

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**DAVID SUTHERLAND, INC.
d/b/a SUTHERLAND,**

Plaintiff,

v.

TEAK WAREHOUSE INC.,

Defendant.

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CIVIL ACTION NO.

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff David Sutherland, Inc. d/b/a Sutherland (“Sutherland”), by and through its undersigned counsel, files this Complaint against Defendant Teak Warehouse, Inc. (“Teak Warehouse”) and alleges the following:

PRELIMINARY STATEMENT

1. This is an action for design patent infringement, trade dress infringement, false advertising and unfair competition. Defendant Teak Warehouse sells and offers for sale teak furniture that constitutes inferior copies of Plaintiff Sutherland’s high quality, award-winning, proprietary furniture designs, particularly including Sutherland’s Poolside Collection. Moreover, Defendant falsely promotes its “knock-offs” as having the same quality and design as Sutherland’s furniture, but at a discounted price. Plaintiff Sutherland seeks monetary damages, disgorgement of Defendant’s profits, injunctive relief, and recovery of its attorneys’ fees and costs incurred in this action.

PARTIES

2. Plaintiff Sutherland is a corporation organized and existing under the laws of the State of Texas and having a principal place of business at 140 Regal Row, Dallas, Texas 75247.

3. Upon information and belief, Defendant Teak Warehouse is a corporation organized and existing under the laws of the State of California, and having a principal place of business at 2653 Manhattan Beach Blvd., Redondo Beach, California 90278.

JURISDICTION AND VENUE

4. The patent infringement claims asserted herein arise under the patent statute, Title 35 of the United States Code. The trade dress infringement claims asserted herein arise under the Trademark (Lanham) Act of 1946, as amended, 15 U.S.C. § 1051 *et. seq.*, as well as under the common law. This Court has subject matter jurisdiction over the federal statutory claims pursuant to 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has subject matter jurisdiction over the common law claims asserted herein pursuant to 28 U.S.C. §§ 1338(b) and § 1367(a) because the common law claims are substantial and related to the patent and trade dress claims asserted herein and form part of the same case or controversy.

6. This Court has personal jurisdiction over the defendant Teak Warehouse because it is, *inter alia*, promoting its business and carrying out the acts complained of, over the Internet, and upon information and belief, by regularly conducting business, including the sale and offering for sale of its products within the State of Texas and within this judicial district and division. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and (c) and 28 U.S.C. § 1400(b).

FACTUAL BACKGROUND

7. Plaintiff Sutherland is a nationally and internationally known company which produces unique, designer-class furniture, particularly outdoor furniture, for the discriminating consumer. For over 30 years, Sutherland has been known as a creative source of high quality furniture, with award-winning designs, this reputation for creativity contributing to the intensive demand for Sutherland furniture by classes of consumers such as interior decorators, architects, and furniture buyers for luxury hotels and travel resorts.

8. In particular, Sutherland's uniquely designed lines of outdoor furniture are widely acclaimed throughout the design trade and high fashion consumer market. These product lines, including the Poolside Collection, illustrations of which are depicted in the attached group **Exhibit A**, constitute refined furniture for casual contemporary outdoor living with craftsmanship and detail reflecting genuine and superb quality. This furniture line is handcrafted from Tectona Grandis grade teak, deemed by many to be the world's finest hardwood, and combines unique shapes and ornamental features to provide the overall unique look and feel of Sutherland furniture.

9. Sutherland's Poolside Collection has been extensively and continuously sold for many years throughout the United States and internationally. Sutherland products have also been extensively advertised and promoted in *Architectural Digest*, *Southern Accents*, *Ellé Décor*, and other publications particularly directed to the interior design trade. All of this activity by Sutherland has been carried out long prior to the introduction of the knock-off furniture by Teak Warehouse complained of herein.

10. As a result of Sutherland's aforementioned long and extensive promotion and sale, the trade and consuming public have come to recognize the distinctive styling and look and feel of the Poolside Collection as representing furniture products originating solely with

Sutherland, and such styling and designs have therefore acquired secondary meaning and the status of protectable trade dress exclusively owned by Sutherland.

11. The Poolside Collection also incorporates unique designs protectable under the United States patent laws. On June 8, 2004, United States Design Patent No. D490,995 (“the ’995 Patent”), entitled “Pool Chair,” was duly and legally issued to Sutherland for the original and ornamental design features shown and described therein. A copy of the ’995 Patent is attached as **Exhibit B**. The ’995 Patent is valid, subsisting, in full force and effect, and solely owned by Sutherland.

12. At all times relevant hereto, the Poolside Collection products have been marked with the ’995 Patent number. Sutherland’s other furniture collections are similarly marked with the patent numbers protecting those designs.

13. Recently, and subsequent to the establishment by Sutherland of its trade dress rights in its Poolside Collection and to the issuance of the ’995 Patent, Defendant Teak Warehouse embarked upon a systematic, organized and damaging course of conduct directed to the duplication and copying of Sutherland’s outdoor furniture lines, and particularly its Poolside Collection, and has in fact copied and is offering for sale, and selling, unauthorized, and inferior, replications of Sutherland’s Poolside Collection. Illustrations of these “knock-offs” are attached hereto as **Exhibit C**. This illegal conduct by Teak Warehouse has no other purpose than to trade on the reputation and recognition by the purchasing public of Sutherland’s furniture products. Moreover, Teak Warehouse is falsely promoting these inferior quality “knock-offs” as being of the same “quality and design” of the authentic Sutherland furniture, as evidenced, in part, by the attached promotional advertising attached hereto as **Exhibit D**. These activities by Teak Warehouse are damaging Sutherland’s reputation in the marketplace and, unless immediately restrained, will cause irreparable harm to Sutherland.

COUNT I
DESIGN PATENT INFRINGEMENT

14. The foregoing allegations are re-alleged and incorporated by reference herein.

15. Sutherland is the exclusive and sole owner of the valid and subsisting '995 Patent.

16. Defendant Teak Warehouse has been and is engaged in activities which constitute infringement of at least Sutherland's '995 Patent.

17. Defendant Teak Warehouse has been and is directly infringing the '995 Patent in violation of 35 U.S.C. § 271 by, without authority, making, using, offering to sell, and selling furniture products within the United States that incorporate the patented design of the '995 Patent, or colorable imitations thereof.

18. Defendant Teak Warehouse has been and is also indirectly infringing the '995 Patent in violation of 35 U.S.C. § 271 by actively inducing others to infringe the '995 Patent by selling its furniture to customers knowing and intending for those customers to use that furniture.

19. Defendant Teak Warehouse has been and is also indirectly infringing the '995 Patent in violation of 35 U.S.C. § 271 by contributing to infringement of the '995 Patent by others. Defendant sells and offers to sell its furniture, which is a material part of the '995 invention, knowing that the furniture is especially made for use in an infringement of the '995 Patent, particularly as it would be impossible to use the furniture without infringing the patent. Defendant's furniture is not a staple article or commodity of commerce suitable for substantial non-infringing uses.

20. Defendant Teak Warehouse's acts of infringement have been and are willful, as Teak Warehouse is on at least constructive notice that the designs that it is copying are protected by the '995 Patent based on the marking of Plaintiff's products in compliance with 35 U.S.C. § 271(a).

21. The acts of patent infringement complained of herein have caused, and if not enjoined will continue to cause, irreparable harm to Sutherland, for which Sutherland is entitled to injunctive relief pursuant to 35 U.S.C. § 283.

22. Sutherland seeks damages adequate to compensate it for Defendant's patent infringement pursuant to 35 U.S.C. §§ 284 and 289. Moreover, because Teak Warehouse's acts of infringement are, and have been, intentional and willful, Sutherland also seeks and is entitled to enhanced damages under 35 U.S.C. § 284. This is an exceptional case, further entitling Sutherland to recover its reasonable attorneys' fees pursuant to 35 U.S.C. § 285.

COUNT II
TRADE DRESS INFRINGEMENT

23. The foregoing allegations are re-alleged and incorporated by reference herein.

24. Sutherland has established a unique and recognizable trade dress for its furniture products such that the trade and the general public recognize those designs and quality as originating from Sutherland.

25. Teak Warehouse's use of Sutherland's unique trade dress in connection with the promotion of its furniture products is likely to cause confusion, mistake or deception as to the source or origin, sponsorship, or approval of Defendant's products in violation of 15 U.S.C. §1125(a)(1)(A).

26. Teak Warehouse's actions have harmed Plaintiff and, unless enjoined, will continue to cause irreparable harm to Sutherland.

COUNT III
FALSE ADVERTISING

27. The foregoing allegations are re-alleged and incorporated by reference herein.

28. Sutherland has established a unique and recognizable trade dress for its furniture products such that the trade and the general public recognize those designs and quality as originating from Sutherland.

29. Teak Warehouse has misrepresented the characteristics and quality of its goods in commercial advertising and promotion in violation of 15 U.S.C. §1125(a)(1)(B), including by advertising that its products are of the same quality as Plaintiff's products.

30. Teak Warehouse's actions have caused harm and, unless enjoined, will continue to cause irreparable harm to Sutherland.

COUNT IV
UNFAIR COMPETITION

31. The foregoing allegations are re-alleged and incorporated by reference herein.

32. Teak Warehouse's aforementioned acts of trade dress misappropriation and false advertising constitute unfair completion under the common law as well as a violation of statutory trademark law. These acts of Teak Warehouse have been carried out for the purpose of unfairly misappropriating Sutherland's profits, as well as its reputation and goodwill, all to the detriment of Sutherland. Sutherland is therefore entitled to recover actual damages suffered as a result of these acts, enhanced damages, any and all profits of the defendant attributable to such acts, and recovery of Sutherland's attorneys' fees. Defendant's conduct has caused harm and, unless enjoined, will continue to cause irreparable harm to Sutherland and to the intellectual property associated with Sutherland's Poolside Collection, for which there is no adequate remedy of law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court enter judgment:

(a) That Defendant Teak Warehouse, and its agents, servants, employees, successors, and assigns, its subsidiary and related entities, and any and all persons, firms, associations and corporations in active concert or participation with Defendant, be enjoined and restrained from:

(i) reproducing, distributing, importing, selling, or offering for sale any furniture products, which are copies of, or are substantially similar to, any of Plaintiff's furniture lines, in whole or in part, including but not limited to Plaintiff's Poolside Collection; and

(ii) using any designs which are similar, in whole or in part, to any trade dress of Plaintiff, or tending to dilute such trade dress; and

(iii) making any false designation of origin, false representation, or false advertising claims, regarding furniture products originating from Defendant; and

(iii) committing any acts causing, or calculated to cause, purchasers or the trade to mistakenly believe that Defendant's products are Plaintiff's products, or vice versa, in whole or in part; and

(iv) infringing any patent of Plaintiff; and

(v) from otherwise competing unfairly with Plaintiff.

(b) That judgment be entered against Defendant for all damages, including enhanced damages, sustained by Plaintiff and for all profits realized by Defendant by reason of Defendant's unlawful acts;

(c) That Plaintiff recover its costs and reasonable attorneys' fees;

(d) That Plaintiff recover the costs of this action, and pre- and post-judgment interest;

and

(e) That Plaintiff have such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all issues so triable in this action.

Dated: January 31, 2013

Respectfully submitted,

/s/ Paul V. Storm
Paul V. Storm.
Texas Bar No. 19325350
pvstorm@gardere.com
Sarah M. Paxson
Texas Bar No. 24032826
spaxson@gardere.com

GARDERE WYNNE SEWELL, LLP
1601 Elm Street, Suite 3000
Dallas, Texas 75201
(214) 999-3000 (ph)
(214) 999-4667 (fax)

ATTORNEYS FOR PLAINTIFF