

manufacturing and/or selling semiautomatic pistols, and is placed at a competitive disadvantage by Defendant's false marking of the same.

2. COLT'S MANUFACTURING COMPANY LLC., is and at all relevant times mentioned herein was, a Connecticut limited liability company having a business address at 545 New Park Avenue, West Hartford, CT 06110.

II. JURISDICTION AND VENUE

3. This is an action for false patent marking arising under the patent laws of the United States, Title 35, United States Code, specifically, under Title 35, Section 292 of the United States Code. The Court's jurisdiction is proper under the above statutes, and 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over the Defendant. The Defendant has conducted and does conduct business within the State of Texas. The Defendant, directly or through intermediaries (including distributors, retailers, and others), ships, distributes, offers for sale, and sells its products in the United States, the State of Texas, and the Eastern District of Texas. The Defendant has purposefully and voluntarily placed a plurality of its falsely marked products, as described below, into the stream of commerce with the expectation that they will be purchased by consumers in the Eastern District of Texas. These falsely marked products have been and continued to be purchased by consumers in the Eastern District of Texas. The Defendant has committed the offense of false patent marking within the State of Texas and, more particularly, within the Eastern District of Texas.

5. Venue is proper in this Court under 28 U.S.C. §§ 1391(b, c), and 28 U.S.C. § 1395(a) because, at least in part, Defendant's products, the subject matter of this

cause of action, have in the past been offered for sale and sold in this District, and are presently being offered for sale and sold in this District. Upon information and belief, such sales and offers to sell by Defendant are substantial, ongoing, and systematic.

IV. DEFENDANT'S FALSELY MARKED PRODUCTS

6. The Defendant has in the past falsely marked (or caused to be marked) and upon information and belief presently falsely marks (or causes to be marked) at least its "Government," "Defender," and "New Agent" model pistols, importing that the same are patented, for the purpose of deceiving the public by marking them with the inapplicable and expired patent number, 4,754,689 (Exhibit A).

7. The Defendant has in the past falsely marked (or caused to be marked) and upon information and belief presently falsely marks (or causes to be marked) at least its "Government," "Defender," and "New Agent" model pistols, importing that the same are patented, for the purpose of deceiving the public by marking them with the expired patent number, 4,555,861 (Exhibit B).

V. CAUSE OF ACTION FOR FALSE PATENT MARKING

8. Plaintiff incorporates by reference, repeats, and re-alleges the content of the above paragraphs as though fully set forth herein.

9. All monopoly rights in a patent are determined by the scope of the claims therein.

10. All monopoly rights in a patent terminate completely and irretrievably upon expiration of the patent.

11. The Defendant has many years of experience in applying for, acquiring, maintaining, licensing, asserting, and litigating related to purported patent rights and other intellectual property rights.

12. The Defendant has many years of experience marking (or causing to be marked) goods sold and offered for sale with pertinent patent numbers and/or patent pendency.

13. The Defendant knows that patents confer no rights outside the scope of the patent claims.

14. The Defendant knows that all claims of United States Patent Number 4,754,689 entitled “Combination Plastic Spring guide and Buffer for Automatic Pistol”, include *inter alia* the claim element, “an elongated plastic guide rod segment”. (Please see Exhibit A).

15. The Defendant knows that all claims of United States Patent Number 4,754,689 entitled “Combination Plastic Spring guide and Buffer for Automatic Pistol”, include *inter alia* the claim element, “a plastic head segment”. (Please see Exhibit A).

16. The Defendant knows that its “Government” model automatic pistol does not include “an elongated plastic guide rod segment” as identified in United States Patent Number 4,754,689.

17. The Defendant knows that its “Government” model automatic pistol does not include “a plastic head segment” as identified in United States Patent Number 4,754,689.

18. The Defendant knows that United States Patent Number 4,754,689 is and always has been inapplicable to its “Government” model automatic pistol products.

19. The Defendant has marked (or caused to be marked) and upon information and belief presently marks (or causes to be marked) with intent to deceive the public, “Government” model automatic pistol products and/or their packaging, and other products, with the number of inapplicable U.S. patent 4,754,689 (Exhibit C).

20. Because all monopoly and exclusionary rights in the 4,754,689 patent are inapplicable to articles not endowed with the claim elements, Defendant cannot have any reasonable belief that its “Government” model pistols marked and/or advertised as protected by said patent have been or are entitled to any protection accorded by United States patent laws.

21. The Defendant knows that its “Defender” model automatic pistol does not include “an elongated plastic guide rod segment” as identified in United States Patent Number 4,754,689.

22. The Defendant knows that its “Defender” model automatic pistol does not include “a plastic head segment” as identified in United States Patent Number 4,754,689.

23. The Defendant knows that United States Patent Number 4,754,689 is inapplicable to its “Defender” model automatic pistol products.

24. The Defendant knows that its “New Agent” model automatic pistol does not include “an elongated plastic guide rod segment” as identified in United States Patent Number 4,754,689.

25. The Defendant knows that its “New Agent” model automatic pistol does not include “a plastic head segment” as identified in United States Patent Number 4,754,689.

26. The Defendant knows that United States Patent Number 4,754,689 is inapplicable to its “New Agent” model automatic pistol products.

27. The Defendant has issued a recall notice pertaining to its “Defender” and “New Agent” model pistols with an intention to replace the recoil spring assemblies therein, taking affirmative steps to ensure that United States Patent Number 4,754,689 is inapplicable to its “New Agent” and “Defender” model automatic pistol products. (Please see Exhibit D).

28. Despite having knowledge that the 4,754,689 patent is inapplicable to its “New Agent” and “Defender” model automatic pistol products, and despite its knowledge and awareness concerning the composition of the recoil spring assembly of its “New Agent” and “Defender” pistols as demonstrated by the recall notice, the Defendant falsely marked, and upon information and belief continues to falsely mark the packaging for its “New Agent” and “Defender” model pistols with the intent to deceive the public into believing that the pistols so marked are accorded patent protection by patent number 4,754,689. (Exhibit E).

29. Because all monopoly and exclusionary rights in the 4,754,689 patent are inapplicable to articles not endowed with the claim elements, Defendant cannot have any reasonable belief that its “Defender” and “New Agent” model pistols marked/and or advertised as protected by said patent have been or are entitled to any protection accorded by United States patent laws.

30. The Defendant knows that patents do not have indefinite duration and that they expire.

31. The Defendant knows that United States Patent Number 4,754,689 has expired no later than March 30, 2007.

32. The Defendant has marked (or caused to be marked), subsequent to March 30, 2007, and upon information and belief presently marks (or causes to be marked) products offered for sale, including the “Government,” “Defender,” and “New Agent” model pistols, with the number of expired patent 4,754,689. (Exhibits C, E).

33. Because all monopoly and exclusionary rights in the expired patent 4,754,689 have terminated, the Defendant cannot have any reasonable belief that articles marked with said patent number after expiration of the patent term have been or are entitled to any protection accorded by United States patent laws.

34. The Defendant knows that United States Patent Number 4,555,861 has expired no later than December 16, 2003.

35. The Defendant has marked (or caused to be marked), subsequent to December 16, 2003, and upon information and belief presently marks (or causes to be marked) products offered for sale, including the “Government,” “Defender,” and “New Agent” model pistols with the number of expired patent 4,555,861. (Exhibits C, E).

36. Because all monopoly and exclusionary rights in the expired patent 4,555,861 have terminated, the Defendant cannot have any reasonable belief that articles marked with said patent number after expiration of the patent term have been or are entitled to any protection accorded by United States patent laws.

37. The Defendant is intimately familiar with patent scope and expiration issues, and the concurrent expiration dates of any patent markings related thereto, as

indicated by the circumstance that the Defendant has been engaged in litigation concerning the validity, scope, and applicability of its patents.

38. For the reasons set forth herein, and/or for other reasons which will be further evidenced in these proceedings, it may reasonably be inferred that the Defendant has engaged in a pattern of false marking offenses involving multiple products and multiple patents with the intent to deceive one or more of, the public, competitors, potential competitors, purchasers, and potential purchasers, in violation of 35 U.S.C. §292.

39. As a direct and proximate result of Defendant's acts of false patent marking, Plaintiff has been and continues to be injured and has sustained actual and statutory damages.

40. As a direct and proximate result of Defendant's acts of false patent marking, firearms manufacturers and sellers in Texas have been and continue to be placed at a competitive disadvantage.

41. As a direct and proximate result of Defendant's acts of false patent marking, the interests of the United States have been and continue to be injured and such interests have sustained and will continue to sustain actual and statutory damages.

42. Unless the Defendant ceases its false patent marking, the United States will continue to suffer additional irreparable harm and impairment of its interests in furthering technological progress in the useful arts.

43. The Plaintiff has incurred and will incur attorneys' fees, costs, and expenses in the prosecution of this action. The Court has the discretion to award the

Plaintiff, and the Plaintiff is entitled to recover its reasonable and necessary attorneys' fees, costs, and expenses.

44. For the reasons set forth herein, and/or for additional or alternative reasons which shall be evidenced through these proceedings, each instance of marking (or causing to be marked) a product with the number of an inapplicable and/or expired patent by the Defendants (directly or on the packaging thereof) constitutes an "offense" for the purposes and remedies of 35 U.S.C. §292.

45. Plaintiff demands a jury for all issues so triable.

VI. PRAYER FOR RELIEF

Plaintiff prays for the following relief:

A. A judgment that the Defendant has violated the provisions of 35 U.S.C. §292, as alleged herein;

B. A judgment and order requiring the Defendant to pay to the Plaintiff, and to the United States Treasury, to share equally pursuant to statute, a civil monetary fine of FIVE HUNDRED DOLLARS (\$500) for each of its false marking offenses.

C. A judgment and order requiring the Defendant to pay Plaintiff, and the United States, pre-judgment and post-judgment interest on the damages awarded;

D. A judgment and order finding this to be a case in which the equities and circumstances requiring the Defendant to pay to the Plaintiff, in addition to the civil monetary fine shared between the Plaintiff and the United States, the costs of this action (including all disbursements) and attorneys' fees incurred by the Plaintiff.

E. A judgment and order that the Defendant, its agents employees, representatives, successors, and assigns, and those acting in privity or in concert with them, be permanently enjoined from further false marking as evidenced herein; and

F. Such other and further relief as the Court deems just and equitable.

Dated: May 31, 2010

Respectfully submitted,

By: s/Michael T. Konczal

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