

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF IOWA**

BAKKO BROS., INC., a Minnesota Corporation

and,

GENESIS III, INC., an Illinois Corporation

Plaintiffs,

vs.

JACOBS CORP.

Defendant.

**COMPLAINT (3<sup>rd</sup> AMENDED)**

CIVIL CASE NO. 4:14-cv-00015

**JURY TRIAL DEMANDED**

**COMPLAINT (3<sup>rd</sup> AMENDED)**

Plaintiffs Bakko Bros., Inc. (“Bakko Bros.”) and Genesis III, Inc., (“Genesis III” and collectively, “Plaintiffs”) in filing this Complaint against Defendant Jacobs Corp. (“Jacobs”), allege as follows:

**NATURE OF THE ACTION**

1. Plaintiffs bring this Complaint for infringement of U.S. Pat. Nos. 8,960,581 (“the ‘581 patent”), 8,613,403 (“the ‘403 patent”), 8,141,804 (“the ‘804 patent”), 8,033,490 (“the ‘490 patent”), 7,140,569 (“the ‘569 patent”), and 7,559,497 (“the ‘497 patent”) against Jacobs. Plaintiffs include additional claims of patent infringement of the ‘581, ‘569, and ‘497 patents through this 2<sup>nd</sup> Amended Complaint. By reason of Jacob’s infringement and/or willful infringement of the ‘581, ‘403, ‘804, ‘490, ‘569, and ‘497 patents, Plaintiffs are seeking preliminary and permanent injunctive relieve, recovery of Jacob’s wrongfully made profits, compensatory damages, and trebled damages.

2. Plaintiffs bring this Complaint for promissory estoppel against Jacobs. By reason of Jacob's affirmative promise and statements that it was not infringing the '490 or '569 patents, causing Plaintiffs to rely upon that promise and forbearing from pursuing a then-pending lawsuit Case 4:13-CV-00070 against Jacobs for the same conduct, which Plaintiffs have had to refile at extensive additional exhaustion of its time and resources, Plaintiffs are seeking enforcement of that promise not to infringe, as well as costs and fees accrued due to the duplicative filing and expense incurred.

### **PARTIES**

3. Bakko Bros. is a Minnesota Corporation, organized and existing under the laws of the State of Minnesota, with its principal place of business at 28958 198<sup>th</sup> Avenue, Glenwood, Minnesota.

4. Genesis III is an Illinois Corporation, organized and existing under the laws of the State of Illinois, with its principal place of business at 5575 Lyndon Road, Prophetstown, Illinois 61277.

5. Upon information and belief, Jacobs is a corporation organized under the laws of the State of Iowa, with its principal place of business at 2510 South 12<sup>th</sup> Street, Harlan, Iowa.

6. Upon information and belief, Jacobs regularly conducts business in the State of Iowa.

### **JURISDICTION AND VENUE**

7. This is a civil action arising primarily under the Patent Act of 1953 codified in Title 35 of the United States Code §§ 100 *et seq.*

8. This Court has jurisdiction over the subject matter of Plaintiffs' claims pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1338 (general jurisdiction for patent actions).

9. This Court has personal jurisdiction over Jacobs by virtue of systematic and continuous contacts with Iowa and this judicial district.

10. Venue is proper in this Court pursuant to 28 U.S.C. §1391(c) in that Jacobs is subject to personal jurisdiction in this district and therefore resides in this district.

### **RELEVANT FACTS**

11. Plaintiff Bakko Bros. is in the business of, *inter alia*, developing, manufacturing, and selling grinders and associated components.

12. Plaintiff Genesis III is in the business of, *inter alia*, developing, manufacturing, and selling hammers and hammermill components.

13. Plaintiff Genesis III is the owner by assignment of the '490 patent, issued to Roger T. Young and Loren Bakko. The '490 patent issued on October 11, 2011, and a true and accurate copy thereof is attached as **Exhibit A**.

14. Plaintiff Genesis III is the owner by assignment of the '804 patent, issued to Roger T. Young. The '804 patent issued on March 27, 2012, and a true and accurate copy thereof is attached as **Exhibit B**.

15. Plaintiff Genesis III is the owner by assignment of the '403 patent, issued to Roger T. Young. The '403 patent issued on December 24, 2013, and a true and accurate copy thereof is attached as **Exhibit C**.

16. Plaintiff Genesis III is the owner by assignment of the ‘569 patent, issued to Roger T. Young. The ‘569 patent issued on November 28, 2006, and a true and accurate copy thereof is attached as **Exhibit F**.

17. Plaintiff Genesis III is the owner by assignment of the ‘497 patent, issued to Roger T. Young. The ‘497 patent issued on July 14, 2009, and a true and accurate copy thereof is attached as **Exhibit G**.

18. Plaintiff Genesis III is the owner by assignment of the ‘581 patent, issued to Roger T. Young. The ‘581 patent issued on February 24, 2015, and a true and accurate copy thereof is attached as **Exhibit H**.

19. Plaintiff Bakko Bros. is the exclusive licensee of the ‘581, ‘569, ‘490, ‘804, and ‘403 patents for use with grinders.

20. On February 11, 2013, Plaintiffs sued Defendant for patent infringement of the ‘490 patent and the ‘569 patent, in Case 4:13-CV-00070. That case settled after Defendant made assurances that the infringing conduct would cease. Accordingly, Plaintiffs voluntarily dismissed the case without prejudice on May 23, 2013. The infringing conduct began anew or continued after May 23, 2013.

#### **COUNT I—INFRINGEMENT OF THE ‘490 PATENT**

21. Plaintiffs reallege and incorporate by reference Paragraphs 1–20 as if set forth fully herein.

22. Upon information and belief, Defendant has made, used, sold, offered for sale, and/or imported into the United States a line of hammers that infringe the ‘490 patent.

23. Upon information and belief, Defendant's hammer that infringes the '490 patent includes, without limitation, the line of hammers made and sold using the name "Jacobs BT Hammer Built Tough."

24. Upon information and belief, Defendant has infringed, contributed to, and/or induced infringement of at least claims 1, 2, 3, 4, 8, 9, 14, 15, and 16 by making, using, offering to sell, selling within the United States, and/or importing into the United States at least the Jacobs BT Hammer. Plaintiff includes a true and accurate copy of a Jacobs brochure illustrating the infringing product as **Exhibit D** and a photograph of hammers in the possession of counsel as **Exhibit E**.

25. Upon information and belief, Defendant's hammer that infringes the '490 patent also includes, without limitation, the line of hammers made and sold using the name(s) "Jacobs Blade."

26. Upon information and belief, Defendant has infringed, contributed to, and/or induced infringement of at least claims 1, 2, 3, 4, 8, 10, 11, 12, 13, 14, 15, and 16 by making, using, offering to sell, selling within the United States, and/or importing into the United States at least the "Jacobs Blade" hammers. Plaintiff includes a true and accurate copy of a Jacobs brochure illustrating the infringing products as **Exhibit M** and photographs of a hammer in the possession of counsel as **Exhibit N**.

27. Upon information and belief, Defendant's hammer that infringes the '490 patent also includes, without limitation, the line of hammers made and sold using the name(s) "Jacobs Pentagon" and/or "Jacobs Pentagon Extreme."

28. Upon information and belief, Defendant has infringed, contributed to, and/or induced infringement of at least claims 1, 2, 3, 4, 8, 9, 10, 11, 13, 14, 15, and 16 by making,

using, offering to sell, selling within the United States, and/or importing into the United States at least the “Jacobs Pentagon” and/or “Jacobs Pentagon Extreme” hammers. Plaintiff includes a true and accurate copy of a Jacobs brochure illustrating the infringing products as **Exhibits I and J** and photographs of hammers in the possession of counsel as **Exhibits K and L**.

29. As a result of proper notice, Defendant’s infringement is considered willful and deliberate. Defendant continued or restarted infringing the ‘490 patent after Case 4:13-CV-00070 was voluntarily dismissed without prejudice on May 23, 2013.

30. As a direct and proximate result of Defendant’s infringement of the ‘490 patent, Plaintiffs have suffered and continue to suffer damages.

31. Plaintiffs have no adequate remedy at law and will be irreparably injured unless Defendant’s acts of infringement are enjoined by this Court.

#### **COUNT II—INFRINGEMENT OF THE ‘804 PATENT**

32. Plaintiffs reallege and incorporate by reference Paragraphs 1–32 as if set forth fully herein.

33. Upon information and belief, Defendant has made, used, sold, offered for sale, and/or imported into the United States a line of hammers that infringe the ‘804 patent.

34. Upon information and belief, Defendant’s hammer that infringes the ‘804 patent include, without limitation, the line of hammers shown in **Exhibit E**.

35. Upon information and belief, Defendant has infringed, contributed to, and/or induced infringement of at least claims 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, and 13 by making, using, offering to sell, selling within the United States, and/or importing into the United States at least the hammer shown in **Exhibit E**.

36. Defendant’s infringement is, and has been, willful and deliberate.

37. As a direct and proximate result of Defendant's infringement of the '804 patent, Plaintiffs have suffered and continue to suffer damages.

38. Plaintiffs have no adequate remedy at law and will be irreparably injured unless Defendant's acts of infringement are enjoined by this Court. Plaintiffs are likely to succeed on the merits, the public interest will be harmed, and a balance of hardships favor preliminarily enjoining Defendant's conduct.

### **COUNT III—INFRINGEMENT OF THE '403 PATENT**

39. Plaintiffs reallege and incorporate by reference Paragraphs 1–38 as if set forth fully herein.

40. Upon information and belief, Defendant has made, used, sold, offered for sale, and/or imported into the United States a line of hammers that infringe the '403 patent.

41. Upon information and belief, Defendant's hammer that infringes the '403 patent include, without limitation, the line of hammers shown in **Exhibit E**.

42. Upon information and belief, Defendant has infringed, contributed to, and/or induced infringement of at least claims 1, 2, 3, 4, 5, 6, 7, and 8 by making, using, offering to sell, selling within the United States, and/or importing into the United States at least the hammer shown in **Exhibit E**.

43. Defendant's infringement is, and has been, willful and deliberate.

44. As a direct and proximate result of Defendant's infringement of the '403 patent, Plaintiffs have suffered and continue to suffer damages.

45. Plaintiffs have no adequate remedy at law and will be irreparably injured unless Defendant's acts of infringement are enjoined by this Court. Plaintiffs are likely to succeed on

the merits, the public interest will be harmed, and a balance of hardships favor preliminarily enjoining Defendant's conduct.

**COUNT IV—PROMISSORY ESTOPPEL**

46. Plaintiffs reallege and incorporate by reference Paragraphs 1–45 as if set forth fully herein.

47. Upon information and belief, in the late winter of 2012 or early spring of 2013, Defendant made promises and other affirmative statements to Plaintiffs that it was not infringing the '569 or '490 patents and would not do so in the future.

48. Upon information and belief, Defendant made such promises and affirmative statements of non-infringement for the purpose of having Plaintiffs dismiss Case 4:13-CV-00070 alleging Patent Infringement by Jacobs of the '569 and '490 patents.

49. Based upon these promises, Plaintiffs voluntarily dismissed Case 4:13-CV-00070 without prejudice on May 23, 2013.

50. Upon information and belief, Defendant knew that it was then infringing and intended to continue infringing the '569 and '490 patents.

51. As a direct and proximate result of Defendant's promise not to infringe, Plaintiffs have suffered and continue to suffer damages, including duplicative filing fees and costs.

52. Plaintiffs have no adequate remedy at law and will be irreparably injured unless Defendant's promise not to infringe is enforced.

**COUNT V—INFRINGEMENT OF THE '569 PATENT**

53. Plaintiffs reallege and incorporate by reference Paragraphs 1–52 as if set forth fully herein.



54. Upon information and belief, Defendant has made, used, sold, offered for sale, and/or imported into the United States a line of hammers that infringe the ‘569 patent.

55. Upon information and belief, Defendant’s hammer that infringes the ‘569 patent include, without limitation, the line of hammers shown in **Exhibit D** and a photograph of hammers in the possession of counsel as **Exhibit E** and known as the Jacobs BT Hammer.

56. Upon information and belief, Defendant has infringed, contributed to, and/or induced infringement of at least claims 8, 12, 13, 14, 15, 17, 23 and 30 by making, using, offering to sell, selling within the United States, and/or importing into the United States at least the hammer shown in **Exhibit E**.

57. Upon information and belief, another design of Defendant’s hammer that infringes the ‘569 patent include, without limitation, the line of hammers shown in **Exhibits I** and **J** and photographs of hammers in the possession of counsel as **Exhibits K** and **L** known as the Jacobs Pentagon and/or Jacobs Pentagon Extreme Hammers.

58. Upon information and belief, Defendant has infringed, contributed to, and/or induced infringement of at least claims 1, 2, 3, 4, 5, 6, 7, 8, 18, 19, 20, 21, 22, and 23 by making, using, offering to sell, selling within the United States, and/or importing into the United States at least the hammers shown in **Exhibits K** and **L**.

59. Upon information and belief, another design of Defendant’s hammer that infringes the ‘569 patent include, without limitation, the line of hammers shown in **Exhibit M** and photographs of a hammer in the possession of counsel as **Exhibit N** known as the Jacobs Blade Hammer.

60. Upon information and belief, Defendant has infringed, contributed to, and/or induced infringement of at least claims 1, 2, 6, 7, 18, and 19 by making, using, offering to sell,

selling within the United States, and/or importing into the United States at least the hammers shown in **Exhibit N**.

61. Defendant's infringement is, and has been, willful and deliberate.

62. As a direct and proximate result of Defendant's infringement of the '569 patent, Plaintiffs have suffered and continue to suffer damages.

63. Plaintiffs have no adequate remedy at law and will be irreparably injured unless Defendant's acts of infringement are enjoined by this Court. Plaintiffs are likely to succeed on the merits, the public interest will be harmed, and a balance of hardships favor preliminarily enjoining Defendant's conduct.

#### **COUNT VI – INFRINGEMENT OF THE '497 PATENT**

64. Plaintiffs reallege and incorporate by reference Paragraphs 1–63 as if set forth fully herein.

65. Upon information and belief, Defendant has made, used, sold, offered for sale, and/or imported into the United States a line of hammers that infringe the '497 patent.

66. Upon information and belief, Defendant's hammer that infringes the '497 patent include, without limitation, the line of hammers shown in **Exhibits I and J** and photographs of hammers in the possession of counsel as **Exhibits K and L** known as the Jacobs Pentagon and/or Jacobs Pentagon Extreme Hammers.

67. Upon information and belief, Defendant has infringed, contributed to, and/or induced infringement of at least claims 1, 2, 3, 4, 5, 6, 7, 8 and 9 by making, using, offering to sell, selling within the United States, and/or importing into the United States at least the hammers shown in **Exhibits K and L**.

68. Defendant's infringement is, and has been, willful and deliberate.

69. As a direct and proximate result of Defendant's infringement of the '497 patent, Plaintiffs have suffered and continue to suffer damages.

70. Plaintiffs have no adequate remedy at law and will be irreparably injured unless Defendant's acts of infringement are enjoined by this Court. Plaintiffs are likely to succeed on the merits, the public interest will be harmed, and a balance of hardships favor preliminarily enjoining Defendant's conduct.

**COUNT VII – INFRINGEMENT OF THE '581 PATENT**

71. Plaintiffs reallege and incorporate by reference Paragraphs 1–70 as if set forth fully herein.

72. Upon information and belief, Defendant has made, used, sold, offered for sale, and/or imported into the United States a line of hammers that infringe the '581 patent.

73. Upon information and belief, Defendant's hammer that infringes the '581 patent include, without limitation, the line of hammers shown in **Exhibit M** and photographs of a hammer in the possession of counsel as **Exhibit N** known as the Jacobs Blade Hammer.

74. Upon information and belief, Defendant has infringed, contributed to, and/or induced infringement of at least claims 1, 2, 3, 5, 6, and 7 by making, using, offering to sell, selling within the United States, and/or importing into the United States at least the hammers shown in **Exhibit N**.

75. Defendant's infringement is, and has been, willful and deliberate.

76. As a direct and proximate result of Defendant's infringement of the '581 patent, Plaintiffs have suffered and continue to suffer damages.

77. Plaintiffs have no adequate remedy at law and will be irreparably injured unless Defendant's acts of infringement are enjoined by this Court. Plaintiffs are likely to succeed on

the merits, the public interest will be harmed, and a balance of hardships favor preliminarily enjoining Defendant's conduct.

**JURY DEMAND**

In accordance with Federal Rules of Civil Procedure 38 and 39, Plaintiffs Bakko Bros. and Genesis III demand a trial by jury on all issues so triable.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their favor and against Jacobs, and that Plaintiff's be granted the following relief:

- A. Issuance of a preliminary injunction and a permanent injunction restraining Jacobs, its officers, agents, servants, attorneys and all persons in active concert or participation with Jacobs from further acts of infringement of the '581, '569, '497, '403, '804, and '490 patents;
- B. Entry of an award of damages sufficient to compensate Plaintiffs for Jacob's infringement;
- C. Entry of an award of increased damages in an amount not less than three times the damages found or assessed by this Court for Jacobs' willful and wanton acts of infringement;
- D. Grant of specific enforcement of Jacobs' promise not to infringe the '569 and '490 patents;
- E. Entry of an award of damages sufficient to compensate Plaintiffs for the duplicative costs of bringing suit and additional damages suffered by Jacobs' continued infringement after dismissal of Case 4:13-CV-00070;
- F. Order Jacobs to pay all costs, attorneys' fees, and applicable interests; and
- G. Grant Plaintiffs such other and further relief as this Court shall deem appropriate.

Dated: August 12, 2015

Respectfully submitted,

By: /s/ Brett J. Trout

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ATTORNEYS FOR PLAINTIFFS

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GENESIS III, INC.

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon the parties to this action by serving a copy upon each of the attorneys listed below on August 12, 2015 by

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|---|--|
| <input type="checkbox"/> U.S. Mail                | <input type="checkbox"/> FAX                 |
| <input type="checkbox"/> Hand Delivered           | <input type="checkbox"/> Electronic Mail     |
| <input type="checkbox"/> FedEx/ Overnight Carrier | <input checked="" type="checkbox"/> CM / ECF |

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