

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

ACUSHNET COMPANY,

Plaintiff,

v.

RJ SPORTS USA,

Defendant.

Civil Action No. _____

COMPLAINT

Plaintiff Acushnet Company (“Acushnet”), for its Complaint against Defendant RJ Sports USA (“RJ Sports”), alleges as follows:

NATURE OF THE ACTION

1. This is an action for infringement of one (1) United States Patent pursuant to the Patent Laws of the United States, 35 U.S.C. § 100 *et seq.*, and for trade dress infringement under the Lanham Act, 15 U.S.C. § 1051 *et seq.*, and for such relief as the Court deems just and proper.

THE PARTIES

2. Acushnet is a corporation organized and existing under the laws of the State of Delaware, having principal places of business at 333 Bridge Street, Fairhaven, Massachusetts 02719 and 144 Field Street, Brockton, Massachusetts 02302.

3. On information and belief, RJ Sports is an California-based company with principal place of business located at 1783 W. Second Street, Pomona, California 91766.

4. On information and belief, RJ Sports has a manufacturing facility in China located at Shuiling Industrial Park, 89#, Road Wangxin, Zhouwu, Dongcheng Dongguan, Guangdong, China 523118.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1338(a), and 1367. The claims relate to design patent infringement and violations of the trademark laws of the United States.

6. This Court has personal jurisdiction over RJ Sports because RJ Sports has sold and continues to sell the products at issue in this case and committed the tortious acts complained of within this judicial district and is otherwise amenable to the jurisdiction of this Court under the Massachusetts long arm statute, Mass. Gen Laws. ch. 223A, § 3.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

THE PATENT

8. U.S. Patent No. D466,272 (“the ‘272 patent”), entitled “Sandal Sole,” issued to John J. Erickson, Douglas K. Robinson, John F. Lane, III, James M. Feeney, and Richard A. Mochen on December 3, 2002. The application for the ‘272 patent was filed on October 17, 2001. A copy of the ‘272 patent is attached hereto as Exhibit 1. The following figure from the ‘272 patent shows certain features of the unique design:

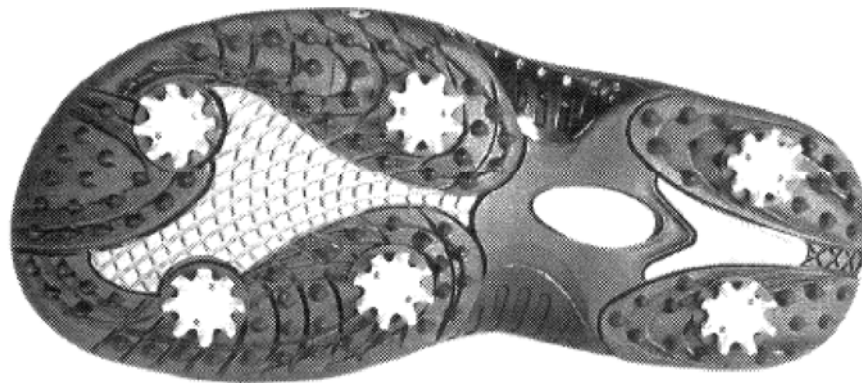


Figure 1.

9. Acushnet is the owner, by assignment, of the '272 patent.

FACTUAL BACKGROUND AND CONTROVERSY

10. Acushnet is a market leader in the manufacture and design of golf equipment. Acushnet develops and sells golf products in this district, throughout the United States, and throughout the world under the brand names of Titleist[®], FootJoy[®], Pinnacle[®], and Scotty Cameron[®]. Among Acushnet's FootJoy[®] product offerings are golf shoes including, but not limited to, golf sandals.

11. To maintain its reputation as a premier golf equipment manufacturer, Acushnet has developed and continues to develop new technologies and ornamental designs for use in and on its golf shoes and sandals.

12. Acushnet's FootJoy[®] Mens GreenJoys Golf Sandals incorporate the ornamental features disclosed and claimed in the '272 patent.

13. Acushnet's FootJoy[®] Mens GreenJoys Golf Sandals are marketed and sold with distinctive trade dress, samples of which are shown in the attached Exhibit 2. Acushnet's trade dress consists of an upper sandal portion having a specific pattern created by the use of at least three different materials, a footbed with a specific imprint, and an outsole with a distinctive

pattern and placement of cleats. Acushnet has used this trade dress in connection with its golf sandal since 2002. *See* Exhibit 3.

14. RJ Sports markets itself as a direct manufacturer of a wide variety of quality products including golf cart and stand bag models, golf accessories, sandals, and shoes. *See* Exhibit 4 at Pages 1-2.

15. The infringing products have been and are presently being sold on-line by several retailers by the product name RJ Sports USA Men's Golf Sandal and TGW Ladies Sport Golf Sandals. *See* Exhibit 5 and Exhibit 7 at Page 3. Photographs of the infringing products are attached as Exhibit 6.

16. On information and belief, for the purposes of marketing its products in the United States, RJ Sports offers at least 12 retail partners spread across various states in the U.S. *See* Exhibit 4 at Page 3.

17. On information and belief, RJ Sports has sold the infringing products to at least several of the 12 retail partners listed on its website (www.rjsportsusa.com) including, but not limited to, Austad's Golf and The Golf Warehouse, which were then offered for sale and sold under various product names including RJ Sports Mens Golf Sandal, TGW Mens Sport Golf Sandals, and TGW Ladies Sport Golf Sandals. *See* Exhibit 7.

18. Because of the similar nature of Acushnet's and RJ Sports' men's golf sandal product, retailers display both company's products near each other, thus maximizing the chances that consumers will be confused about the source of RJ Sports' men's golf sandal product. A printout of an on-line retail "display" from one of RJ Sports' retail partners containing Acushnet's golf sandal product alongside RJ Sports' men's golf sandal product is attached as

Exhibit 8 As shown in Exhibit 8, the RJ Sports' men's golf sandal is marketed as a "Great Value" at \$39.98.

COUNT I

(Infringement of the '272 Patent)

19. Acushnet incorporates and realleges the allegations of paragraphs 1 through 18 as if fully set forth herein.

20. On information and belief, RJ Sports has in the past and continues to infringe, directly, or under the doctrine of equivalents, the '272 patent by offering for sale and/or selling golf sandals, including, but not necessarily limited to, the RJ Sports Men's USA Golf Sandal in the United States that are within the scope of the '272 patent. As the photographs in Exhibit 9 indicate, the design of the infringing products are the same or substantially the same to the eye of the ordinary observer as the ornamental design claimed in the '272 patent. The comparisons attached as Exhibit 8 exemplify how the design of the infringing products is the same or substantially similar to the design claimed in the '272 patent. Shown below is Figure 1 of the '272 patent side-by-side with a picture of one of the infringing products.

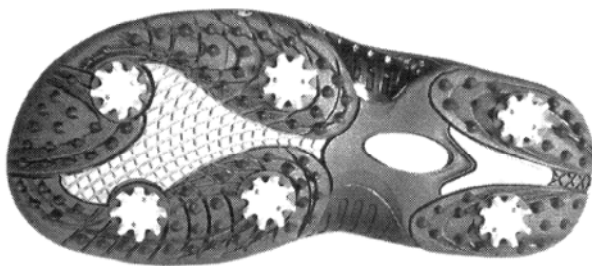


Figure 1.



21. On information and belief, RJ Sports has in the past and continues to infringe by selling its men's and ladies' golf sandals in the United States that are within the scope of the '272 patent, and by inducing others to do so.

22. On information and belief, RJ Sports has in the past and continues to contributorily infringe the '272 patent by selling its men's and ladies' golf sandals in the United States that are within the scope of the '272 patent.

23. On information and belief, the infringement of the '272 patent has been with notice and has been willful.

COUNT II

(Violation of the Lanham Act, 15 U.S.C. § 1125)

24. Acushnet incorporates and realleges the allegations of paragraphs 1 through 23 as if fully set forth herein.

25. Acushnet's trade dress is non-functional and inherently distinctive.

26. RJ Sports' use of Acushnet's trade dress in connection with the sale of its men's golf sandal constitutes trade dress infringement and unfair competition in violation of the Lanham Act, 15 U.S.C. § 1125, because such use is likely to cause confusion, mistake, and deception as to the origin of the goods sold by RJ Sports and, in turn, its retailers, and it is likely to mislead consumers and potential consumers into believing that RJ Sports' goods are somehow affiliated with, or are sponsored, authorized, approved, or sanctioned by Acushnet, or that Acushnet's goods are somehow affiliated with, or are sponsored, authorized, approved, or sanctioned by RJ Sports. The comparison attached as Exhibit 10 exemplifies the degree of similarity between the golf sandal product offered by Acushnet and RJ Sports.

27. RJ Sports' use of Acushnet's trade dress in connection with the sale of a men's golf sandal constitutes false representation and false designation of origin in violation of the Lanham Act, 15 U.S.C. § 1125, because such use tends to describe or represent that the goods sold by RJ Sports originate from, are somehow affiliated with, or are sponsored, authorized, approved, or sanctioned by Acushnet.

28. On information and belief, RJ Sports' acts have caused Acushnet to sustain monetary damage, loss, and injury, in an amount to be determined at trial.

29. RJ Sports' acts have caused, and unless enjoined by this Court will continue to cause, irreparable damage, loss, and injury to Acushnet for which it has no adequate remedy at law.

30. RJ Sports has engaged and continues to engage in the acts described above knowingly, willfully, and in bad faith, so as to justify the assessment of treble damages against it in an amount to be determined at the time of trial, along with Acushnet's reasonable attorney fees and costs in this action.

PRAYER FOR RELIEF

WHEREFORE, Acushnet prays for the following relief:

a. A judgment in favor of Acushnet, declaring that RJ Sports has infringed, directly or indirectly, the '272 patent;

b. A judgment in favor of Acushnet, declaring that RJ Sports infringement of the '272 patent has been willful and trebling damages awarded to Acushnet, as provided by 35 U.S.C. § 284;

c. An award to Acushnet of all damages adequate to compensate Acushnet for all acts of infringement of the '272 patent by RJ Sports, but in no event less than a reasonable

royalty, together with pre-judgment and post-judgment interest and costs fixed by the Court, as provided by 35 U.S.C. § 284;

d. An order, in accordance with 15 U.S.C. § 1117(a), together with pre-judgment and post-judgment interest and costs fixed by the Court, requiring RJ Sports to (i) account for and pay over to Acushnet an amount equal to three times all of the profits, gains, savings, and advantages realized by RJ Sports as a result of its unlawful activities, (ii) pay over to Acushnet an amount equal to three times the amount of damages sustained by Acushnet as a result of RJ Sports' unlawful activities, (iii) reimburse Acushnet for the costs of this action, and (iv) reimburse Acushnet for any reasonable attorney fees incurred as a result of RJ Sports' unlawful activities, including all attorney fees incurred during this action;

e. A permanent injunction prohibiting RJ Sports' use of Acushnet's trade dress;

f. An order requiring RJ Sports to deliver up and destroy all infringing product in its inventory that contains Acushnet's trade dress;

g. An order requiring RJ Sports to request that all retailers selling RJ Sports' products containing Acushnet trade dress return those products to RJ Sports at RJ Sports' expense and requiring RJ Sports to destroy those products;

h. A declaration that this is an exceptional case under 35 U.S.C. § 285 and an award to Acushnet for its attorneys' fees incurred in prosecuting this action; and

i. Any such other and additional relief as the Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Acushnet demands a trial by jury on all issues so triable.

Dated: September 12, 2011

Respectfully submitted,

/s/ Sean T.C. Phelan

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