

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WISCONSIN**

SNAP-ON INCORPORATED,)	
)	
)	
Plaintiff,)	Case No.: 2:16-cv-01265
v.)	
)	Judge Adelman
HARBOR FREIGHT TOOLS USA, INC.))	
)	JURY TRIAL DEMANDED
Defendant.)	

FIRST AMENDED COMPLAINT

Plaintiff, Snap-on Incorporated (“Snap-on”), for its First Amended Complaint against Defendant, Harbor Freight Tools USA, Inc. (“Harbor Freight”), states as follows:

NATURE OF ACTION

This is an action for: (a) infringement of US Design Patent No. D730,612, pursuant to the US Patent Act, 35 USC § 101, *et. seq.*; (b) unfair competition under Section 43(a) of the Lanham Act, 15 U.S.C. §1125; and (c) common law unfair competition, stemming from Harbor Freight’s using, selling, having sold, offering to sell, making, having made, and/or importing or having imported into the United States, certain garage floor jack products.

PARTIES

1. Plaintiff, Snap-on, is a corporation organized and existing under the laws of the State of Delaware, and has a principal place of business at 2801 80th Street, Kenosha, Wisconsin.

2. Defendant, Harbor Freight, is a corporation organized and existing under the laws of the State of Delaware, and has a principal place of business at 26541 Agoura Road, Calabasas, California.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§1331 and 1338(a), in that this matter arises under an Act of Congress relating to patents and the Lanham Act. This Court also has supplemental jurisdiction of the claim arising under common law pursuant to 28 U.S.C. §1367.

4. This Court has personal jurisdiction over Harbor Freight pursuant to Wis. Stat. §801.05, because Harbor Freight has a place of business(es) located within this district, has committed the acts complained of herein in this district, and/or transacts business within this district.

5. Venue is proper in this district pursuant to 28 U.S.C. §§1391 and 1400, in that Harbor Freight (a) has regular and established places of business within this district, and (b) engaged in one or more acts complained of herein within this district, including, *inter alia*, infringement within this district by selling and/or offering to sell products that directly, or contributorily infringe or induce others to infringe, the claim of U.S. Patent no. D730,612 (the '612 Patent).

FACTS

6. Snap-on is a well-known designer, marketer, and seller of high-quality, high-end tools, garage accessories, and other equipment.

7. Purchasers, customers and end-users purchase and use Snap-on's products because of Snap-on's service, reputation and good will, and the high quality and reliability of the products Snap-on designs and sells.

8. Snap-on sells and offers for sale garage floor jacks, including Snap-on's FJ200 (2-ton rated) and FJ300 (3-ton rated) floor jacks (collectively "Snap-on's Jacks"). (Attached as Exhibit A are representative photos of Snap-on's Floor Jacks, compared to the '612 Patent).

9. Purchasers, customers, and end-users associate the shape, appearance, and non-functional features of Snap-on's Jacks with Snap-on, including its reputation and good will.

10. Harbor Freight manufacturers, has manufactured, sells, offers for sale, and/or imports or has imported into the United States, garage floor jacks, including, but not limited to, the *Daytona 3 Ton Super Duty Floor Jack (DJ3000)* (bearing sku 63183) (collectively "Harbor Freight's Jacks"). (Attached as Exhibit B are representative photos of Harbor Freight's Jacks, compared to the '612 Patent; attached as Exhibit C is a Harbor Freight sale brochure marketing Harbor Freight's Jacks).

11. On information and belief, Harbor Freight first sold or offered for sale Harbor Freight's Jacks, within this district and elsewhere, in late August 2016.

12. Harbor Freight sells and offers to sell Harbor Freight's Jacks and other products on its website, which is available to and targets purchasers, customers, and end-users, within this district and elsewhere. (See Harbor Freight website, <http://www.harborfreight.com/3-ton-daytona-professional-steel-floor-jack-super-duty-63183.html> (printout attached as Exhibit D)).

13. On Harbor Freight's website, Harbor Freight states it has "700+ Stores Nationwide." (See Id.).

14. According to Harbor Freight's website, Harbor Freight has at least three retail stores located in this district, including in or around Milwaukee, Wisconsin, and/or Racine, Wisconsin. (See Harbor Freight website, http://www.harborfreight.com/storelocator/location/map?zipcode_input=Milwaukee,%20WI,%20United%20States (print-out attached as Exhibit E)).

15. In Harbor Freight marketing and advertising materials, Harbor Freight touts that the Daytona jack is comparative to and competitive with the Snap-on Jacks in quality and

performance, while directing customers to compare the difference in pricing between the Harbor Freight and Snap-on jacks. (See Harbor Freight advertisements, attached as Exhibits C and I.)

16. Snap-on conducted certain testing, such as lift cycle (a/k/a life cycle) testing, on Snap-on's Jacks to assess the jacks' anticipated durability and longevity. During a lift cycle test, the lift arm of a jack is subjected to repeated extension and retraction under 80% of its rated load capacity. Based on this testing, Snap-on and its franchisees promote that Snap-on's Jacks are expected to exceed 5,000 lift-cycles when selling and offering to sell Snap-on's Jacks to further differentiate Snap-on's Jacks from other competitive jacks in the marketplace.

17. On Harbor Freight's website and in advertisements, Harbor Freight represents that the Harbor Freight Jack has a life of "over 5,000 lift cycles." (See Exhibit D and I).

18. Snap-on conducted lift cycle testing on at least two different Harbor Freight Jacks. (See Exhibit J and K). None of the Harbor Freight Jacks met the 5,000 lift cycles Harbor Freight represented and promoted. Rather, the tested jacks failed at 296 and 329 lift cycles, respectively. (See Id.)

19. Harbor Freight's Jacks do not have an expected 5,000 lift cycle, as Harbor Freight represents, promotes, and advertises for the Harbor Freight Jacks.

20. Snap-on also designed and developed Snap-on's Jacks to comply with certain industry standards, including the ANSI PALD-2009 standard, and Snap-on and Snap-on's franchisees promote this fact when selling and offering to sell Snap-on's Jacks to further differentiate Snap-on's Jacks from other competitive jacks in the marketplace.

21. Harbor Freight represents that the Harbor Freight Jack "[m]eets 2009 ANSI/ASME PALD standards." (See Daytona jack Owner's Manual & Safety Instructions (attached as Exhibit L)).

22. Two Harbor Freight Jacks were tested for compliance with the 2009 ANSI/ASME PALD standards. (See Exhibits M and N). Neither jack passed the tests required for compliance with the 2009 ANSI/ASME PALD standards.

23. Harbor Freight's Jacks do not meet the 2009 ANSI/ASME PALD standard, as Harbor Freight promotes and advertises for the jacks.

24. Harbor Freight's Jacks are substantially identical in shape and appearance to Snap-on's Jacks. (See e.g. Exhibit H, showing side-by-side comparisons of Harbor Freight's Jacks to Snap-on's Jacks).

25. Purchasers, customers, and/or end-users have been confused as to the source and/or origin of Harbor Freight's Jack, and/or Snap-on's approval of or affiliation with Harbor Freight and/or Harbor Freight's Jack.

26. For example, and without limitation, some purchasers, customers, and/or end-users confusingly and/or mistakenly believe that Snap-on's Jacks and Harbor Freight's Jack are the same, including having the same design, are manufactured by the same manufacturer, utilize the same components, and/or are built of the same quality. (See e.g., Exhibit F showing customer and end-user confusion).

COUNT I
(Patent Infringement)

27. Snap-on restates and realleges the allegations in Paragraphs 1-26, as if fully set forth herein.

28. Snap-on is the owner, by assignment, of all rights, title and interest in and to the '612 Patent, entitled FLOOR JACK, which was duly issued by the United States Patent and Trademark Office on May 26, 2015. ('612 Patent attached as Exhibit G).

29. Snap-on's Jacks incorporate the invention(s) claimed in the '612 Patent. (See e.g., Exhibit A).

30. Harbor Freight's Jacks embody the design patented in the '612 Patent, or, at a minimum, a colorable imitation thereof. (See e.g., Exhibit C).

31. An ordinary observer, familiar with the prior art, would be, and has been, deceived into believing Harbor Freight's Jacks are the same as the design patented in the '612 Patent. (See e.g., Exhibit F).

32. Without permission or license from Snap-on, Harbor Freight uses, manufactures, has manufactured, sells, offers for sale, and/or imports or has imported into the United States, within this judicial district and elsewhere, products, including, *inter alia*, Harbor Freight's Jacks, that directly infringe, contributorily infringe, and/or induce others to infringe, the claim of the '612 Patent, in violation of 35 U.S.C. § 271.

33. Harbor Freight has notice of its infringement as prescribed by 35 U.S.C. § 287(a).

34. Harbor Freight's infringement has been, and continues to be, willful.

35. Harbor Freight's infringement of the '612 Patent has caused, and continues to cause, irreparable injury to Snap-on, and unless and until Harbor Freight's infringement of the '612 Patent is enjoined by this Court, Snap-on will continue to suffer irreparable injury because of Harbor Freight's infringement. Snap-on has no adequate remedy at law.

COUNT II
(Federal Unfair Competition and False Advertising)

36. Snap-on restates and realleges the allegations in Paragraphs 1-35, as if fully set forth herein.

37. Snap-on and Snap-on's franchisees promote, represent and/or advertise that Snap-on's Jacks have an expected life of over 5,000 lift cycles to differentiate Snap-on's Jacks from other competitive jacks in the marketplace.

38. Harbor Freight markets, promotes, represents, and/or advertises the Harbor Freight Jacks as having a life of "over 5,000 lift cycles."

39. Harbor Freight's marketing, promotion, representation and/or advertisements that the Harbor Freight Jacks having a life of "over 5,000 lift cycles" constitutes a use in commerce of false or misleading representations of fact, which, in commercial advertising or promotion, misrepresents the nature, characteristics and/or qualities of the Harbor Freight Jack.

40. Snap-on and Snap-on's franchisees promote the fact that Snap-on's Jacks comply with the ASME PASE/ANSI PALD standard when selling and offering to sell Snap-on's Jacks to further differentiate Snap-on's Jacks from other competitive jacks in the marketplace.

41. Harbor Freight markets, promotes, represents and/or advertises that the Harbor Freight Jack "[m]eets 2009 ANSI/ASME PALD standards."

42. Harbor Freight's marketing, promotion, representation and/or advertisements that the Harbor Freight Jacks "meet 2009 ANSI/ASME PALD standards" constitutes a use in commerce of false or misleading representations of fact, which, in commercial advertising or promotion, misrepresents the nature, characteristics and/or qualities of the Harbor Freight Jack.

43. Harbor Freight's actions constitute unfair competition and false and/or misleading advertising, in violation of Section 43(a) of the Lanham act, 15 USC §1125(a).

44. Harbor Freight's actions are, and continue to be, willful, and are undertaken with the intent to mislead, deceive, and/or confuse customers into believing the Harbor Freight Jack and Snap-on's Jacks are substantially similar as to function and performance, when they are not.

45. Harbor Freights' actions have caused, and continued to cause, irreparable injury to Snap-on, and unless and until Harbor Freight's actions are enjoined by this Court, Snap-on will continue to suffer irreparable injury because of Harbor Freight's actions. Snap-on has no adequate remedy at law.

COUNT III
(Common Law Unfair Competition)

46. Snap-on restates and realleges the allegations in Paragraphs 1-35, as if fully set forth herein.

47. Snap-on and Snap-on's franchisees promote, represent and/or advertise that Snap-on's Jacks have an expected life of over 5,000 lift cycles to differentiate Snap-on's Jacks from other competitive jacks in the marketplace.

48. Harbor Freight markets, promotes, represents, and/or advertises the Harbor Freight Jacks as having a life of "over 5,000 lift cycles."

49. Harbor Freight's marketing, promotion, representation and/or advertisements that the Harbor Freight Jacks having a life of "over 5,000 lift cycles" constitutes a use in commerce of false or misleading representations of fact, which, in commercial advertising or promotion, misrepresents the nature, characteristics and/or qualities of the Harbor Freight Jack.

50. Snap-on and Snap-on's franchisees promote the fact that Snap-on's Jacks comply with the ASME PASE/ANSI PALD standard when selling and offering to sell Snap-on's Jacks to further differentiate Snap-on's Jacks from other competitive jacks in the marketplace.

51. Harbor Freight markets, promotes, represents and/or advertises that the Harbor Freight Jack "[m]eets 2009 ANSI/ASME PALD standards."

52. Harbor Freight's marketing, promotion, representation and/or advertisements that the Harbor Freight Jacks "meet 2009 ANSI/ASME PALD standards" constitutes a use in

commerce of false or misleading representations of fact, which, in commercial advertising or promotion, misrepresents the nature, characteristics and/or qualities of the Harbor Freight Jack.

53. Harbor Freight's actions constitute common law unfair competition.

54. Harbor Freight's acts are, and continue to be, willful, and are undertaken with the intent to misappropriate, and have misappropriated, the good will and reputation associated with Snap-on and Snap-on's Jacks by misleading customers into believing the Harbor Freight jacks and Snap-on's Jacks are substantially similar as to function and performance when they are not.

55. Harbor Freight's actions have caused, and continued to cause, irreparable injury to Snap-on, and unless and until Harbor Freight's actions are enjoined by this Court, Snap-on will continue to suffer irreparable injury because of Harbor Freight's actions. Snap-on has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Snap-on prays for an order and judgment in its favor and against Harbor Freight as follows:

- a. preliminarily and permanently enjoining Harbor Freight, and its parents, subsidiaries, affiliates, officers, directors, agents, employees, successors, assigns, and attorneys, and any and all persons in active concert or participation with any of them, from using, making, causing to be made, selling, offering to sell, causing to be sold, and/or importing or causing to be imported into the United States, any products that directly infringe, contributorily infringe, or induce others to infringe, the claim of the '612 Patent;
- b. preliminarily and permanently enjoining Harbor Freight, and its parents, subsidiaries, affiliates, officers, directors, agents, employees, successors, assigns, and attorneys, and any and all persons in active concert or participation with any of them, from marketing, advertising or otherwise representing that the Harbor Freight Jacks are of the same quality, or otherwise have the same performance as, Snap-on's Jacks;
- c. ordering Harbor Freight to pay to Snap-on the damages that Snap-on has incurred as a result of the acts complained of herein, including, but not limited to, an award to Snap-on of Snap-on's lost profits and/or Harbor Freight's total profits, pursuant to 35 U.S.C. § 289;

- d. a finding that Harbor Freight's actions and infringement has been willful, and that any damages award be trebled, pursuant to 35 U.S.C. § 284;
- e. ordering Harbor Freight to pay to Snap-on its costs and expenses of this action, and its attorneys' fees, pursuant to 35 U.S.C. § 285, as a result of the acts complained of herein; and
- f. awarding Snap-on any other relief that this Court deems just and fit.

JURY TRIAL DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Snap-on demands a trial by jury of all issues triable of right by a jury.

Dated: November 7, 2016

Respectfully submitted,

SNAP-ON INCORPORATED

By: /s/ Justin K. Beyer

Justin K. Beyer

Joseph R. Lanser (*admission in ED Wis
pending*)

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CERTIFICATE OF SERVICE

I, Justin K. Beyer, an attorney, do hereby certify that I have caused a true and correct copy of the foregoing SNAP-ON'S FIRST AMENDED COMPLAINT, to be served upon all counsel of record via the ECF Filing System as well as serving copies of the foregoing via email on this 7th day of November, 2016 upon:

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