

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION**

DALEN PRODUCTS, INC.,)	
)	
Plaintiff,)	
)	
v.)	No. _____
)	
SIX HOGS, LLC,)	JURY TRIAL REQUESTED
)	
Defendant.)	

COMPLAINT FOR PATENT INFRINGEMENT AND COPYRIGHT INFRINGEMENT

Plaintiff, Dalen Products, Inc., for its complaint against Defendant, Six Hogs, LLC, states as follows:

PARTIES

1. Plaintiff Dalen Products, Inc. is a Tennessee corporation with a principal place of business at 700 Dalen Lane, Knoxville, Tennessee 37932.
2. Upon information and belief, Defendant Six Hogs, LLC is a Kentucky limited liability company with a principal place of business at 302 American Greeting Card Road, Corbin, Kentucky 40701.

JURISDICTION AND VENUE

3. This is an action for patent infringement and copyright infringement. Accordingly, this Court has subject matter jurisdiction over the claims in this case pursuant to 28 USC §§ 1331 and 1338.
4. On information and belief, Defendant offers for sale and sells throughout the United States, including within this Judicial District and Division, a wide variety of products, including replicas of owls.
5. On information and belief, this Court has personal jurisdiction over the Defendant based on Defendant's contacts with this district and division including, but not limited to, Defendant's conducting business in this district and committing acts of infringement of the patent

and copyrights sued upon in this district by at least the use, sale, offering for sale, and/or distribution of infringing products in, to, and/or into this district, including by sales of the infringing products in this district through the www.amazon.com website.

6. On information and belief, venue is proper in this district with regard to Defendant pursuant to 28 USC § 1391.

NATURE OF THE ACTION

7. Plaintiff is the owner of all right, title, and interest in Unites States Patent No. 5,901,491, entitled “Owl with Movable Head,” (the ‘491 Patent) which was duly and legally issued by the United States Patent Office on May 11, 1999. A copy of the ‘491 Patent is attached hereto as Exhibit A.

8. The Defendant does not have any license, authorization, consent, or permission from Plaintiff or any other party having any interest in or related to the ‘491 Patent to manufacture, use, offer to sell, or sell any product embodying the subject matter of any claim of the ‘491 Patent, or to engage in any other activity that would, in the absence of any license, authorization, permission, or consent, infringe upon or in any way violate any right or interest of Plaintiff in or relating to the ‘491 Patent.

9. Defendant has been infringing and/or otherwise violating Plaintiff’s rights with respect to one or more of the claims of the ‘491 Patent by, among other things, manufacturing, using, offering for sale, and/or selling in this district and elsewhere throughout the United States products which embody the subject matter of at least one claim of the ‘491 Patent, and will continue to do so unless and until enjoined by this Court. Such infringing products include the “Cornucopia Brands Garden Defense Scarecrow Owl with Rotating Head” (hereinafter the “Cornucopia Owl”). A printout showing the “Cornucopia Owl” product is attached hereto as Exhibit B.

10. Defendant has, with full knowledge of the ‘491 Patent, commenced and/or continued infringement of and/or otherwise acted in violation of Plaintiff’s rights with respect to one or more of the claims of the ‘491 Patent in willful disregard of Plaintiff’s rights thereunder.

11. On information and belief, Defendant has, with full knowledge of the ‘491 Patent, actively induced others to infringe one or more claims of the ‘491 Patent. Also, with knowledge or reason to know of the ‘491 Patent, Defendant has contributed to the infringement

thereof by, among other things, supplying one or more material components or parts of a combination which infringed or infringes upon at least one claim of the '491 Patent, knowing the same to be especially made or adapted for use in an infringement of the '491 Patent and not as a staple item of commerce suitable for substantial non-infringing uses.

12. Plaintiff is also the sole owner of all copyrights in a three-dimensional sculpture entitled "Owl with Movable Head." The U.S. Library of Congress issued U.S. copyright registration certificate number VA-1-882-056 for the sculpture entitled "Owl with Movable Head" to Plaintiff with an effective date of registration of August 28, 2013. A copy of the copyright registration is attached hereto as Exhibit C.

13. Plaintiff currently distributes and sells products embodying the Owl with Movable Head design throughout the United States (hereinafter "Plaintiff's Owl Product"). Photograph of Plaintiff's Owl Product are included with the copyright registration attached hereto as Exhibit C.

14. Plaintiff's Owl Product includes a copyright notice affixed thereto, as prescribed by 17 U.S.C. § 401.

15. Defendant has manufactured, reproduced, publicly displayed, sold, and/or distributed the Cornucopia Owl throughout the United States, including in this district.

16. Defendant's Cornucopia Owl incorporates substantial portions of Plaintiff's "Owl with Movable Head" copyrighted work.

17. Defendant's Cornucopia Owl is a copy and/or a derivative work of Plaintiff's "Owl with Movable Head" work.

18. Without the consent, approval, or license of the Plaintiff, the Defendant has infringed upon Plaintiff's exclusive rights of copyright in its "Owl with Movable Head" work, which is the subject of copyright registration no. VA-1-882-056.

19. Defendant knew or should have known of Plaintiff's exclusive rights in the "Owl with Movable Head" work prior to the time Defendant used and reproduced Plaintiff's work, and sold and distributed substantial reproductions of Plaintiff's work. Nevertheless, Defendant proceeded knowingly, willfully, and with malicious disregard for Plaintiff's rights to infringe Plaintiff's copyrights.

20. Defendant has therefore caused, and continues to cause, irreparable injury to Plaintiff by infringement of Plaintiff's copyrights in the "Owl with Movable Head" work.

COUNT I – PATENT INFRINGEMENT

21. Plaintiff hereby restates the averments of the previous paragraphs as if fully set forth herein, and for its Count I states as follows:

22. Defendant has been and is now infringing and/or otherwise acting in violation of Plaintiff's rights with respect to the '491 Patent in violation of 35 U.S.C. § 271(a) by, among other things, making, selling, offering to sell, and/or using in the United States, products covered by at least one of the claims of the '491 Patent.

23. Defendant has been and is now actively inducing infringement of at least one of the claims of the '491 Patent by others in violation of 35 U.S.C. §§ 271(b) and 271(f).

24. Defendant has been and is now contributing to infringement of at least one of the claims of the '491 Patent by others in violation of 35 U.S.C. § 271(c).

25. The acts of Defendant complained of herein have been and are now being done willfully with knowledge of, or reason to know, that they violate Plaintiff's rights under and related to the '491 Patent including, but not limited to, infringement of the '491 Patent.

26. The acts of Defendant complained of herein have caused and are presently causing irreparable harm, damage, and injury to Plaintiff for which Plaintiff has no adequate remedy at law, and such acts will continue to cause such irreparable harm, damage, and injury to Plaintiff unless and until the same are enjoined and restrained by this court.

COUNT II – COPYRIGHT INFRINGEMENT

27. Plaintiff hereby restates the averments of the previous paragraphs as if fully set forth herein, and for its Count II states as follows:

28. Defendant has been and is now infringing and/or otherwise acting in violation of Plaintiff's rights with respect to its registered copyrights in violation of 17 U.S.C. § 501 by, among other things, manufacturing, reproducing, publicly displaying, selling, and/or distributing in

the United States, products which constitute copies and derivative works of Plaintiff's "Owl with Movable Head" work.

29. The acts of Defendant complained of herein have been and are now being done willfully with knowledge of, or reason to know, that they violate Plaintiff's copyrights.

30. The acts of Defendant complained of herein have caused and are presently causing irreparable harm, damage, and injury to Plaintiff for which Plaintiff has no adequate remedy at law, and such acts will continue to cause such irreparable harm, damage, and injury to Plaintiff unless and until the same are enjoined and restrained by this court.

WHEREFORE, Plaintiff prays for at least the following relief:

a. A preliminary and permanent injunction against the Defendant enjoining it from and against any and all further and/or continued infringement, contributory infringement, and active inducement of infringement of the claims of the '491 Patent.

b. An accounting for damages to Plaintiff resulting from Defendant's infringement, contributory infringement, active inducement of infringement, and any/all other compensable violations of Plaintiff's rights pertaining to the '491 Patent, together with a trebling of all such damages because of the knowing, willful and wanton nature of Defendant's conduct and the exceptional nature of this case pursuant to 35 U.S.C. § 285.

c. That this Court award Plaintiff its attorneys' fees, costs and expenses in this action under 35 U.S.C. § 285.

d. That the Court order Defendant to pay Plaintiff, in accordance with 17 U.S.C. § 504, damages, including Plaintiff's actual damages and Defendant's profits attributable to its infringement or, at the election of Plaintiff, statutory damages, which Plaintiff has suffered as a consequence of Defendant's infringement of Plaintiff's copyrights in its "Owl with Movable Head" work.

e. If Plaintiff elects statutory damages, a determination that Defendant has acted willfully in infringing Plaintiff's copyrights, thereby warranting an award of statutory damages as provided for by 17 U.S.C. § 504(c)(2).

f. That this Court award Plaintiff its attorneys' fees, costs and expenses in this action under 17 U.S.C. § 505.

g. That the Court issue a preliminary and permanent injunction and such other and further relief as is available under 17 U.S.C. § 502 to prevent any further infringement of Plaintiff's copyrights by Defendant;

h. That the Court direct Plaintiff or the Court's designee to take possession of all goods infringing Plaintiff's copyright and all molds or other articles by means of which such goods may be reproduced that are in the possession, custody or control of Defendant for destruction or disposal as provided by 17 U.S.C. § 503

i. An assessment of interest on all damages.

j. Such other, further, and additional relief as this Court may deem reasonable and just.

Plaintiff hereby demands a trial by jury.

Respectfully submitted,

DALEN PRODUCTS, INC.

By: s/Michael J. Bradford

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