

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NATIONAL PRODUCTS, INC.,

Plaintiff,

v.

WIRELESS ACCESSORY SOLUTIONS,
LLC, d/b/a IBOLT – WIRELESS
ACCESSORY SOLUTIONS, LLC

Defendant.

Case No. 2:15-cv-02024

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff National Products, Inc. (“NPI”) brings this action against Defendant Wireless Accessory Solutions, LLC, d/b/a iBOLT – Wireless Accessory Solutions, LLC (“Defendant” or “iBOLT”) for an injunction, damages, and other appropriate relief to stop Defendant from violating NPI’s patent and trademark rights. NPI states and alleges as follows:

THE PARTIES

1. NPI is a corporation organized and existing under the laws of the State of Washington, having its principal place of business at 8410 Dallas Ave S., Seattle, Washington 98108.

2. NPI is a market leader in the design, manufacture, and sale of innovative mounting systems, including mounts for tablets, cellular phones, and other portable devices, which are used, for example, in cars, trucks, bikes, planes, boats and motorcycles.

3. Upon information and belief, Defendant iBOLT is a limited liability company organized and existing under the laws of the State of Utah, which is registered to do business in the State of California and which has its principal place of business at 11 Flower Street, Arcadia, California 91006.

4. Upon information and belief, Defendant is a manufacturer and distributor of mounts for cellular phones, which are used, for example, in cars. Defendant advertises, markets, and sells its products, including the products that are the subject of the tortious acts alleged in this lawsuit, to the public throughout the United States, including within this judicial district.

NATURE OF THE ACTION

5. This is a civil action for (1) patent infringement of United States Patent No. 6,585,212 (“the ’212 patent”) under the patent laws of the United States, including without limitation, 35 U.S.C. § 1 *et seq.*; (2) trade dress infringement of United States Trademark Reg. No. 4,254,086 under 15 U.S.C. § 1114; (3) Unfair Competition and False Designation of Origin under 15 U.S.C. § 1125(a); (4) trade dress infringement under Washington common law; (5) Unfair Business Practices under RCW 19.86 *et seq.*; (6) Unfair Competition under Washington common law; and (7) Unjust Enrichment under Washington common law.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction pursuant to 15 U.S.C. §§ 1114, 1121, and 1125, and 28 U.S.C. §§ 1331 and 1338(a) and (b). NPI also asserts claims under Washington law, which are so related to the federal question claims that they are part of the same case and controversy, and therefore fall within the scope of this Court’s supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).

7. This Court has personal jurisdiction over Defendant because, among other things, Defendant has engaged in business activities in and directed to this judicial district and the State of Washington, and has committed the tortious acts complained of in this judicial district and the State of Washington that led to foreseeable harm and injury to NPI. Defendant sells and offers to sell its infringing products directly through its website to the public throughout the United States,

1 including this judicial district. Defendant also sells and offers to sell its infringing products
 2 directly through Amazon.com, an online retailer with headquarters in this judicial district, to the
 3 public throughout the United States, including this judicial district. Upon information and belief,
 4 Defendant has contracted or otherwise formed agreements with Amazon.com to receive services
 5 related to its selling and offering to sell its infringing products, including storage, shipping, and
 6 customer service through Amazon.com's facilities and services. Defendant also distributes its
 7 infringing products throughout the United States, including this judicial district, to retailers,
 8 including Verizon Wireless.

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

10 **THE '212 PATENT**

11 9. On July 1, 2003, U.S. Patent No. 6,585,212 ("the '212 patent"), entitled "Quick
 12 Release Electronics Platform," was duly and legally issued to Jeffrey D. Carnevali. The '212
 13 patent is generally directed to a mounting platform for an accessory device, such as, for example,
 14 a cellular phone, phablet, tablet, laptop, radar detector, handheld device, or the like.

15 10. NPI is the owner, by assignment, of all right, title, and interest in the '212 patent,
 16 including the rights to exclude others and to sue and recover damages for infringement.

17 11. To the extent any marking or notice was required by 35 U.S.C. § 287, Plaintiff
 18 and/or all predecessors in interest and/or implied or express licensees of the '212 patent, if any,
 19 have complied with the marking requirements of 35 U.S.C. § 287 by fixing the word "patented"
 20 together with the address of NPI's website, which is accessible to the public without charge and
 21 which associates the patented article with the '212 patent in the "Patent and Trademarks" page of
 22 NPI's website, on all goods made, offered for sale, sold, and/or imported into the United States
 23 that embody one or more claims of the '212 patent.

24 12. A true and correct copy of the '212 patent is attached as **Exhibit A**.

25 **NPI'S TRADEMARK**

26 13. NPI was founded by Jeff Carnevali in Seattle in 1992 and is in the business of
 27 manufacturing and selling, among other things, mounting systems and device mounting solutions

1 including its highly successful product line of RAM Mounting Systems.

2 14. Since 1992, NPI has continuously and exclusively used in commerce a double-
 3 socket RAM Mounting device with a distinctive hourglass-shaped profile. NPI has aggressively
 4 enforced its hourglass design trade dress rights. For example, in 2005, after NPI's competitor
 5 Gamber-Johnson LLC had begun selling hourglass-shape double-socket arm mounts, NPI filed an
 6 Amended Complaint alleging, *inter alia*, infringement of its hourglass-shaped trade dress. A true
 7 and correct copy of the Amended Complaint in that action and Exhibit 2 attached thereto is
 8 attached hereto as **Exhibit B**. Following are true and correct excerpts from Exhibit 2 to that
 9 Amended Complaint comparing the trade dress infringing device with the RAM Mount device:



15. In the Amended Consent Judgment entered on October 2, 2006 by this Court, the
 parties stipulated that “NPI also has a protectable trade dress in the hourglass shaped profile of its
 double-socket RAM Mount products [and] this trade dress is nonfunctional and has acquired
 secondary meaning with consumers.” Thus, the Court “enjoined [Gamber-Johnson] from

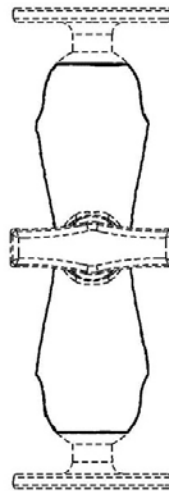
1 infringing NPI's trade dress, comprising the distinctive hourglass-shaped profile of NPI's double-
 2 socket RAM Mount devices, for the life of the trade dress." A true and correct copy of the
 3 Amended Consent Judgment is attached hereto as **Exhibit C**.

4 16. On May 23, 2012, NPI filed an application with the United States Patent and
 5 Trademark Office ("PTO") to register its hourglass shaped profile trade dress on the Principal
 6 Register. A true and correct copy of the application is attached hereto as **Exhibit D**. Following
 7 are true and correct excerpted copies of specimens that were attached to the application as
 8 exemplars of NPI's trade dress:



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21 17. On December 4, 2012, the PTO granted the application as amended for the
 22 "MARK CONSIST[ING] OF A THREE-DIMENSIONAL CONFIGURATION OF A DOUBLE-
 23 SOCKET MOUNT ARM THAT IS TAPERED IN THE MIDDLE LIKE AN HOURGLASS."
 24 registered under U.S. Trademark Reg. No. 4,254,086 and issued to NPI. The registration
 25 certificate also contained a drawing of the following trade dress shape with the limitation: "THE
 26 DOTTED LINES OUTLINING THE ENDS OF THE MOUNT AND THE ADJUSTMENT
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1 KNOB INDICATE PLACEMENT OF THE MARK ON THE GOODS AND ARE NOT PART
2 OF THE MARK”:



11 The registration is valid and subsisting, and NPI has been the continuous owner of the hourglass
12 shaped profile of a double-socket mount device trade dress from 1992 to the present. NPI’s
13 website provides notice that “[t]he Hourglass Shape® is a registered trademark of National
14 Products Inc.”

15 18. NPI owns all rights, title, and interests in and to, and holds the first, superior, and
16 exclusive rights to use the mark identified on the PTO Principle Register under Registration No.
17 4,254,086.

18 19. A true and correct copy of the registration certificate is attached hereto as
19 **Exhibit E.**

20 **COUNT I**
21 **(Patent Infringement of United States Patent No. 6,585,212)**

22 20. NPI realleges and reincorporates the allegations in paragraphs 1-19 above.

23 21. Defendant has directly infringed and continues to directly infringe at least claim 27
24 of the ’212 patent by making, using, offering to sell, and selling within the United States and/or
25 importing into the United States products that infringe the ’212 patent, including all products that
26 incorporate the miniPro, including but not limited to, the miniPro Holder, the miniPro Connect
27 Kit for NFC enabled Phones, the miniPro Windshield/Dash Kit for all Smartphones (including

1 without limitation, the miniPro Kit Universal Holder, the miniPro Window/Dash Car Mount, and
2 the miniPro Universal In-Car Dock for iPhone, Samsung, HTC, Motorola, Nokia, LG and Sony),
3 the miniPro Vent Universal Car Dock, the Tripod miniPro, the Tripod miniPro + BT Selfie, the
4 miniPro Charge & Play Kit, and the miniPro Car Dock for the Amazon Fire Phone (collectively,
5 “the miniPro products”); all products that incorporate the sPro2, including but not limited to, the
6 sPro2 Holder, the sPro2 Connect for NFC enabled Phones, the sPro2 Kit, and the sPro2
7 Windshield Dash and Vent Combo Kit (collectively, “the sPro2 products”); and all products that
8 incorporate the xProDock, including but not limited to, the xProDock Holder, the xProDock 2
9 Connect Kit, the xProDock Connect for NFC enabled Phones (including without limitation, the
10 xProDock Active Car Dock/Holder/Mount), the xProDock Connect Holder for NFC enabled
11 Phones, the xProDock for HTC Kit, the xProDock for HTC with 6ft USB charging cable, the
12 xProDock for Samsung with 9ft aux/charge cable, the xProDock for Samsung with charging
13 cable, xProDock Universal Kit for all micro-USB smartphones, the xProDock NFC Bizmount, the
14 xProDock Music & Charge Kit, the xProDock iCharge & Sync, and the xProDock for Blackberry
15 Kit (collectively, “the xProDock products”).

16 22. Visual inspection of the miniPro Windshield/Dash Kit for all Smartphones
17 product, which incorporates the miniPro, demonstrates it literally infringes each and every
18 element of claim 27. For example, Defendant’s website depicts the miniPro as comprising the
19 mounting platform of claim 27:
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<https://ibolt.co/car-docks/minipro>.

23. Visual inspection of the sPro2 Windshield Dash and Vent Combo Kit product, which incorporates the sPro2, demonstrates that it literally infringes each and every element of claim 27. For example, Defendant's website depicts the sPro2 as comprising the mounting platform of claim 27:



<https://ibolt.co/car-docks/smartphone-mounts/spro2-combo-kit>.

24. Visual inspection of the xProDock Connect for NFC enabled Phones product, which incorporates the xProDock, demonstrates that it literally infringes each and every element

1 of claim 27. For example, Defendant's website depicts the xProDock as comprising the
 2 mounting platform of claim 27:



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11 <https://ibolt.co/car-docks/smartphone-mounts/galaxy-s6-edge-plus/xprodock-connect>.

12 25. As a direct and proximate consequence of Defendant's infringement of the '212
 13 patent, NPI has suffered irreparable harm, and NPI will continue to suffer irreparable harm in the
 14 future unless Defendant is enjoined from infringing the '212 patent.

15 26. Upon information and belief, the continued infringement by Defendant of the '212
 16 patent is willful.

17 **COUNT II**

18 **(Federal Trade Dress Infringement under 15 U.S.C. § 1114)**

19 27. NPI realleges and incorporates by this reference herein each and every allegation
 20 set forth in paragraphs 1 through 26 above.

21 28. Defendant has infringed and continues to infringe NPI's rights in its trade dress by
 22 marketing, distributing, and selling within the United States products containing double-socket
 23 mount arms tapered in the middle like an hourglass, including but not limited to the following: all
 24 products that incorporate the Bizmount, including without limitation, the xProDock NFC
 25 Bizmount, the iPro2 Bizmount, the TabDock Bizmount, and the Tabdock 2 Bizmount
 26 (collectively, "the Bizmount products"). On information and belief, Defendant sells the
 27 Bizmount products from its website and from the Amazon.com online retail platform to

1 consumers throughout the United States, including this district and the State of Washington. On
 2 information and belief, Defendant also distributes the Bizmount products to retailers for sale
 3 throughout the United States, including this district and the State of Washington.

4 29. Visual inspection of the xProDock NFC Bizmount product, which incorporates the
 5 Bizmount, demonstrates that it infringes NPI's rights in its trade dress. For example, Defendant's
 6 website depicts the xProDock as comprising a double-socket mount arm tapered in the middle
 7 like an hourglass:



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 18 <https://ibolt.co/car-docks/smartphone-mounts/connect-kits/xpro-dock-bizmount>.

19 30. Defendant's use in its products of NPI's registered trade dress with a double-
 20 socket mount arm tapered in the middle like an hourglass, or of a confusingly similar variation
 21 thereof, is likely to cause confusion, or mistake, or to deceive others into believing that
 22 Defendant's products are manufactured, offered, sponsored, authorized, licensed, of similar
 23 quality to, or otherwise connected or affiliated with NPI and NPI's RAM Mounting Systems.

24 31. Defendant either had actual notice and knowledge, or had constructive notice by
 25 the PTO's placement of the mark on the Principal Register and NPI's notice of ® with the mark
 26 on NPI's RAM Mounts website prior to Plaintiff's adoption and use of NPI's registered trade
 27 dress.

38. NPI realleges and incorporates by this reference each and every allegation set forth
in paragraphs 1 through 37 above.

1 39. NPI's distinctive and non-functional registered trade dress is a designation of
2 origin that identifies NPI as the exclusive source of the RAM Mount double-socket mount arm
3 devices, and distinguishes NPI's goods from the goods of others in the marketplace.

4 40. Defendant's use of NPI's trade dress in its goods constitutes false designation of
5 origin and/or false or misleading representation. Defendant's use of an identical or confusingly
6 similar variation of NPI's trade dress is likely to cause confusion, or mistake, or to deceive others
7 into believing that Defendant's products are manufactured, offered, sponsored, authorized,
8 licensed, of similar quality to, or otherwise connected or affiliated with NPI and NPI's RAM
9 Mounting Systems.

10 41. Such false designation of origin and or representation constitutes unfair
11 competition and is an infringement of NPI's rights in its trade dress in violation of § 43(a) of the
12 Lanham Act, 15 U.S.C. § 1125(a).

13 42. Defendant either had actual notice and knowledge, or had constructive notice by
14 the PTO's placement of the mark on the Principal Register and NPI's notice of ® with the mark
15 on NPI's RAM Mounts website prior to Plaintiff's adoption and use of NPI's registered trade
16 dress.

17 43. On information and belief, Defendant's acts are deliberate and intended to confuse
18 the public as to the source of the Bizmount products, to injure NPI, and to reap the benefits of
19 NPI's goodwill associated with NPI's trade dress.

20 44. As a direct and proximate result of Defendant's willful and unlawful conduct,
21 Defendant has damaged and will continue to damage NPI's business, market, reputation, and
22 goodwill, and may discourage current and potential customers from dealing with NPI. Such
23 irreparable damage will continue unless Defendant is enjoined from infringing NPI's registered
24 trade dress.

25 45. Defendant's acts have damaged and will continue to damage NPI, and NPI has no
26 adequate remedy at law.

1 use of NPI's trade dress is an unfair or deceptive practice occurring in trade or commerce that
2 impacts the public interest and has caused injury to NPI.

3 55. Defendant's actions violate RCW 19.86 *et seq.*

4 **COUNT VI**

5 **(Washington Common Law Unfair Competition)**

6 56. NPI realleges and incorporates by this reference each and every allegation set forth
7 in paragraphs 1 through 55 above.

8 57. Defendant's use of NPI's trade dress has infringed on its distinctive features in a
9 manner that tends to confuse, in the public mind, NPI's products and/or advertising with the
10 products and/or advertising of others.

11 58. The acts of Defendant complained of herein constitute unfair competition in
12 violation of Washington common law.

13 **COUNT VII**

14 **(Washington Common Law Unjust Enrichment)**

15 59. NPI realleges and incorporates by this reference each and every allegation set forth
16 in paragraphs 1 through 58 above.

17 60. The acts of Defendant complained of herein constitute unjust enrichment of
18 Defendant at NPI's expense in violation of Washington common law.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, NPI prays for the following relief:

- 21 a. A judgment that Defendant iBOLT has infringed the '212 patent;
- 22 b. An order preliminarily and permanently enjoining and restraining iBOLT, its
23 officers, directors, agents, servants, employees, licensees, attorneys, and all other persons acting
24 under or through it, directly or indirectly, from infringing the '212 patent;
- 25 c. A judgment that iBOLT acts are unlawful as constituting unfair competition, false
26 designation of origin, trade dress infringement, and unjust enrichment under the causes of action
27 asserted in this Complaint;

d. An order preliminarily and permanently enjoining and restraining iBOLT, its officers, directors, agents, servants, employees, licensees, attorneys, and all other persons acting under or through it, directly or indirectly, from offering for sale, marketing, or selling any product which includes a configuration of a double-socket mount arm that is tapered in the middle like an hourglass or any confusingly similar variation thereof;

e. A judgment and order requiring iBOLT to deliver up for destruction all products, labels, signs, prints, advertisements, and other articles that infringe NPI's statutory and common law trade dress rights, or are a result of any false designation of origin or unfair competition by Defendant;

f. A judgment and order requiring that iBOLT pay damages under 35 U.S.C. § 284, with prejudgment interest;

g. An order for an accounting of all gains, profits and advantages derived from iBOLT's wrongful acts;

h. A judgment and order requiring that iBOLT pay NPI all gains, profits, and advantages derived by Defendant for its unlawful acts;

i. A judgment and order requiring that iBOLT pay NPI all damages caused by Defendant's unlawful acts;

j. A judgment and order directing iBOLT to pay the costs of this action, including all disbursements, attorney fees and costs incurred herein, for example, as provided by 35 U.S.C. § 285, with prejudgment and post-judgment interest;

k. A judgment and order requiring that iBOLT pay NPI treble damages as provided by law; and

l. Such other and further relief as the Court may deem just and equitable.

DEMAND FOR JURY TRIAL

NPI hereby demands a trial by jury of all issues so triable.

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NATIONAL PRODUCTS, INC.

By its attorneys,

Dated: December 29, 2015

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