

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

LACKS ENTERPRISES, INC.,
a Michigan corporation, and **LACKS**
HOME PRODUCTS, LLC, a
Michigan corporation,

Plaintiffs,

v.

HD SUPPLY, INC., a Delaware corporation,
HD SUPPLY DISTRIBUTION LLC, a
Delaware limited liability company, and
CROWN BOLT, a division of HD Supply, Inc.

Defendants.

Civil Action No.

Jury Trial Demanded

COMPLAINT

Plaintiffs, Lacks Enterprises, Inc. and Lacks Home Products, LLC (collectively referred to herein as “Lacks”), complain and allege as follows against Defendants, HD Supply, Inc., HD Supply Distribution LLC, and Crown Bolt (collectively referred to herein as “HD Supply”).

THE PARTIES

1. Plaintiff Lacks Enterprises, Inc. (“Lacks Enterprises”) is a Michigan corporation with its principal place of business at 5460 Cascade Road SE, Grand Rapids, MI 49546.

2. Plaintiff Lacks Home Products, LLC (“Lacks Home Products”) is a Michigan corporation with its principal place of business at 4261 Air Lane Dr. SE, Kentwood, MI 49512.

3. Upon information and belief Defendant HD Supply, Inc. is a corporation organized under the laws of the State of Delaware, having a principal place of business at 3100 Cumberland Blvd., Suite 1480, Atlanta, Georgia 30339 and which is doing business in this

District, including through advertising, marketing, selling and/or offering to sell infringing products in this District.

4. Upon information and belief Defendant HD Supply Distribution LLC, is a Delaware limited liability company, having a principal place of business at 3100 Cumberland Blvd SE, Suite 1700, Atlanta, Georgia 30339, and which is doing business in this District, including through advertising, marketing, selling and/or offering to sell infringing products in this District.

5. Upon information and belief Defendant Crown Bolt, is a division of HD Supply, Inc., having a principal place of business at 26940 Aliso Viejo Parkway, Aliso Viejo, CA 92656, and which is doing business in this District, including through advertising, marketing, selling and/or offering to sell infringing products in this District.

JURISDICTION AND VENUE

6. This action arises under the patent laws of the United States, 35 U.S.C. §1 *et seq.* and is an action for patent infringement based on 35 U.S.C. §271.

7. This Court has exclusive subject matter jurisdiction over this dispute pursuant to 28 U.S.C. §1331 and 1338(a).

8. This Court has personal jurisdiction over HD Supply because each of these entities has committed and continues to commit acts of infringement in violation 35 U.S.C. §271 and places infringing products into the stream of commerce with the knowledge that such products are sold in the State of Michigan, including in this District.

9. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391 and 28 U.S.C. §1400(b).

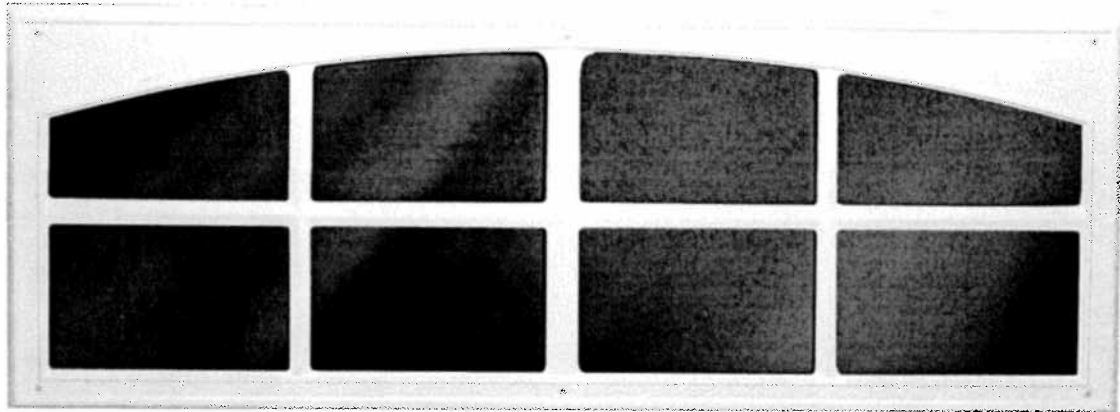
BACKGROUND

LACKS' DEVELOPMENTS AND COMMERCIAL ACTIVITIES

10. Lacks is a privately held family owned company that has been in business since 1961.
11. Lacks employs over 2,000 people with the majority of employees being located in Michigan.
12. Lacks manufactures and supplies a variety of automotive trim products, including exterior trim products, interior trim products, radiator grills, and wheel trim products.
13. Within the last couple of years, Lacks decided to explore a new business segment surrounding architectural products for home exteriors and has devoted considerable resources toward the conception, design and development of such products.
14. Within the last year, Lacks Home Products was created as the entity through which this new business segment would be employed.
15. Since its inception Lacks has invested significant resources and capital in the design and development of various home exterior products, including decorative garage door accent products to allow home owners to enhance the appearance of their garage doors.
16. These garage door accent products are the first product commercially introduced by Lacks Home Products and they are being marketed under the trademark "Coach House Accents".
17. The decorative garage door accent products include decorative simulated window overlays ("faux garage door windows") and decorative hardware kits, which consist of decorative handles and hinges that allow a home owner to easily change the exterior appearance of their garage door at reasonable cost.

18. Lacks introduced its faux garage door windows and decorative hardware products into the market in early 2011 and extensively promoted these products at various industry trade shows and exhibitions throughout 2011.

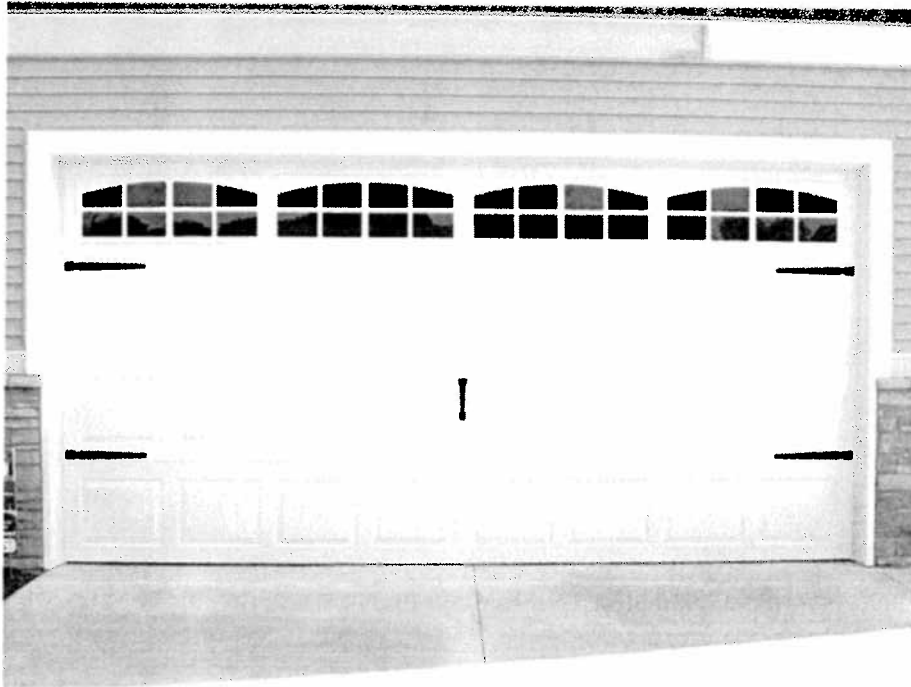
19. An illustrative photograph of the Lacks faux garage door window marketed and sold under the “Coach House Accent” mark is depicted below:



20. An illustrative photograph of Lacks’ decorative garage door hardware kit (consisting of decorative handles and hinges) is depicted below:



21. The representative photograph below illustrates Lacks' faux garage door windows and decorative hardware kit installed on a garage door to enhance its appearance and curb appeal.



22. Lacks' "Coach House Accent" products, including the faux garage door windows and the decorative hardware, are offered for sale and sold through its website at www.coachhouseaccents.com.

23. Lacks also supplies its faux garage door windows and decorative hardware to various hardware and lumber stores across the country.

24. Lacks advertises and markets its faux garage door windows and decorative hardware at various trade shows, in radio advertisements, on-line and in print advertisements.

25. The Lacks faux garage door windows and decorative hardware are featured on the DIY Television Network.

26. In October 2011, Lack and Lowe's Companies, Inc. ("Lowe's") began discussing a potential supply relationship with respect to Lacks' faux garage door windows and decorative hardware.

27. Lacks has entered into an Agreement with Lowe's Canada to supply its faux garage door windows and decorative hardware for sale in Lowe's Canada stores.

28. Lacks has been in discussion with Lowe's in the United States regarding a potential supply relationship with respect to the faux garage door windows and decorative hardware, and Lowe's recently committed to carry Lacks' products for a 100 store pilot.

LACKS' DESIGN PATENT

29. Lacks has sought to protect its innovations in its Coach House Accent products, including by way of securing patent protection.

30. Lacks has filed both design and utility patent applications with the United States Patent and Trademark Office ("USPTO") to protect its novel innovations in both its faux garage door windows and the decorative hardware.

31. Lacks filed a utility patent application on a "Garage Door and Faux Window Façade Assembly" on February 3, 2011, which is identified by U.S. Patent Publication No. 2012/0198772.

32. Lacks is the owner of U.S. Design Patent No. D668,784 ("the 'D784 Patent"), which was just awarded to Lacks and is directed toward the appearance of its novel faux garage door windows.

33. The 'D784 Patent is entitled "A Faux Window Assembly" and issued on October 9, 2012. (Copy attached as Exhibit A.)

34. The 'D784 Patent is valid and enforceable.

35. Lacks Home Products is the exclusive licensee of the 'D784 Patent and has the right to enforce the 'D784 Patent.

DEFENDANTS' INFRINGING ACTIVITIES

36. Defendants approached Lacks at the National Hardware show in Las Vegas in May 2011 and expressed interest in Lacks' faux garage door windows and decorative hardware for garage doors.

37. In June 2011, Lacks met with Defendants at the "Crown Bolt" facility to review actual "Coach House Accent" parts and discuss a potential relationship.

38. In October 2011, Defendants approached Lacks at the California Operator and Door Association ("CODA") show in October 2011 to again express interested in obtaining more information about the Lacks faux garage door windows and decorative hardware.

39. At Defendants' request, Lacks participated in a telephone conference call in November 2011 with representatives of Defendants, including Matt Steele (Product Manager), Brett Hankey (Senior Director Sales & Marketing) and Ramesh Shenoy (Vice President).

40. During the call, Lacks and Defendants discussed a potential business relationship with Defendant seeking more information, including Lacks' pricing, cost payment terms and profit margin expectations.

41. Defendants also proposed a relationship where the Lacks' faux garage door windows and decorative hardware would be supplied to Home Depot, Inc. ("Home Depot") for sale within certain U.S. stores.

42. During the call, Lacks informed Defendants of Lacks' ongoing discussion with Lowe's about a potential relationship therewith.

43. To entice Lacks to provide more specific information about its marketing and pricing plans as well as margin information for the Lacks faux garage door windows and decorative hardware, Defendants provided Lacks with a proposed Non-Disclosure Agreement.

44. The Non-Disclosure Agreement was executed in November 2011. (Copy attached as Exhibit B.)

45. In December, Lacks decided to pursue a sourcing path with Lowe's and backed away from any further discussion with Defendants and their proposed arrangement with Home Depot.

46. Defendants recently introduced into the market place decorative faux windows and decorative hardware for garage doors.

47. These products are advertised and promoted on Defendants' website as being exclusively available for purchase at Home Depot. (See website excerpt at Exhibit C.)

48. Defendants have also marketed its products on the home improvement show "Designing Spaces", which airs on the Lifetime Network.

49. Defendants' faux garage door windows and decorative hardware were featured on the July 30, 2012 Designing Spaces show.

See e.g., http://www.designingspaces.tv/show_segment.php?id=1094.

50. Defendants manufacture and sell various models of faux garage door windows and decorative hardware to Home Depot.

51. Defendants' faux garage door windows and decorative hardware are available for purchase on the Home Depot website with the faux windows being identified as "Decorative Window Panels" and being sold under the "Crown" brand. (See website excerpt at Exhibit D.)

52. Defendants' faux garage door windows, including those available for purchase through the Home Depot website, infringe the 'D784 Patent.

**COUNT I -
(Infringement of the 'D784 Patent)**

53. Lacks incorporates and realleges paragraphs 1 through 52 of this Complaint.

54. Defendants make, sell, and offer for sale products and in particular faux garage door windows or decorative window panels that are covered by and therefore infringe the 'D784 Patent.

55. Defendants' aforementioned commercial activities constitute an infringement of the 'D784 Patent under 35 U.S.C. §271.

56. On information and belief, Defendants' infringement of the 'D784 Patent has been intentional and willful, making this an exceptional case.

57. As a result of Defendants' infringing conduct, Lacks has been and will continue to be irreparably harmed and denied the benefit of the protections afforded by the 'D784 Patent by Defendants' infringement thereof.

JURY DEMAND

Lacks demands a trial by jury on all issues so triable.

RELIEF SOUGHT

WHEREFORE, Lacks respectfully prays for:

- A. Judgment that Defendants have infringed the 'D784 Patent in violation of 35 U.S.C. §271(a);
- B. Judgment that Defendants' infringement of the 'D784 Patent has been deliberate and willful;
- C. Preliminary injunctive relief prohibiting further infringement of the 'D784 Patent by Defendants, its officers, agents, employees, representatives, successors and assigns and those acting in privity or concert with them;
- D. Permanent injunctive relief prohibiting further infringement of the 'D784 Patent by Defendants, its officers, agents, employees, representatives, successors and assigns and those acting in privity or concert with them;
- E. An award of damages adequate to compensate Lacks for the patent infringement that has occurred pursuant to 35 U.S.C. §284, which shall be trebled as a result of Defendants' willful patent infringement, or an award of Defendants' profits from its infringement pursuant to 35 U.S.C. §289, whichever is greater, together with prejudgment interest and costs;
- F. An assessment of costs, including reasonable attorney fees, pursuant to 35 U.S.C. §285, with prejudgment interest;
- G. An award of prejudgment and post judgment interests on the damages caused by Defendants' acts of infringement; and
- H. Such other and further relief as this Court deems just and proper.

Respectfully submitted,

DICKINSON WRIGHT, PLLC

By s/John S. Artz
John S. Artz (P-48578)
J. Bradley Luchsinger (P-76115)
2600 West Big Beaver Road
Suite 300
Troy, Michigan 48084-3312
(248) 433-7200
jsartz@dickinsonwright.com
jluchsinger@dickinsonwright.com
Attorneys for Plaintiff

Dated: October 9, 2012