Mass. Gen. K. Ch. 110B § 12 (West Supp. 1990); Minnesota, Minn. Stat. Ann § 325D.4165 (1995); Mississippi, Miss. Code Ann. § 75-25-25 (Supp. 1997); Montana, Mont. Code Ann. § 30-13-334 (1995); New Mexico, N.M. Stat. Ann § 57-3D-15 (Supp. 1997); New York, N.Y. Gen. Bus. Law § 360-1 (McKenny 1996); Oregon, O.R.S. § 647.107 (1988); Pennsylvania, 54 Pa. Cons. Stat. Ann. § 1124 (West 1996); Rhode Island, R.I. Gen. Laws § 6-2-12 (1992); Tennessee, Tenn. Code Ann. § 47-25-512 (1995); Texas, Tex. Bus. & Com. Code Ann. § 16.29 (West Supp. 1998); Washington, Wash. Rev. Code Ann. § 19.77.160 (West Supp. 1997); West Virginia, W. Va. Code § 47-2-13 (1996); and Wyoming, Wyo. Stat. Ann § 40-1-115 (Michie 1997).

143. Weld therefore, is entitled to injunctive relief, damages and costs, as well as enhanced damages and reasonable attorneys' fees.

#### **PRAYER FOR RELIEF**

WHEREFORE, Weld respectfully asks this Court:

1. To enter judgment that Defendants Ultra, Summit Racing and Jegs willfully infringed Weld's '975 Patent in violation of 35 U.S.C. § 271(a);

2. To enjoin Defendants Ultra, Summit Racing and Jegs against further infringement of Weld's '975 Patent by Defendants, their agents, servants, employees, officers, and all other controlled by them;

3. To award damages adequate to compensate Weld for the patent infringement that has occurred pursuant to 35 U.S.C. § 284, which shall be trebled as a result of Defendant Ultra's, Summit Racing's and Jegs' willful patent infringement, or an award of Defendant Ultra's, Summit Racing's and Jegs' profits from its infringement pursuant to 35 U.S.C. § 289, whichever is greater, together with prejudgment interest and costs;

4. To assess costs, including reasonable attorneys' fees, pursuant to 35 U.S.C. § 285, with prejudgment interest;

5. To enjoin Defendants Ultra, Summit Racing and Jegs and all their agents, servants, employees, officers, and all other persons acting for, within, by through, or under authority from Defendants Ultra, Summit Racing and Jegs, or in concert or participation with Defendants Ultra, Summit Racing and Jegs, and each of them be enjoined permanently, from:

a. using the DRAGLITE, PROSTAR and MAGNUM Trade Dress, or any other copy, reproduction, or colorable imitation or simulation of Welds' DRAGLITE, PROSTAR and MAGNUM Trade Dress on or in connection with Defendant Ultra's, Summit Racing's and Jegs' goods.

b. using any design or source designation of any kind on or in connection with Defendant Ultra's, Summit Racing's and Jegs' goods or services that are a copy, reproduction, colorable imitation, or simulation of, or confusingly similar to any design of Weld;

c. using any design or source designation of any kind on or in connection with Defendant Ultra's, Summit Racing's and Jegs' goods or services that is likely to cause confusion, mistake, deception, or public misunderstanding that such goods or services are produced or provided by Weld, or are sponsored or authorized by or in any way connected or related to Weld;

d. using any design or source designation of any kind on or in connection with Defendant Ultra's, Summit Racing's and Jegs' goods or services that dilutes or is likely to dilute the distinctiveness of any design of Weld; and

e. passing off, palming off, or assisting in passing off or palming off, Defendant Ultra's, Summit Racing's and Jegs' goods or services as those of Weld's or otherwise continuing any and all acts of unfair competition as alleged in this Complaint;

6. To order Defendants Ultra, Summit Racing and Jegs to recall all products bearing the confusing similar Trade Dress to that of DRAGLITE, PROSTAR and MAGNUM, which have been shipped by Defendants Ultra, Summit Racing and Jegs or under its authority, to any customer including, but not limited to, any wholesaler, distributor, retailer, consignor, or marketer, and also to deliver to each customer a copy of this Court's order as it relates to said injunctive relief against Defendants Ultra, Summit Racing and Jegs;

7. To order Defendants Ultra, Summit Racing and Jegs to deliver up for impoundment and for destruction all wheels, bags, boxes, labels, tags, signs, packages, receptacles, advertising, sample books, promotional material, stationery or other materials in the possession, custody, or under the control of Defendants Ultra, Summit Racing and Jegs that are found to adopt, to infringe, or to dilute any of Weld's trade dress or that otherwise unfairly compete with Weld an its products and services;

8. To compel Defendants Ultra, Summit Racing and Jegs to account to Weld for any and all profits derived by Defendants Ultra, Summit Racing and Jegs from the sale or distribution of infringing goods as described in this Complaint;

9. To award Weld all damages caused by the acts forming the basis of this Complaint under the Lanham Act;

10. Based on Defendant Ultra's, Summit Racing's and Jegs' knowing and intentional use of confusing similar imitations of Weld's DRAGLITE, PROSTAR and MAGNUM Trade Dress, order that any award be trebled and the award of Defendants Ultra's, Summit Racing's and Jegs' profits be enhanced as provide for by 15 U.S.C. 1117(a);

11. To require Defendants Ultra, Summit Racing and Jegs to pay Weld the costs of this action and their reasonable attorneys' fees pursuant to 15 U.S.C. 1117(a) and the state statutes cited in this Complaint;

12. Based on Defendant Ultra's, Summit Racing's and Jegs' willful and deliberate infringement and dilution of Weld's trade dress, and to deter such conduct in the future, to award Weld punitive damages; and

13. Weld be awarded such other and further relief as this Court deems meet, just and proper.

### **JURY DEMAND**

Weld demands a trial by jury on all issues submittable to a jury.

Respectfully submitted,

MITCHELL, KRISTL & LIEBER, P.C.

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 6, 2010 I electronically filed the forgoing document with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to counsel for defendant as follows:

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/s/ R. Mark Nasteff, Jr.

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