

**UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW JERSEY**

SLP Performance Parts, Inc.,	)	
a New Jersey Corporation,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 3:11-CV-03460
	)	
	)	
Suncoast Automotive Performance, Inc.,	)	
a Florida Corporation,	)	
	)	
Defendant.	)	

**FIRST AMENDED COMPLAINT**

COMES NOW Plaintiff SLP Performance Parts, Inc. ("SLP") and for its First Amended Complaint against Defendant Suncoast Automotive Performance, Inc. ("Suncoast") states the following:

**PARTIES AND JURISDICTION**

1. Plaintiff, SLP, is a New Jersey corporation, having its principal place of business at 1501 Industrial Way North, Toms River, New Jersey 08755.

2. Defendant, Suncoast, is a Florida Corporation, having its principal place of business at 3112 29th Avenue East, Bradenton, Florida 34208.

3. This Court has subject matter jurisdiction under 28 U.S.C. §1338(a) (any Act of Congress relating to patents or trademarks); 15 U.S.C. § 1121 (action arising under the Lanham Act); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1338(b) (action asserting a claim of unfair competition joined with a substantial and related claim under the trademark laws); and 28 U.S.C. § 1367 (supplemental jurisdiction).

4. This Court has personal jurisdiction over Defendant because it has committed and continues to commit acts of infringement in violation of 35 U.S.C. § 271 and 15 U.S.C. §§ 1114 and 1125, and places infringing products into the stream of commerce, with the knowledge or understanding that such products are sold in the State of New Jersey in this District. The acts of Defendant cause injury to SLP within this District. Upon information and belief, Defendant derives revenue from the sale of the infringing products within this District, expects its actions to have consequences within this District, and derives substantial revenue from interstate commerce.

5. Venue is proper in this Court under 28 U.S.C. § 1391(b) and (c) because Defendant transacts business within this District and offers for sale, in this District, products that infringe SLP's patents and trademarks. Venue is also proper because SLP's principal place of business is in this district and SLP has suffered and continues to suffer harm in this District.

## **FACTS**

### **A. SLP's "ZL" Trademarks**

6. In 2004, SLP began selling performance kits, performance parts for automobiles, and enhanced performance Camaros under the ZL name and mark.

7. SLP frequently uses a number with the ZL mark, such as ZL 427, as a trademark for enhanced performance automobiles and on badges branding automobiles with a performance upgrade.

8. SLP has also used single digit numbers with the ZL mark. For example, SLP uses ZL5, as a trademark for performance parts kits and for automobiles with the kits.

9. On March 4, 2004, SLP applied to register the ZL trademark for "automotive engine short block; land vehicle engine performance enhancement kit, namely, a cold air induction

system comprising an air filter, a cold air duct, an air intake scoop and a connector for attachment to an original engine air intake, and an engine exhaust system comprising exhaust pipe, tailpipe, muffler, at least one tip and installation hardware, sold as a unit; land vehicle engine performance enhancement kit, namely, a cold air induction system comprising an air filter, a cold air duct, an air intake scoop and a connector for attachment to an original engine air intake, and an engine exhaust system comprising exhaust pipe, tailpipe, muffler, at least one tip and installation hardware, tuned-length headers and rocker arms” in International Class 7. This application matured into Federal Registration Number 3,146,303 on September 19, 2006. A copy of the registration certificate is attached as **Exhibit A**.

10. On August 18, 2009, SLP applied to register the ZL trademark for “enhanced performance automobiles” in International Class 12. This application matured into Federal Registration Number 3,767,305 on March 30, 2010. A copy of the registration certificate is attached as **Exhibit B**.

**B. SLP’s Design Patents**

11. On July 9, 2009, SLP filed an application for a Design Patent for the design of an automobile hood. This application matured into Federal Design Patent Registration Number D623,570 (‘570 Patent) on September 14, 2010. A copy of the issued patent is attached as **Exhibit C**.

12. On November 1, 1996, SLP filed an application for a Design Patent for the design of an automobile hood. This application matured into Federal Design Patent Registration Number D386,457 (‘457 Patent) on November 18, 1997. A copy of the issued patent is attached as **Exhibit D**.

13. On September 21, 1998, SLP filed an application for a Design Patent for the design of

an automobile hood. This application matured into Federal Design Patent Registration Number D418,465 ('465 Patent) on January 4, 2000. A copy of the issued patent is attached as **Exhibit E**.

**C. Defendant's Infringing Activities**

14. On information and belief, Defendant sells its products, including the infringing products, through resellers/distributors located in New Jersey.

15. On July 27, 2009, New Jersey resident, Hank Daniecki of H3 Automotive, ordered an infringing ram air hood via Defendant's website; this infringing item was shipped by Defendant and delivered to Mr. Daniecki at 755 Rt. 524 Allentown, New Jersey.

16. In January 2011 and upon further investigation after filing its first Complaint in this matter, SLP discovered that Defendant was selling automobile badges bearing the mark ZL 427 and several ram air hoods, including, but not limited to:

- Part #21022 "Chevrolet - Bumble Bee Camaro Z Style 2010 and Up Functional Ram Air Hood",
- Part #21021 "Chevrolet - Camaro Z Style 2010 and Up Functional Ram Air Hood",
- Part #21018 "Chevrolet - Camaro Z Style 2010 and Up Functional Ram Air Hood",
- Part #21003 "Chevrolet - Camaro SS Style 1998-2002 Functional Ram Air Hood", and
- Part #28003<sup>1</sup> "Pontiac Firebird & Trans Am 1998-2003 Raptor Style Functional Ram Air Hood"

(collectively, the "Infringing Products") which are the same as, or similar to, the design of SLP's air hoods covered by the '570 Patent, '457 Patent, and/or '465 Patent.

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<sup>1</sup>SLP's investigation revealed that Defendant is still selling Part #28003 which is the same as, or similar to, the design of SLP's hood covered by the '465 Patent. SLP and Suncoast were previously involved in a litigation involving this hood in the Eastern District of Michigan Case No. 97-72665, the litigation was dismissed without prejudice.

17. On January 12, 2011, SLP's attorney sent a letter to Defendant demanding that it cease selling any replacement Camaro air hoods of the type covered by SLP's patents and that Defendant cease selling badges for automobiles which include SLP's registered ZL mark.

18. To date, Defendant has not responded to the cease and desist letter and its infringing activities continue.

19. After the filing of the original complaint in this matter SLP's further investigation revealed that Defendant is also selling a ram air hood called "Part #21003 Camaro SS Style 1998-2002 Functional Ram Air Hood" which is the same as, or similar to, the design of SLP's hood covered by the '457 Patent.

20. SLP's further investigation also revealed that Defendant is still selling a ram air hood called "Raptor Style Functional Ram Air Hood (#28003)" which is the same as, or similar to, the design of SLP's hood covered by the '465 Patent.<sup>2</sup>

### **COUNT I - PATENT INFRINGEMENT**

21. SLP realleges Paragraphs 1 through 20 of this First Amended Complaint as if stated herein.

22. SLP owns the '570 Patent, entitled "Automobile Hood," which was duly and legally issued by the United States Patent and Trademark Office and remains in force.

23. SLP owns the '457 Patent, entitled "Automobile Hood," which was duly and legally issued by the United States Patent and Trademark Office and remains in force.

24. SLP owns the '465 Patent, entitled "Automobile Hood," which was duly and legally issued by the United States Patent and Trademark Office and remains in force.

25. Defendant is making, offering for sale, selling and marketing ram air hoods having a

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<sup>2</sup> SLP and Suncoast were previously involved in a litigation involving this hood in the Eastern District of Michigan Case No. 97-72665, the litigation was dismissed without prejudice.

design disclosed and claimed in the '570 Patent, '457 Patent, and/or '465 Patent through its website <suncoastcreations.com> and elsewhere.

26. The near-identical similarity between the ram air hoods and SLP's patented automobile air hood designs demonstrates that Defendant knowingly and intentionally copied the SLP air hood designs covered by the '570 Patent, '457 Patent, and/or '465 Patent.

27. The actions of Defendant constitute infringement of the '570 Patent, '457 Patent, and/or '465 Patent under the Patent Act, 35 U.S.C. § 1 *et seq.*

28. The actions of Defendant constitute willful patent infringement warranting increased damages under 35 U.S.C. § 284

29. The actions of Defendant constitute an exceptional case of patent infringement warranting an award of attorneys' fees under 35 U.S.C. § 285.

30. As a result of Defendant's aforesaid conduct, SLP has suffered substantial damage and irreparable harm constituting an injury for which SLP has no adequate remedy at law, and SLP will continue to suffer irreparable harm unless Defendant's infringing acts are enjoined by this Court.

## **COUNT II - TRADEMARK INFRINGEMENT**

31. SLP realleges Paragraphs 1 through 30 of this First Amended Complaint as if stated herein.

32. SLP owns two Federal Trademark Registrations for the ZL mark, Reg. Nos. 3,146,303 and 3,767,305, providing SLP with nationwide rights in the ZL mark, which are prior to any use of the ZL mark by Defendant.

33. Long after SLP's use and registration of the ZL mark, Defendant began and continues to sell automobile badges that incorporate SLP's ZL mark.

34. Defendant's use of the ZL mark for automobile badges is likely to cause consumer confusion, mistake, or deception as to the affiliation, connection or association of Defendant with SLP and its ZL mark, or as to the origin, sponsorship, or approval by SLP of Defendant's goods.

35. Defendant's use of the ZL mark on automobile badges enables Defendant to benefit unfairly from SLP's reputation, success and goodwill, thereby giving Defendant's infringing products sales and commercial value they would not have otherwise.

36. Defendant's unauthorized use of the ZL mark on automobile badges is an infringement of SLP's trademark rights in violation of the Trademark Laws of the United States, 15 U.S.C. § 1114(a).

37. The actions of Defendant involving the ZL mark are deliberate and intentional, performed with knowledge of SLP's prior use and rights in the ZL mark, and constitute willful infringement of SLP's trademark rights.

38. The actions of Defendant constitute an exceptional case of trademark infringement warranting an award of attorneys fees under 15 U.S.C. § 1117.

39. As a result of Defendant's aforesaid conduct, SLP has suffered substantial damage and irreparable harm constituting an injury to SLP's goodwill for which SLP has no adequate remedy at law, and SLP will continue to suffer irreparable harm unless Defendant's infringing acts are enjoined by this Court.

### **COUNT III – UNFAIR COMPETITION UNDER SECTION 43(a)**

40. SLP realleges Paragraphs 1 through 39 of this First Amended Complaint as if stated herein.

41. Long prior to the acts of Defendant complained of here, SLP adopted and began using the marks ZL, ZL 427 and related marks (the "ZL marks") in connection with enhanced

performance automobiles and automobile parts, and has widely sold, marketed, and promoted its ZL marks throughout the United States.

42. As a result of SLP's long use, marketing and promotion, SLP's ZL marks have become distinctive and well-known in the automotive field, are associated with SLP as indications of source, and represent valuable goodwill owned by SLP.

43. Defendant's use of the ZL marks for similar and related goods is likely to cause confusion, mistake or deception as to the source or origin of Defendant's goods, in that consumers and others are likely to mistakenly believe that Defendant's products are SLP's products or are authorized or sponsored by SLP.

44. Defendant's use of the ZL marks constitutes unfair competition in violation of § 43(a) of the Trademark Laws of the United States, 15 U.S.C. § 1125(a), and the laws of the various states, including New Jersey.

45. As a result of Defendant's aforesaid conduct, SLP has suffered substantial damage and irreparable harm constituting an injury to SLP's goodwill for which SLP has no adequate remedy at law, and SLP will continue to suffer irreparable harm unless Defendant's infringing acts are enjoined by this Court.

**WHEREFORE**, SLP prays for relief, as follows:

1. An order preliminarily and permanently enjoining Defendant and its officers, directors, agents, servants, employees, affiliated, attorneys and all others acting in privity or in concert with them, and their parents, subsidiaries, divisions, successors and assigns, from:

- a) further acts of infringement of SLP's '570, '457, and '465 Patents;
- b) directly or indirectly using the ZL mark or any confusingly similar mark that infringes SLP's ZL trademarks or constitutes unfair competition against SLP; and



- c) from doing any other act or thing that is likely to cause confusion, mistake or deception among consumers or others as to the relationship of Defendant and its goods with SLP and its goods.
- 2. An order requiring Defendant to deliver to SLP for destruction of all products, tooling and materials in its possession or control which bear or depict the infringing design or trademarks; and the means of making such infringing materials.
- 3. An award to SLP of:
  - a) all damages caused by Defendant's infringement of SLP's '570, '457 and '465 Patents in an amount no less than a reasonable royalty, as well as treble damages pursuant to 35 U.S.C. § 284, and prejudgment interest;
  - b) all damages caused by Defendant's trademark infringement and unfair competition, including treble damages pursuant to 15 U.S.C. § 1117, and prejudgment interest;
  - c) an accounting of Defendant's profits pursuant to 35 U.S.C. § 289 and 15 U.S.C. § 1117;
  - d) the cost of this suit, including reasonable attorneys' fees, pursuant to 35 U.S.C. § 285 and 15 U.S.C. § 1117; and
  - e) punitive damages sufficient to deter further acts of infringement and unfair competition, as provided by the laws of the various states, including the State of New Jersey.
- 4. Such other relief as this Court deems just and proper.

### **DESIGNATION OF TRIAL COUNSEL**

Plaintiff, SLP Performance Parts, Inc., hereby appoints Angela White Dalton, Esq., of the law firm Zager Fuchs, P.C., and Mark V.B. Partridge (admitted *pro hac vice*), of the law firm Partridge IP Law P.C., as its trial counsel in this matter.

### **DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury of all issues properly triable by jury in this action.

### **CERTIFICATION PURSUANT TO LOCAL RULE 11.2**

To the best of the undersigned's knowledge, it is hereby certified that the matter in controversy is not the subject of any other pending or contemplated action in any court, nor is it the subject of any pending or contemplated arbitration or administrative proceeding.

Respectfully Submitted,

ZAGER FUCHS, P.C.

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