

EFILED  
10/09/03

-9 OCT 09 PM 16:15

DISTRICT OF UTAH

BY: \_\_\_\_\_

L. Grant Foster, 7202  
gfoster@hollandhart.com  
Brett L. Foster, 6089  
bfoster@hollandhart.com  
HOLLAND & HART LLP  
60 E. South Temple, Suite 2000  
Salt Lake City, UT 84111-1031  
Telephone: (801) 595-7800  
Facsimile: (801) 364-9124

*Attorneys for Browning Arms Co.*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

---

BROWNING ARMS CO., a Utah corporation	)	
	)	
Plaintiff,	)	<b>COMPLAINT FOR DECLARATORY JUDGMENT</b>
	)	
v.	)	
	)	
JOHN. R. JAMISON, a resident of Oregon,	)	Judge Dee Benson
	)	DECK TYPE: Civil
Defendant.	)	DATE STAMP: 10/09/2003 @ 16:18:49
	)	CASE NUMBER: 1:03CV00116 DB
	)	
	)	
	)	
	)	
	)	

---

Plaintiff Browning Arms Co. ("Browning Arms"), for its cause of action against John R. Jamison, alleges as follows:

**JURISDICTION AND VENUE**

1. This is an action for declaratory judgment regarding two United States patents, Lanham Act claims and misappropriation of trade secret claims. This Court has subject matter



jurisdiction over the matters complained of herein pursuant to 28 U.S.C. §§ 1331, 1338, 1367 and 2201-2202.

2. This action arises from, in part, Jamison's activities purposefully directed to Utah residents and businesses. Jamison's business activities in and directed to Utah residents and businesses have been systematic and continuous. Therefore, this Court has personal jurisdiction over Jamison.

3. On information and belief, venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2).

#### **THE PARTIES**

4. Plaintiff Browning Arms Co. is a Utah corporation with its principal place of business in Morgan, Utah.

5. Browning Arms is involved with research, design and development of firearms, and importing and exporting.

6. Defendant John R. Jamison ("Jamison") is an individual residing in Eugene, Oregon.

7. Jamison manufactures and sells firearms and firearm cartridges throughout the United States.

8. In connection with the manufacture or sale of his firearms and firearm cartridges, Jamison is believed to have, *inter alia*, traveled to and transacted business within the State of Utah, directed correspondence into the State of Utah and made numerous telephone calls into the State of Utah.

9. In connection with the manufacture or sale of his firearms and firearm cartridges, Jamison is further believed to have entered into license agreements within the State of Utah.

**GENERAL BACKGROUND ALLEGATIONS**

10. On April 22, 2003, United States Patent No. 6,550,174 (the “174 patent”), entitled “Short-Action Firearm for High-Power Firearm Cartridge” issued to, and is owned by, Jamison.

11. On July 22, 2003, United States Patent No. 6,595,138 (the “138 patent”), entitled “High-Power Firearm Cartridge” issued to, and is owned by, Jamison.

12. Browning Arms designed short action firearms capable of firing a cartridge commonly referred to as a short magnum; the firearms are sold under a variety of model names by Browning, a Utah corporation having a principal place of business in Morgan, Utah.

13. Jamison has accused Browning Arms of, *inter alia*, infringing both the ‘174 patent and the ‘138 patent, engaging in false designations of origin in violation of the Lanham Act and misappropriating trade secrets in violation of the Oregon Trade Secrets Act, all in connection with the design and development of the short action firearms referred to in the preceding paragraph.

14. On or about July 30, 2003, Jamison filed a complaint for patent infringement against Browning Arms in the U.S. District Court for the District of Oregon, Civil No. CV03 – 1036-KI, alleging, *inter alia*, infringement of both the ‘174 patent and the ‘138 patent, Lanham Act violations and misappropriation of trade secrets.

15. Upon information and belief, both the '174 patent and the '138 patent and every claim thereof are invalid under the Patent Laws of the United States (35 U.S.C. § 1 *et seq.*), and specifically one or more of 35 U.S.C. §§ 102, 103 and 112.

16. Upon information and belief, Browning Arms does not infringe any claim of the '174 patent or the '138 patent as alleged in Jamison's Oregon complaint.

17. On information and belief, Browning Arms does not engage in false designations of origin in violation of the Lanham Act as alleged in Jamison's Oregon complaint.

18. On information and belief, Browning Arms has not misappropriated trade secrets in violation of the Oregon Trade Secret Act (ORS 646.461 to 475) as alleged in Jamison's Oregon complaint.

19. A justiciable controversy exists between Jamison and Browning Arms as to the allegations of patent infringement, Lanham Act violations and misappropriation of trade secrets.

20. The justiciable controversy will not be resolved in the District of Oregon because Oregon lacks personal jurisdiction over Browning Arms.

21. The justiciable controversy can be resolved in the District of Utah because Utah may lawfully exercise personal jurisdiction over Jamison.

22. By reason of the foregoing, a substantial and continuing actual controversy exists between Jamison and Browning Arms with respect to the validity, scope and infringement of the '174 patent and the '138 patent; the alleged Lanham Act violations and the alleged misappropriation of trade secrets.

**CLAIM FOR RELIEF AGAINST JAMISON**  
**(Declaratory Judgment)**

23. Browning Arms incorporates by reference the allegations contained within paragraphs 1 through 20 of this Complaint as if fully set forth herein.

24. Upon information and belief, none of the claims of the '174 patent are valid.

25. Upon information and belief, none of the claims of the '138 patent are valid.

26. Upon information and belief, Browning Arms has not infringed and does not infringe any claims of the '174 or the '138 patent.

27. Browning Arms, therefore, hereby asks this Court to enter a declaratory judgment declaring that Browning Arms has not, and is not, infringing either the '138 patent and '174 patent, and that both the '138 patent and the '174 patent are invalid.

28. Browning Arms further asks this Court to enter a declaratory judgment, declaring that Browning Arms is not in violation of the Lanham Act or the Oregon Trade Secrets Act as alleged otherwise by Jamison.

**PRAYER FOR RELIEF**

WHEREFORE, Browning Arms prays for Judgment as follows:

1. That the Court declare that Browning Arms has not infringed, and is not infringing, the '138 patent;

2. That the Court declare that Browning Arms has not infringed, and is not infringing, the '174 patent;

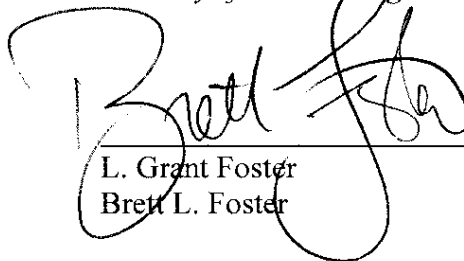
3. That the Court declare that Browning Arms is not in violation of the Lanham Act, notwithstanding the allegations of Jamison to the contrary;

4. That the Court declare that Browning Arms is not in violation of the Oregon Trade Secrets Act, notwithstanding the allegations of Jamison to the contrary;
5. That the Court declare that the '138 patent is invalid;
6. That the Court declare that the '174 patent is invalid;
7. That this case be deemed exceptional under 35 U.S.C. § 285 or 15 U.S.C. § 1117, thereby entitling Browning Arms to its reasonable attorneys' fees;
8. For costs of suit incurred herein; and
9. For such other and further relief as this Court deems just and proper.

Dated this 9<sup>th</sup> day of October, 2003.

Respectfully submitted,

HOLLAND & HART LLP  
*Attorneys for Browning Arms Co.*



L. Grant Foster  
Brett L. Foster

Plaintiffs' Address:

Browning Arms Co.  
One Browning Place  
Morgan, UT 84050-9319