

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
ORANGEBURG DIVISION**

TH PRODUCTS, LLC d/b/a)
TEXAS HUNTER PRODUCTS,)

Plaintiff,)

v.)

Case No.: _____

WM CAROLINA, LLC d/b/a)

WHITMAN MOLD d/b/a)

AMERICAN FEEDER,)

Defendant.

**COMPLAINT
(JURY TRIAL DEMANDED)**

Plaintiff TH Products, LLC (“**Texas Hunter**”), by and through its attorneys, for its Complaint against defendant WM Carolina, LLC d/b/a Whitman Mold d/b/a American Feeder (“**American Feeder**”), alleges as follows:

INTRODUCTION

1. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code, and for trade dress infringement, unfair competition, and false designation of origin arising under the Lanham Act.

2. Texas Hunter brings this action to obtain redress and compensation for past and ongoing loss and damages sustained because of the infringement by defendant American Feeder. “**Defendant**” is further defined to include all entities

or persons acting in concert or participation with American Feeder or acting or purporting to act on their behalf, or who are within their control.

3. Texas Hunter seeks a permanent injunction, damages (including Defendant's profits) trebled under the law, attorneys' fees, and related relief as more fully described herein.

JURISDICTION

4. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action involves claims for patent infringement in violation of 35 U.S.C. § 1 *et seq.*, and claims for trade dress infringement, unfair competition, and false designation of origin in violation of 15 U.S.C. § 1111 *et seq.*

5. Personal jurisdiction over American Feeder is proper in this District because American Feeder is physically present and resides within this judicial district. American Feeder is organized under the laws of the State of South Carolina. American Feeder has manufactured, offered for sale, sold, and/or distributed the infringing products in this judicial district, and, upon information and belief, operates a facility in Cope, South Carolina.

VENUE

6. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 1400(b) because American Feeder resides in this judicial district and Defendant has

committed acts of infringement and has a regular and established place of business in this judicial district.

PARTIES

7. Texas Hunter is a limited liability company formed under the laws of Delaware and does business in San Antonio, Texas. Texas Hunter has a physical office at 2250 N. Panam Expressway, San Antonio, Texas 78219.

8. On information and belief, American Feeder is a limited liability company formed under the laws of South Carolina, and does business in Cope, South Carolina. On information and belief, American Feeder has a manufacturing facility located at 4336 Bamberg Road, Cope, South Carolina 29038.

FACTS

The '583 Patent

9. United States Patent Number 7,222,583 (the “**'583 Patent**”), titled Directional Broadcast Feeder For Fish And Game, was duly and legally issued on May 29, 2007, and names H. Dell Foster and Paul B. Sides as the inventors. Attached as Exhibit 1 is a true and correct copy of the '583 Patent.

10. The '583 Patent is valid and enforceable.

11. The '583 Patent claims, among other things:

A directional feeder system comprising:

a container which delivers feed particulate;

a feed guide portion comprising an opening through which the feed particulate, which is delivered from the container, passes;

a centrifugal air blower having blades positioned around a center portion to which the feed particulate is delivered, and a housing with an opening which expels air and the feed particulate; and

the opening of the feed guide is aligned with the center portion of the centrifugal air blower so that the feed particulate is delivered to the center portion from the feed guide portion,

wherein the feed particulate is drawn down through the center portion of the centrifugal air blower and accelerated by the air, and the feed particulate is dispensed from the opening of the housing.

See Ex. 1, Col. 5, lines 26-43.

Texas Hunter's Practice of the '583 Patent

12. Texas Hunter is the assignee of the entire right, title, and interest in the '583 Patent.

13. Texas Hunter designs, develops, manufactures, and sells directional fish feeder systems that embody the invention claimed in the '583 Patent under the name TEXAS HUNTER FISH FEEDER (the "**Patented Feeder**").

14. Texas Hunter's Patented Feeder is available for sale throughout the United States, including through its website at <https://www.texashunterproducts.com/fish-feeders/>, a true and correct copy of which is attached as Exhibit 2.

15. Texas Hunter’s products are offered for sale in 70-pound, 175-pound, and 250-pound capacity models. *See* Ex. 2.

16. Promotional materials for the Patented Feeder expressly refer to “U.S. Utility Patent #7222583”—*i.e.*, the ’583 Patent. *See* Ex. 3.

17. Texas Hunter also marks units of the Patented Feeder with the number of the ’583 Patent.

Texas Hunter’s Well-Known Trade Dress

18. The Patented Feeder has been advertised and featured extensively throughout the United States, including through Texas Hunter’s own social media and advertising.

19. Texas Hunter has made significant investments—both in time and in material resources—in developing the Patented Feeder and in securing the intellectual property rights that protect it. This intellectual property includes valuable trade dress rights.

20. Through extensive and consistent advertising, promotion, and publicity of the Patented Feeder, Texas Hunter has obtained and holds unique and distinctive trade dress rights in its overall design of the Patented Feeder (the “**Feeder Trade Dress**”). The Feeder Trade Dress as a whole neither affects the cost or quality of the Patented Feeder nor serves any functional purpose. The Feeder Trade Dress—when used exclusively by Texas Hunter—does not put Texas

Hunter's competitors at a significant reputation-related disadvantage, because it is not the only option for the design of a directional feeder system.

21. Texas Hunter has owned and used its distinctive and non-functional Feeder Trade Dress on its directional fish feeder systems and has featured it prominently in its advertising for more than 10 years to identify Texas Hunter as the source of the directional fish feeder systems. Texas Hunter began marketing and selling its Patented Feeder—which is the subject of the '583 Patent and of the Feeder Trade Dress—at least as early as 2007. Since then, to distinguish its products from those offered by others, Texas Hunter has extensively promoted, advertised, and used the Feeder Trade Dress in a variety of media throughout the United States—including product labeling and packaging, brochures, point-of-purchase display materials, trade show displays, social media, and on the internet.

22. As shown on Exhibit 4, key elements of the Feeder Trade Dress include (but are not limited to): (1) the powder-coated green color; (2) the positioning and configuration of the thin sight-glass centered below the logo/decal; (3) the positioning and configuration of the battery/timer-access door below the sight-glass with a single, centered latch; (4) the positioning and configuration of the battery/timer-access door's internal brackets for the battery and timer; (5) the positioning and configuration of the access panel, including placement and type of the four locking knobs and of the grommets; (6) the configuration of the top lid,

attached with two hinges and single latch, and having a centered ‘U’-shaped handle; and (7) the positioning and configuration of the solar panel.

23. The striking and distinctive nature of the Feeder Trade Dress ensures that consumers will recognize that it is a product originating from Texas Hunter.

24. In the United States, the Patented Feeder with its Feeder Trade Dress is sold through a wide variety of channels, including through Texas Hunter’s website at <https://www.texashunterproducts.com/fish-feeders/>. *See* Ex. 2.

25. As a result of Texas Hunter’s widespread use and display of the Feeder Trade Dress in association with the Patented Feeder, the public has come to recognize and identify products bearing the Feeder Trade Dress as originating from Texas Hunter. The public also recognizes that products bearing the Feeder Trade Dress are high-quality products. Accordingly, the Feeder Trade Dress has established strong secondary meaning and has acquired distinctiveness, in that consumers recognize the Feeder Trade Dress as originating from a single source – Texas Hunter. The Feeder Trade Dress achieved this status long before Defendant first began the infringing activities (detailed below).

26. The Feeder Trade Dress represents extensive goodwill of Texas Hunter and is a tremendously valuable asset of Texas Hunter.

The Infringing Product

27. Upon information and belief, Defendant was aware of the Patented Feeder and the '583 Patent before it began to develop its infringing products (detailed below).

28. Upon information and belief, Defendant acquired one or more of Texas Hunter's Patented Feeders, and such acquired Patented Feeder(s) included the '583 Patent marking on the Patented Feeder(s).

29. On information and belief, Defendant has infringed and continues to infringe the '583 Patent and the Feeder Trade Dress by making, using, selling, and offering for sale the AMERICAN FEEDER H125 (the "**Infringing Product**") in the United States, which embodies or uses both the inventions claimed in the '583 Patent and the Feeder Trade Dress.

30. On information and belief, Defendant copied the design of the Infringing Product from the designs of the '583 Patent and of the Feeder Trade Dress of the Patented Feeder.

31. The Infringing Product is a directional fish feeder system comprising a container, a feed guide portion, a centrifugal air blower, and a housing and having the other features recited in at least claim 1 of the '583 Patent.

32. A side-by-side comparison of the Infringing Product with claim 1 of the '583 Patent shows that the Infringing Product embodies the invention claimed in the '583 Patent. A side-by-side comparison is attached as Exhibit 5.

33. Defendant's Infringing Product is offered for sale throughout the United States, at least through its website at <https://american-feeder.com/outdoor-feeders>, a true and correct copy of which is attached as Exhibit 6.

34. Currently, only a 70-pound capacity model is available through Defendant's website. However, the website notes that a 175-pound capacity model (the AMERICAN FEEDER S300) and a 250-pound capacity model (the AMERICAN FEEDER R425) are "coming soon"—*i.e.*, exactly the same capacities in which Texas Hunter offers its Patented Feeder. *See* Ex. 6, and Exhibit 7 (website <https://american-feeder.com/h125/>).

35. Defendant also promotes the Infringing Product through social media, including on the "American Feeders" [sic] Facebook page at <https://www.facebook.com/pg/americanfeeders/posts/>, a copy of which is attached as Exhibit 8.

36. Texas Hunter competes with Defendant in the marketplace for directional fish feeder systems.

Defendant's Patent Infringing Activities

37. Defendant has been and is infringing the '583 Patent by making, using, selling, and offering for sale in the United States, including within this judicial district, directional fish feeder systems, including those sold under the name AMERICAN FEEDER H125. *See* Ex. 7.

38. Upon information and belief, Defendant has been and is inducing infringement of the '583 Patent by its authorized dealers and/or resellers by actively and knowingly inducing such authorized dealers and/or resellers to use, sell, or offer for sale the Infringing Product, which embodies or uses the inventions claimed in the '583 Patent.

39. Further, American Feeder specifically intended its authorized dealers to infringe the patent, and American Feeder knew that its authorized dealers' sale and offers for sale constituted infringement.

40. On information and belief, Defendant has known of the existence of the '583 Patent, and its acts of infringement have been willful and in disregard for the '583 Patent, without any reasonable basis for believing that it had a right to engage in the infringing conduct.

Defendant's Trade Dress Infringing Activities and Unfair Competition

41. In addition to Defendant's infringement of the '583 Patent, Defendant is marketing, distributing, offering for sale, and selling goods in interstate

commerce that bear a confusingly similar imitation of the Feeder Trade Dress. There are many ways to design a directional feeder system. However, as depicted in Exhibit 4, Defendant has chosen to adopt a design for the Infringing Product that is likely to cause confusion and to deceive consumers and the public regarding its source.

42. Texas Hunter used the Feeder Trade Dress extensively and continuously before Defendant began using and selling confusingly similar imitations of the Patented Feeder.

43. The Infringing Product is similar to and competes with products sold by Texas Hunter, and these products are sold through overlapping channels of trade.

44. The likelihood of confusion engendered by Defendant's misappropriation of the Feeder Trade Dress is causing irreparable harm to the goodwill symbolized by the Feeder Trade Dress and to the reputation for quality that it embodies.

45. Defendant's activities are likely to cause confusion before, during, and after the time of purchase, because purchasers, prospective purchasers, and others viewing the Infringing Product at the point-of-sale are likely—due to Defendant's use of confusingly similar imitations of the Feeder Trade Dress—to mistakenly attribute the product to Texas Hunter. By causing such a likelihood of confusion,

mistake, or deception, Defendant is inflicting irreparable harm to the goodwill symbolized by the Feeder Trade Dress and to the reputation for quality that it embodies.

46. On information and belief, Defendant knowingly, willingly, intentionally, and maliciously adopted and used confusingly similar imitations of the Feeder Trade Dress in the Infringing Product.

Texas Hunter's Notice to Defendant

47. On July 20, 2021, counsel for Texas Hunter sent to American Feeder a letter giving official notice to Defendant that the Infringing Product infringes the '583 Patent and the Feeder Trade Dress (the "**Texas Hunter July 20 Letter**"). A true and correct copy of the Texas Hunter July 20 Letter is attached as Exhibit 9.

48. On August 18, 2021, counsel for American Feeder responded to the July 20 Letter claiming that American Feeder's product lacked a "centrifugal air blower" as required by the '583 Patent ("**American Feeder August 18 Letter**"). A true and correct copy of the American Feeder Hunter August 18 Letter is attached as Exhibit 10.

49. As of August 18, 2021, American Feeder promoted its Infringing Product as having a "high velocity blower" that "sprays feed in an arc that's 45' long and 25' wide at it's [sic] widest and prevents feed from dropping within 3' of the feeder base to deter vermin."

50. Counsel for Texas Hunter sent American Feeder’s counsel another letter dated October 7, 2021 pointing out that American Feeder promoted its H125 feeder as having a “high velocity blower” (“**Texas Hunter October 7 Letter**”). A true and correct copy of the Texas Hunter October 7 Letter is attached as Exhibit 11.

51. Shortly thereafter, American Feeder changed its promotion of the Infringing Product to stop using the term “high velocity blower”, and instead referring to the same component as a “high velocity scatterplate”. *See Ex. 7.* Notably, this same component still used the same functionality description as the prior “high velocity blower”, namely that it “sprays feed in an arc that’s 45’ long and 25’ wide at it’s [sic] widest and prevents feed from dropping within 3’ of the feeder base to deter vermin.” *See Ex. 7.*

52. Upon information and belief, American Feeder did not make any changes to the Infringing Product itself; rather, American Feeder simply started referring to its centrifugal air blower as a scatter plate in an attempt to avoid infringement.

53. Upon information and belief, American Feeder continues to make, use, sell, and offer for sale the Infringing Product.

COUNT I

Patent Infringement

54. Texas Hunter repeats and realleges paragraphs 1 through 53 hereof, as if fully set forth herein.

55. Defendant has been and is infringing the '583 Patent by making, using, selling, and/or offering for sale in the United States, or importing into the United States, including within this judicial district, directional fish feeder systems including those sold under the name AMERICAN FEEDER H125, in violation of 35 U.S.C. § 271(a).

56. On information and belief, Defendant has been and is inducing infringement of the '583 Patent by actively and knowingly inducing others to use, sell, and/or offer for sale the Infringing Product, which embodies or uses the invention claimed in the '583 Patent, including those sold under the name AMERICAN FEEDER H125, in violation of 35 U.S.C. § 271(b).

57. Defendant's infringement has been, and continues to be knowing, intentional, and willful.

58. Defendant's acts of infringement of the '583 Patent have caused and will continue to cause Texas Hunter damages for which Texas Hunter is entitled to compensation pursuant to 35 U.S.C. § 284.

59. Defendant's acts of infringement of the '583 Patent have caused and will continue to cause Texas Hunter immediate and irreparable harm unless such infringing activities are enjoined by this Court pursuant to 35 U.S.C. § 283.

60. Texas Hunter has no adequate remedy at law.

61. This case is exceptional, and, therefore, Texas Hunter is entitled to an award of attorney fees pursuant to 35 U.S.C. § 285.

COUNT II

Trade Dress Infringement

62. Texas Hunter repeats and realleges paragraphs 1 through 61 hereof, as if fully set forth herein.

63. The Feeder Trade Dress is used in commerce and is not functional. As a result of the widespread use, promotion, and display of the Feeder Trade Dress, the Feeder Trade Dress has acquired distinctiveness and has established secondary meaning to potential purchasers, in that potential purchasers have come to associate the overall design of the Feeder Trade Dress with a single source.

64. Subsequent to Texas Hunter's use of and adoption of the Feeder Trade Dress, Defendant developed, advertised, and offered for sale a directional fish feeder system that uses trade dress that is confusingly similar to the Feeder Trade Dress.

65. Texas Hunter has used the Feeder Trade Dress in commerce and has established protectible rights in the elements of the Feeder Trade Dress.

66. The elements comprising the Feeder Trade Dress are primarily non-functional.

67. Defendant's use of the Feeder Trade Dress in connection with the Infringing Product is likely to confuse, to cause mistake, or to deceive as to the affiliation, connection, or association of Defendant with Texas Hunter.

68. Defendant chose to use the trade dress of the Infringing Product with knowledge of Texas Hunter's prior use of and rights in the well-known and distinctive Feeder Trade Dress. On information and belief, Defendant has used the Infringing Product in commerce with the intent to cause confusion, to cause mistake, or to deceive.

69. Defendant's actions constitute willful trade dress infringement in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

70. Due to Defendant's actions constituting trade dress infringement, Texas Hunter has suffered and continues to suffer great and irreparable injury, for which Texas Hunter has no adequate remedy at law.

CLAIM III

Unfair Competition and False Designation of Origin

71. Texas Hunter repeats and realleges paragraphs 1 through 70 hereof, as if fully set forth herein.

72. Defendant's use of the Feeder Trade Dress on the Infringing Product without Texas Hunter's consent: (1) constitutes a false designation of origin and a false representation as to the origin of the Infringing Product; (2) is likely to cause confusion, mistake, or deception as to the source of the Infringing Product; and (3) is likely to create the false impression that the Infringing Product is authorized, sponsored, endorsed, licensed by, or affiliated with Texas Hunter—all in violation of 15 U.S.C. § 1125(a).

73. Such conduct by Defendant is likely: (1) to confuse, mislead, and deceive customers, purchasers, and members of the public as to the origin of the Feeder Trade Dress; or (2) to cause said persons to believe that Defendant or the Infringing Product either have been sponsored, approved, authorized, or licensed by Texas Hunter or are in some way affiliated or connected with Texas Hunter—all in violation of 15 U.S.C. § 1125(a).

74. On information and belief, Defendant's actions were undertaken willfully and with full knowledge of the falsity of such designation of origin and

false descriptions or representations and with the express intent to cause confusion, to cause mistake, or to deceive the purchasing public.

75. Defendant's use of the Feeder Trade Dress without Texas Hunter's consent constitutes unfair competition with Texas Hunter, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

76. Texas Hunter is informed and believes—and thereon alleges—that Defendant has derived and received and will continue to derive and receive gains, profits, and advantages from Defendant's false designation of origin and unfair competition in an amount that is not presently known to Texas Hunter. By reason of Defendant's actions constituting false designation of origin and unfair competition, Texas Hunter has been damaged and is entitled to monetary relief in an amount to be determined at trial.

77. Due to Defendant's actions constituting false designation of origin and unfair competition, Texas Hunter has suffered and continues to suffer great and irreparable injury, for which Texas Hunter has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Texas Hunter requests judgment against Defendant as follows:

- (a) adjudging that Defendant has infringed, actively and induced infringement of, the '583 Patent, in violation of 35 U.S.C. § 271(a),
- (b)
- (b) granting an injunction temporarily, preliminarily, and permanently enjoining Defendant, its employees, agents, officers, directors, attorneys, successors, affiliates, subsidiaries, and assigns, and all of those in active concert and participation with any of the foregoing persons or entities from infringing, or inducing infringement of the '583 Patent or of the Feeder Trade Dress;
- (c) granting an injunction temporarily, preliminarily, and permanently enjoining Defendant, its employees, agents, officers, directors, attorneys, successors, affiliates, subsidiaries, and assigns, and all of those in active concert and participation with any of the foregoing persons or entities from engaging in any act of unfair competition utilizing any trade dress that is identical to or confusingly similar to the Feeder Trade Dress;
- (d) ordering Defendant to account and pay damages adequate to compensate Texas Hunter for Defendant's unlawful activities, including for any infringing acts not presented at trial and pre-

judgment and post-judgment interest and costs, pursuant to 15 U.S.C. § 1117 and to 35 U.S.C. §§ 284 and 289;

- (e) ordering an accounting for any infringing or otherwise unlawful sales not presented at trial and an award by the court of additional damages for any such infringing sales;
- (f) ordering that the damages award be increased up to three times the actual amount assessed, pursuant to 15 U.S.C. § 1117 and to 35 U.S.C. §§ 284 and 289;
- (g) declaring this case exceptional and awarding Texas Hunter its reasonable attorney fees, pursuant to 15 U.S.C. § 1117 and to 35 U.S.C. § 285; and
- (h) awarding such other and further relief as this Court deems just and proper.

TEXAS HUNTER DEMANDS A TRIAL BY JURY

DATED this 11th day of January, 2022.

Respectfully submitted,

/s/ Jonathan E. Schulz

Jonathan E. Schulz (Fed. I.D. No. 12027)

Bradley Arant Boult Cummings LLP

Truist Center

214 North Tryon Street

Ste 3700

Charlotte, NC 28202

Telephone: (704) 338-6127

Facsimile: (704) 332-8858

jschulz@bradley.com

*Attorney for TH Products, LLC, d/b/a Texas
Hunter Products*