

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

J&M MFG. CO., INC.,
284 Railroad Street
Ft. Recovery, Ohio 45846

Plaintiff,

v.

UNVERFERTH MFG. CO., INC.,
601 South Broad Street
Kalida, Ohio 45853

Defendant.

Civil Action No. **1:13 CV 850**

JURY TRIAL DEMANDED

J. BARRETT

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, J&M Manufacturing Company, Inc. ("J&M"), by and through the undersigned counsel, files this Complaint for patent infringement against Defendant, Unverferth Manufacturing Company, Inc. ("Unverferth"), and hereby alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for patent infringement. Plaintiff's claims are based on the unauthorized, infringing manufacture, use, importation, offer for sale and/or sale by Defendant of its grain cart products denominated the X-TREME grain cart models 1315, 1115 and 1015.

THE PARTIES

2. Plaintiff J&M is a corporation organized and existing under the laws of the State of Ohio having a principal place of business at 284 Railroad Street, Ft. Recovery, Ohio, 45846.

3. Defendant Unverferth is a corporation organized and existing under the laws of the State of Ohio having a principal place of business at 601 South Broad Street, Kalida, Ohio, 45853.

JURISDICTION AND VENUE

4. This is an action for patent infringement arising under the provisions of the Patent Laws of the United States, 35 U.S.C. §§ 271, 281 and 283-285. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Upon information and belief, Defendant has solicited business in this judicial district, has transacted continuous and systematic business within this judicial district and has derived significant financial benefit and revenues from transacting business in this judicial district.

6. Upon information and belief, Defendant transacts continuous and systematic business in this judicial district through Unverferth authorized dealers, including, e.g., Five Points Implement Co., Inc., 6720 U.S. 50W, Hillsboro, Ohio 45133, and Equipment Superstore LLC, 9762 U.S. 68, Georgetown, Ohio 45121, which are located in this judicial district and division.

7. This action is related to Case No. 1:12-cv-00931-SJD pending in this judicial district and division. Defendant in its answer to the Complaint in that action admitted that it has transacted business in this judicial district, including through its dealers, Five Points Implement Co. and Equipment Superstore LLC.

8. This Court has personal jurisdiction over Defendant.

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

PATENT-IN-SUIT

10. On November 19, 2013, the United States Patent and Trademark Office duly and legally issued United States Patent No. 8,585,343 ("the '343 patent"), a copy of which is attached hereto as Exhibit A.

11. Plaintiff J&M is the owner of all right, title and interest in and to the '343 patent, including the right to sue for and recover all past, present and future damages for infringement of the '343 patent.

**COUNT 1
(INFRINGEMENT OF THE '343 PATENT)**

12. Plaintiff repeats and realleges the allegations of Paragraphs 1 to 11 above, as if set forth herein.

13. Upon information and belief, Defendant has infringed and is infringing the '343 patent by making, using, importing, offering for sale and/or selling infringing product(s), X-TREME grain cart model 1315, 1115 and 1015 products, and will continue to do so unless enjoined by this Court.

14. Defendant's infringement of the '343 patent has damaged Plaintiff and will continue to cause Plaintiff substantial and irreparable harm unless enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court enter judgment that:

- A. U.S. Patent No. 8,585,343 is infringed by Defendant;
- B. Defendant be permanently enjoined from manufacturing, using, importing, offering to sell and selling the infringing products in the United States prior to the expiration of the '343 patent;

C. Plaintiff be awarded damages adequate to compensate it for Defendant's infringement of the '343 patent in an amount no less than a reasonable royalty, and that such damages be trebled according to 35 U.S.C. § 284;

D. this case is exceptional within the meaning of 35 U.S.C. § 285, and that all costs and expenses of this action, including reasonable attorneys' fees, be awarded to Plaintiff; and

E. Plaintiff be awarded such further relief as the Court may deem just, necessary, and/or proper.

JURY DEMAND

Plaintiff demands a trial by jury.

Dated: November 19, 2013

Respectfully submitted,

s/ J. Robert Chambers

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