

IN THE UNITED STATES DISTRICT COURT
 FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
 CIVIL ACTION NO. 12-326

DNZ PRODUCTS LLC, F/K/A)
 DEDNUTZ PRODUCTS, LLC,)
)
 Plaintiff,)
)
 v.)
)
 LAKE ASSOCIATES, LLC D/B/A)
 WARNE SCOPE MOUNTS AND)
 NIKON, INC.,)
)
 Defendants.

COMPLAINT

JURY TRIAL REQUESTED

Plaintiff DNZ Products LLC, f/k/a Dednutz Products, LLC (“DNZ”), by and through its undersigned counsel, for its complaint against Defendants, Lake Associates, LLC d/b/a Warne Scope Mounts (“Warne”) and Nikon, Inc. (“Nikon”), alleges and states as follows:

NATURE OF THE ACTION

1. This action arises out of Warne’s and Nikon’s design patent infringement, trade dress infringement, and unfair competition and misappropriation in violation of federal and state law. This is an action for injunctive and monetary relief.
2. DNZ, through its owners and predecessors, created a novel scope mount design, which is the subject of a design patent owned by DNZ. Consumers and those in the field further recognize this design as being an indicator of source for DNZ’s products.
3. After learning of DNZ’s unique and innovative design, Nikon’s representatives obtained from DNZ a field-test sample of such a product. Rather than

then dealing with DNZ to obtain authorized product, other arrangements were made to obtain infringing products. Namely, Warne began manufacturing for Nikon scope mounts which copy and incorporate DNZ's design and the unique attributes of the design.

4. Warne's and Nikon's conduct infringes on DNZ's patent and DNZ's protectable trade dress and is causing significant damage to DNZ. Warne and Nikon should be enjoined from further misconduct, and they should compensate DNZ for the damage caused.

PARTIES, JURISDICTION AND VENUE

5. DNZ is a limited liability company organized and existing under the laws of the state of North Carolina with a principal place of business in Lee County, North Carolina.

6. Upon information and belief, Warne is a limited liability company organized and existing under the laws of the state of Oregon with a principal place of business in Washington County, Oregon.

7. Upon information and belief, Nikon is a corporation organized and existing under the laws of the state of New York with a principal place of business in Suffolk County, New York.

8. This Court has subject-matter jurisdiction over this action under 28 U.S.C. § 1331 because one or more of the claims arise under federal laws, such as the Patent Act. This Court has jurisdiction over the related state and common law claims pursuant to 28 U.S.C. § 1367. Furthermore, there is diversity of citizenship between DNZ, Nikon, and Warne, and the amount in controversy is in excess of \$75,000.00, giving rise to

jurisdiction under 28 U.S.C. § 1332.

9. This Court may exercise personal jurisdiction over the Defendants and Nikon. Upon information and belief, this Court has general jurisdiction over Nikon and Warne because Nikon and Warne advertise, market, and sell large volumes of products in this State and District. Furthermore, this Court has specific jurisdiction over Nikon and Warne because Nikon and Warne's infringing products which are the subject of this action are marketed and sold in this State and District.

10. Personal jurisdiction in this Court over the Defendants is proper under N.C. Gen. Stat. § 1-75.4, among other laws and constitutional principles, due to the following, among other actions: their doing business in the State of North Carolina; and their selling and placing in the stream of commerce its products which have been offered to persons within the State of North Carolina.

11. Venue is proper in this District because Nikon and Warne have offered for sale and sold products that infringe on DNZ's patent and DNZ's trade dress in this District and a substantial part of the events giving rise to DNZ's claims therefore occurred in this District.

FACTS

I. PRODUCT DEVELOPMENT

12. After working as a machinist in the 1980s and early 1990s, Timothy L. Coggins ("Mr. Coggins") started a machine shop in Sanford, North Carolina in the mid-1990s.

13. With his skills as a machinist and as a hunting enthusiast, Mr. Coggins has

created scope mount designs for years.

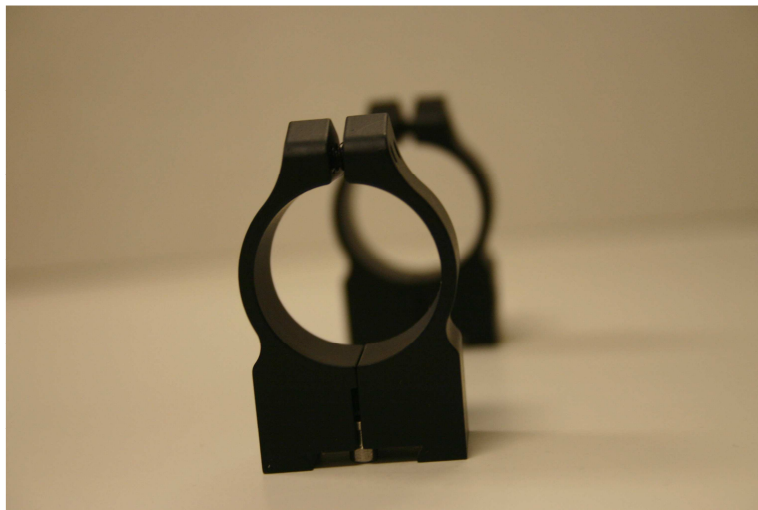
14. Several years ago, Mr. Coggins and his wife, Lisa Coggins (“Mrs. Coggins”), decided to turn his hobby into his business. They organized DedNutz Products, LLC (later renamed “DNZ Products, LLC”) to market and sell Mr. Coggins’ unique scope mount designs, among other products.

II. THE DESIGN

15. DNZ’s products bear a unique design which resonates with the hunting public and those in the field.

16. Mr. Coggins recognized that traditional scope mounts commonly used one or more “wings” to attach the optics to the mount. When viewed looking down the gun with the scope mount attached, the wings usually either appeared on the left and the right sides of the mount or a single wing protruded at the top of the mount. A photo of such a traditional design is attached as Exhibit 1.

EXHIBIT 1 Traditional Winged Scope Mount



17. In a novel twist, Mr. Coggins created a new design which eliminated the protruding wing. His design is shown in the attached Exhibit 2. His design employs a streamlined and a largely circular top piece, with screw fasteners largely hidden from view within the structure of the mount itself rather than being placed in a protruding wing. With this attractive and distinctive design, when the shooter sights the gun, he is presented with a memorable visual image having generally smooth, circular arch or “tunnel” without being distracted by a wing on the top or by side wings.

EXHIBIT 2
DNZ's Scope Mount



18. The new design—a one-piece, wingless mount of the type shown in Exhibit 2 – was not previously sold in the marketplace until DNZ introduced its product. Further, this design has become associated with DNZ such that it is recognized in the marketplace

as DNZ's design. DNZ's designs are distinctive, have acquired secondary meaning and distinctiveness, and serve to identify DNZ as the source of its products in the marketplace.

III. THE DESIGN PATENT AND DNZ'S RECOGNITION IN THE MARKET

19. To protect his intellectual property and sweat equity in the wingless scope mount, Mr. Coggins' assigned his invention to DNZ, and DNZ applied for and obtained US Patent No. D554,730 (the "'730 Patent"). The '730 Patent is a design patent describing DNZ's wingless scope mount. A copy of the '730 Patent is attached hereto as Exhibit 3.

20. DNZ has spent considerable time and money advertising DNZ as the manufacturer of premium scope mounts having its relevant design. Due to these efforts and the inherently distinctive nature of the product design, the design has secondary meaning as a source indicator of DNZ's products. The relevant market and consumers associate the design with DNZ and its products.

IV. WARNE AND NIKON'S INFRINGEMENT

21. At a product convention in February, 2008, Nikon's representatives saw and recognized the ingenuity in DNZ's products covered by the '730 Patent.

22. John Allen, Nikon's Vice President of Sales, discussed the possibility of buying products from DNZ and indicated his authority within Nikon to reach such a deal, saying "I can make this happen." On behalf of Nikon, he requested and Nikon received field-samples from DNZ of its design. Nikon's representatives led DNZ and Mr. and

Mrs. Coggins to believe that Nikon would contract with DNZ to provide Nikon with scope mounts if these field tests were successful.

23. Nikon, however, did not follow through with its discussions concerning potential contracts with DNZ for the manufacture of products bearing the DNZ design. Instead, Nikon contracted with Warne to manufacture products that infringe on DNZ's '730 Patent.

24. Nikon and Warne now offer scope mounts bearing the DNZ design to the public on a mass scale throughout the country.

25. Specifically, Nikon has packaged for sale, and Warne has manufactured scope mounts which infringe and violate DNZ's design patent rights and trade dress rights, such as the scope mount with model number M223 (the "Warne M223"). Rather than adhering to the teachings of prior art or utilizing a different design, the Warne M223 copies the innovative design features of the '730 Patent. The Warne M223 presents two streamlined, rounded rings such that when the shooter sights the gun, he sees two rounded archways—the innovative design covered by the '730 Patent that consumers associate with DNZ's products. An image of the Warne 223 is attached as Exhibit 4.

Exhibit 4
The Warne M223



26. Adding to the confusion, the Warne M223 is a one-piece scope mount made out of lightweight metal—the same premium features consumers expect when they purchase a DNZ product.

27. The sameness and confusing similarity of the Warne M223 design as compared to the DNZ's product and the '730 Patent can be observed in the attached Exhibit 5, consisting of a side-by-side.

Exhibit 5
Side-by-Side Comparison



28. In addition, there has been serious confusion in the industry by persons and consumers familiar with prior designs. For example, but without limitation:

- a. A Bass Pro Shops buyer saw the Warne M223 and believed that it was a DNZ product;
- b. Dealers have asked DNZ whether DNZ was manufacturing the Warne M223 for Nikon; and
- c. Even a Nikon field representative was deceived into believing that the Warne M223 was manufactured by DNZ.

29. Buyers and persons in the industry with familiarity for scope mounts have believed the Warne M223 and DNZ scope designs are the same, come from the same source, are substantially the same, and are confusingly similar.

V. UNREASONABLE REFUSAL TO CEASE INFRINGEMENT

30. Upon learning of Nikon and Warne's infringement of DNZ's rights, DNZ contacted Nikon and Warne.

31. Nikon's John LeCourt asserted in 2011 at the NRA show that the matter concerning the products sold under the Nikon name was "Warne's problem." In 2012 at the Shot Show, DNZ again attempted to discuss the matter with John Allen and John LeCourt, but they refused to discuss the matter substantively.

32. Warne initially seemed willing to reach a resolution of the matter. On May 17, 2010, one of Warne's representatives even told Mrs. Coggins that Warne would do whatever it could to remedy its infringement. After two years of posturing, however, Warne has unreasonably refused to present any concrete resolution to DNZ.

33. DNZ has been harmed by the actions of the Defendants.

34. In addition to each of their own infringing actions, and in the alternative, Nikon and Warne have each materially contributed to and induced the other to infringe of DNZ's rights, to each Defendant's own and mutual benefits.

FIRST CLAIM FOR RELIEF
(Patent Infringement)

35. DNZ repeats and incorporates herein by reference the allegations of paragraphs 1-34 above as if set forth here in full.

36. DNZ is the owner of the '730 Patent.

37. DNZ placed the required statutory notice that its wingless mount design was protected by the '730 Patent on the labeling of all products it sold covered by the '730 Patent in compliance with 35 U.S.C. § 287.

38. Overall, and due to the similar features between the Warne M223 and the '730 Patent described above, the ordinary observer, familiar with the prior art designs, giving the degree of attention normally given by a purchaser, would believe that the Warne M223 and the '730 Patent are the same or substantially the same.

39. Defendants' conduct, as set forth above, constitutes the use, offering for sale, and sale of a patented invention within the United States during the term of the '730 Patent, all in violation of 35 U.S.C. § 271. Accordingly, DNZ has a right of civil action pursuant to 35 U.S.C. § 281.

40. Defendants have infringed and may still continue to infringe the '730 Patent by making, selling, offering for sale, using or otherwise transferring scope mounts

embodying the patented design without authorization from DNZ, and will continue to do so unless enjoined by this Court.

41. Pursuant to 35 U.S.C. § 283, DNZ is entitled to injunctive relief in accordance with the principles of equity to prevent the infringement of rights secured by its patents.

42. DNZ has been damaged in an amount to be determined at trial, but in excess of \$75,000.00, as a result of the conduct complained of herein. Pursuant to 35 U.S.C. § 284, DNZ is entitled to damages adequate to compensate for the infringement, although in no event less than a reasonable royalty, together with such interest and costs to be taxed to the infringer. Further, the damages should be trebled because the infringement was willful pursuant to 35 U.S.C. § 284. DNZ is also entitled to reimbursement of its attorney's fees pursuant to 35 U.S.C. § 285 because this is an exceptional case.

43. Pursuant to 35 U.S.C. § 289, DNZ is entitled to an award of Defendants' total profit because Defendants have sold and exposed for sale wingless scope mounts infringing the '730 Patent.

SECOND CLAIM FOR RELIEF
(Trade Dress Infringement)

44. DNZ repeats and incorporates herein by reference the allegations of paragraphs 1-43 above as if set forth here in full.

45. DNZ is the owner of its products distinctive trade dress—specifically one-piece, wingless scope mounts shown in Exhibit 2 (the “Trade Dress”). The Trade Dress

has acquired secondary meaning. As a whole, the Trade Dress is inherently distinctive and not functional.

46. Based on advertising, promotion and sales throughout the country, the Trade Dress has obtained secondary meaning among consumers, identifying DNZ as the maker of products bearing the Trade Dress.

47. Defendants' manufacture, sale, offering for sale, and distribution of the Warne M233 is likely to cause confusion, or to cause mistake, or to deceive the consumer as to the affiliation, connection, or association of Defendants and DNZ, and as to the origin, sponsorship, or approval by DNZ of Defendants' products.

48. As described above, Defendants infringed DNZ's designs and have therefore violated Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), among other laws. DNZ has been damaged in an amount to be determined at trial, but in excess of \$75,000.00, as a result of the conduct complained of herein.

49. Defendants' actions complained of herein were committed willfully and intentionally. DNZ is entitled to the trebling of its actual damages or Defendants' profits as set forth 15 U.S.C. § 1117(a). Because this is an exceptional case, DNZ is also entitled to an award of its attorney's fees.

50. Due to Defendants' actions, DNZ is entitled to an accounting of all of Defendants' infringing products, sales and orders, and to a disgorgement to DNZ of the profits of Defendants for such infringing products and designs.

51. DNZ is also entitled to injunctive relief in accordance with the principles of equity to prevent the infringement of the Trade Dress.

THIRD CLAIM FOR RELIEF

(Common Law Unfair Competition and Misappropriation)

52. DNZ repeats and incorporates herein by reference the allegations of paragraphs 1-51 above as if set forth here in full.

53. Through the expenditure of considerable time, money, and labor, DNZ has earned a commercial advantage in marketing its scope mounts through use of its unique and innovative designs, including those design elements constituting the Trade Dress.

54. Defendants' manufacture, marketing, and sale of the Warne M233 as described above constitutes unfair competition in that Defendants' actions are calculated to misappropriate DNZ's commercial competitive advantage. Defendants are taking unfair advantage of the goodwill that DNZ has built up in its innovative designs.

55. Upon information and belief, Defendants' actions described above have been carried out knowingly, willfully, and wantonly.

56. DNZ has been damaged in an amount to be determined at trial, but in excess of \$75,000.00, as a result of the conduct complained of herein. Furthermore, DNZ is entitled to punitive damages in an amount to be determined by the trier of fact as provided in N.C. Gen. sta. § 1D-1, *et. seq.*

FOURTH CLAIM FOR RELIEF

(Unfair and Deceptive Trade Practices – N.C. G. S. § 75-1.1)

57. DNZ repeats and incorporates herein by reference the allegations of paragraphs 1-56 above as if set forth here in full.

58. Defendants' actions described above constitute unfair and deceptive trade practices in violation of N.C.G.S. § 75-1.1.

59. Defendants' unfair and deceptive actions are in and effecting commerce.

60. DNZ has been damaged in an amount to be determined at trial, but in excess of \$75,000.00, as a result of the conduct complained of herein, plus attorney's fees and costs.

61. Such damages award should be trebled as set forth under the laws of North Carolina.

JURY REQUEST

62. DNZ requests a jury trial of all issues so triable.

WHEREFORE, Plaintiff DNZ Products, LLC, prays for relief as follows:

1. For a permanent injunction enjoining Warne, Nikon, and their respective directors, officers, employees, representatives or agents, and any persons or entities in active concert or participation with them, from any conduct infringing on the '730 Patent, including without limitation all manufacture, importation, distribution, offering or sale of the Warne M223 product or similar designs infringing on the '730 Patent;

2. For a permanent injunction enjoining Warne, Nikon, and their respective directors, officers, employees, representatives or agents, and any persons or entities in active concert or participation with them, from any use, display or other infringement of the Trade Dress, including without limitation all manufacture, importation, distribution, offering or sale of the Warne M223 product or similar designs infringing on the Trade Dress;

3. For a permanent injunction enjoining Warne, Nikon, and their respective directors, officers, employees, representatives or agents, and any persons or entities in

active concert or participation with them, from assisting, aiding or abetting any other person or business entity from engaging in or performing any of the activities referred to in paragraphs 1 and 2 immediately above;

4. For an award of a reasonable royalty compensating Plaintiff for Warne and Nikon's design patent infringement;

5. For an award of compensatory damages;

6. For an award of treble damages;

7. For an award of punitive damages as may be allowed by law;

8. For an accounting of and a disgorgement to DNZ of Warne and Nikon's profits attributable to their respective infringement(s);

9. For an award of attorney fees, interest, including prejudgment interest, and costs;

10. For a jury trial on all issues so triable; and

11. For such other and further relief as the Court deems just and proper.

This the 2nd day of April, 2012,

/s/ Clint S. Morse
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