

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

AMES TRUE TEMPER, INC., :
485 Railroad Avenue :
Camp Hill, Pennsylvania 17011, : No. _____

Plaintiff, :
v. : Filed Electronically

G-FORCE BRANDS, LLC :
7 Harbor Park Drive :
Port Washington, New York 11050, :
Defendant. :

**COMPLAINT FOR PATENT AND TRADEMARK INFRINGEMENT AND
UNFAIR COMPETITION**

Plaintiff, Ames True Temper, Inc. (“ATTI”) files this Complaint against G-FORCE Brands, LLC (“G-FORCE”) as follows:

NATURE OF THE ACTION

This is an action for damages and injunctive relief for G-FORCE’s patent infringement arising under the Patent Laws of the United States, 35 U.S.C. §§ 1 et

seq., and in particular arising under 35 U.S.C. § 271. This is also an action for trademark and trade dress infringement, for false designation of origin and unfair competition in violation of ATTI's established right, title and interest in its registered trademark arising under the Lanham Act, 15 U.S.C. §§ 1051, et seq. and related claims for trademark, trade dress and unfair competition in violation of the laws of the states in which G-FORCE conducts business including, the Commonwealth of Pennsylvania as a result of G-FORCE's wrongful use of the the aforesaid trademark and trade dress of ATTI.

PARTIES

1. ATTI is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 465 Railroad Avenue, Camp Hill, Cumberland County, Pennsylvania.

2. G-FORCE is a limited liability company organized and existing under the laws of the State of New York, its principal place of business at 7 Harbor Park Drive, Port Washington, New York.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action pursuant to 35 U.S.C. § 281 and 28 U.S.C. § 1331, because the actions asserted herein arise under the laws of the United States; pursuant to 28 U.S.C. § 1338(a), because this action arises under an Act of Congress relating to patents and trademarks; and

pursuant to 28 U.S.C. § 1332, because there is complete diversity between ATTI and G-FORCE and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

4. Venue over this action is proper in this Court and Judicial District pursuant to 28 U.S.C. §§ 1391(a), 1391(b) and 28 U.S.C. § 1400(b) because G-FORCE has committed acts of infringement in this District and a substantial part of the events giving rise to the claims asserted herein have occurred in this District and because G-FORCE is subject to the personal jurisdiction of this Court.

5. This Court has personal jurisdiction over G-FORCE because G-FORCE has purposely availed itself of the privilege of conducting business within the Commonwealth of Pennsylvania and within this Judicial District by offering for sale and selling infringing products, namely the blue “G-FORCE PRO” wheelbarrow which infringes ATTI’s patent and trademark rights.

PATENT IN SUIT

6. On April 27, 1999, the United States Patent and Trademark Office issued United States Design Patent No. D 408,955 (“the ‘955 Patent”) titled “Wheelbarrow Leg Extension” to Larry F. Shuchart and Michael J. Lupey, Jr. (the “Inventors”).

7. Through a series of assignments, the Inventors have assigned all right, title and interest in the ‘955 Patent to ATTI, including the right to bring suit for

infringement of the '955 Patent to recover all past and future damages and to seek equitable relief. A true and correct copy of the '955 Patent is attached to this Complaint as "Exhibit A."

ATTI'S TRADEMARK

8. Since 1969 ATTI has used its distinctive color blue on the tray of its "JACKSON" brand of professional wheelbarrows and over the years, ATTI has invested great effort and resources in promoting its "JACKSON" blue wheelbarrows and has advertised its "JACKSON" blue wheelbarrows throughout the United States, including Pennsylvania in connection with its sale of wheelbarrows.

9. On September 11, 2007, ATTI registered its distinctive color blue as a trademark with the United States Patent and Trademark Office. A true and correct copy of the United States Trademark Registration No. 3,292,442 for ATTI's distinctive blue trademark is attached hereto as "Exhibit B."

OPERATIVE FACTS COMMON TO ALL COUNTS

10. Since at least 1969, ATTI has used its distinctive color blue on the tray of its very popular professional "JACKSON" brand wheelbarrows.

11. ATTI has advertised, promoted and publicized and marketed its distinctive blue "JACKSON" brand of wheelbarrows throughout the United States and within the Commonwealth of Pennsylvania, including within this Judicial District.

12. As a consequence of the advertising, promotion, publicizing and marketing of its “JACKSON” blue wheelbarrows, including ATTI’s advertising campaign in which ATTI identifies itself as the “HOME OF THE BLUE WHEELBARROW,” consumers have accepted and recognized the “JACKSON” blue color as identifying ATTI as the source of the “JACKSON” blue wheelbarrows sold by ATTI and the distinctive “JACKSON” blue color distinguishes ATTI’s “JACKSON” blue wheelbarrows from other wheelbarrows sold by ATTI’s competitors.

13. The “JACKSON” blue color of wheelbarrows has become and remains a valuable asset symbolizing ATTI, its goodwill and the high quality of the “JACKSON” blue wheelbarrows sold by ATTI.

14. ATTI’s “JACKSON” blue trademark has acquired in the United States a substantial and favorable reputation and goodwill and has acquired secondary meaning as indicating ATTI as the source of origin of the “JACKSON” blue wheelbarrows offered for sale by ATTI.

15. ATTI did not authorize G-FORCE to use its distinctive trademark blue color used by ATTI on its “JACKSON” brand wheelbarrows in connection with G-FORCE’s promotion and sale of its competing “G-FORCE PRO” wheelbarrows. A true and correct copy of the infringing “G-FORCE PRO” wheelbarrows sold by G-FORCE is attached hereto as “Exhibit C.”

16. G-FORCE's conduct as alleged herein falsely indicates to the purchasing public that the "G-FORCE PRO" wheelbarrows offered for sale by G-FORCE originate with ATTI and enables G-FORCE to trade upon and receive the benefit and goodwill build up at the great expense and labor of ATTI and to unjustly gain profits for G-FORCE, not as a result of G-FORCE's own efforts, but rather as a result of the misappropriation by G-FORCE of ATTI's registered trademark and trade dress. As a result of the conduct of G-FORCE, ATTI is being, among other things, unlawfully deprived of the advertising value of its distinctive "JACKSON" blue color and of its goodwill.

17. G-FORCE's use of ATTI's distinctive "JACKSON" blue in connection with its sale of "G-FORCE PRO" wheelbarrows constitutes false advertising that is likely to deceive purchasers of wheelbarrows located within the Commonwealth of Pennsylvania and elsewhere in the United States to think that ATTI is the source of or endorses the "G-FORCE PRO" wheelbarrows sold by G-FORCE.

18. In addition to infringing ATTI's registered trademark for the distinctive blue color of ATTI's "JACKSON" brand of wheelbarrows, as depicted in "Exhibit C," G-FORCE has also incorporated into the "G-FORCE PRO" wheelbarrows sold by G-FORCE, an ornamental design for a wheelbarrow leg extension that infringes the Claim of the '955 Patent.

COUNT I
PATENT INFRINGEMENT BY G-FORCE

19. ATTI repeats and realleges Paragraphs 1 through 18 as if fully stated herein.

20. G-FORCE, without authorization from ATTI, has been and is engaged in this Judicial District and elsewhere in the United States in the making, offering for sale, and selling of certain wheelbarrows named the “G-FORCE PRO” wheelbarrows which incorporate the ornamental design for a wheelbarrow leg extension as shown and described in the Claim of the ‘955 Patent, and/or is contributing and/or is actively inducing the making, offering for sale, selling or use of such infringing wheelbarrows which incorporate the ornamental design for a wheelbarrow leg extension as shown and described in the Claim of the ‘955 Patent and is presently and has in the past been infringing the ‘955 Patent in violation of 35 U.S.C. § 271(a), (b) and/or (c).

21. On information and belief, the infringement of the ‘955 Patent by G-FORCE has been willful and deliberate and in conscious disregard of ATTI’s patent rights.

22. As a consequence of the foregoing, G-FORCE has caused and is continuing to cause damage to ATTI and, unless such acts are enjoined by this Court, G-FORCE will continue to cause irreparable harm to ATTI for which there is

no adequate remedy of law and for which ATTI is entitled to injunctive relief pursuant to 35 U.S.C. § 283.

COUNT II
TRADEMARK INFRINGEMENT IN VIOLATION OF 15 U.S.C. § 1114

23. ATTI repeats and realleges Paragraphs 1 through 22 above as if fully stated herein.

24. G-FORCE's conduct constitutes a violation of 15 U.S.C. § 1114.

COUNT III
FALSE DESIGNATION OF ORIGIN AND UNFAIR COMPETITION IN VIOLATION OF 15 U.S.C. § 1125(a)

25. ATTI repeats and realleges Paragraphs 1 through 24 above as if fully stated herein.

26. The distinctive trademark and trade dress blue and the public recognition thereof and the public association thereof with the "JACKSON" blue wheelbarrows sold by ATTI are protected under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

27. G-FORCE's conduct constitutes false designation of origin and unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

28. ATTI has been, and is likely to continue to be, irreparably harmed and damaged by G-FORCE's acts of unfair competition and, unless G-FORCE is restrained, ATTI will suffer and is likely to continue to suffer a loss of sales and

profits each time its customers and prospective customers are led to believe that G-FORCE's "G-FORCE PRO" wheelbarrows are provided or endorsed by ATTI.

29. ATTI has no adequate remedy at law and injury to ATTI increases with each and every action taken by G-FORCE to promote and sell its "G-FORCE PRO" wheelbarrows.

COUNT IV
COMMON LAW UNFAIR COMPETITION

30. ATTI repeats and realleges Paragraphs 1 through 29 above as if fully stated herein.

31. G-FORCE by reason of the foregoing conduct, has attempted to compete unfairly and has competed unfairly against ATTI with the specific intent to destroy ATTI's ability to conduct business, including the making, sale and offering for sale of ATTI's distinctive "JACKSON" blue wheelbarrows.

32. The conduct of G-FORCE is and continues to be intentional, willful, malicious, outrageous and in bad faith.

33. As a direct and proximate result of the foregoing conduct of G-FORCE, ATTI has been damaged and will continue to be damaged and will suffer further irreparable injury unless G-FORCE is enjoined by this Court.

34. ATTI has no adequate remedy at law and irreparable injury to ATTI increases with each and every action taken by G-FORCE with respect to its continuing sales of infringing "G-FORCE PRO" wheelbarrows.

PRAYER FOR RELIEF

WHEREFORE, ATTI demands judgment in its favor and against G-FORCE and prays for relief as follows:

1. A judgment declaring that G-FORCE has infringed the '955 Patent and has infringed ATTI's trade dress, has competed unfairly with ATTI, has injured ATTI's business reputation by the unauthorized use of ATTI's trade dress and has willfully violated the applicable laws of the United States and of the states where G-FORCE PRO wheelbarrows have been sold, all to the detriment of ATTI;

2. That G-FORCE, its officers, agents, servants, employees, attorneys, successors and assigns, and all other persons in active concert with or participation with them be preliminarily and permanently enjoined and restrained from: (a) infringing or inducing infringement of the '955 Patent; (b) infringing or inducing infringement of ATTI's trade dress; (c) using ATTI's trade dress, alone or in combination with any other elements, to advertise or identify the G-FORCE PRO wheelbarrows; (d) unfairly competing with ATTI in any manner whatsoever; (e) causing a likelihood of confusion; and (f) engaging in any acts or activities directly or indirectly calculated to trade upon ATTI's trade dress or the reputation or goodwill of ATTI in any way to compete unfairly with ATTI;

3. For preliminary and permanent injunctive relief directing G-FORCE to recall from distribution and modify or destroy all products that infringe the '955

Patent or infringe or embody ATTI's trade dress or any colorable imitation thereof, but which do not emanate from ATTI;

4. For a judgment against G-FORCE awarding ATTI damages and lost profits, including: (a) all damages sustained by ATTI as a result of G-FORCE's unlawful infringement of the '955 Patent, together with interest on such damages, and that such damages be trebled, pursuant to 35 U.S.C. § 284 and 35 U.S.C. § 289; (b) all damages sustained by ATTI as a result of G-FORCE's unlawful infringement of ATTI's trade dress together with interest on such damages, and that such damages be trebled; (c) all profits derived by G-FORCE from the sale of goods by the direct or indirect use of ATTI's trade dress or colorable imitations thereof, and that such profits be trebled; and (d) all damages sustained by ATTI on account of patent infringement, trade dress infringement, unfair competition, and any other damages suffered by ATTI as a result of G-FORCE's conduct as set forth herein, and that such damages be trebled;

5. For an accounting of all of G-FORCE's profits from the conduct complained of herein;

6. For an order directing G-FORCE to pay punitive damages;

7. For an order directing G-FORCE to pay restitution;

8. For an award of attorney's fees pursuant to 35 U.S.C. § 285 and 15 U.S.C. § 1117, or as otherwise permitted by law;

9. For an award of pre-judgment and post-judgment interest at the maximum rate allowed by law;
10. For the costs and expenses of the suit herein; and
11. For such additional and further relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Mark E. Gebauer

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