

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEBRASKA**

AUTOMATIC EQUIPMENT  
MANUFACTURING COMPANY d/b/a  
BLUE OX, a Nebraska company,

Plaintiff,

v.

YINGZI SHI d/b/a FDSNH or KLBNM,

Defendant.

CASE NO.

**COMPLAINT AND DEMAND FOR JURY  
TRIAL**

COMES NOW Automatic Equipment Manufacturing Company d/b/a Blue Ox and for its  
Complaint against Yingzi Shi d/b/a FDSNH or KLBNM, alleges as follows:

**NATURE OF ALLEGATIONS**

1. This is an action for infringement under the patent laws of the United States, Title 35 of the United States Code § 271. Automatic Equipment Manufacturing Company d/b/a Blue Ox (“Plaintiff” or “Blue Ox”) seeks monetary damages, enhanced damages (including treble damages), attorneys’ fees, costs, and preliminary and permanent injunctive relief preventing continuing acts of infringement of Yingzi Shi d/b/a FDSNH or KLBNM (“Defendant”).

2. This is also an action for injunctive relief and damages under Nebraska statutory and common laws based on Defendant’s wrongful use of Plaintiff’s AVAIL and BX7420 Trademarks.

3. This case involves products called “tow bars” designed to be added to a towing vehicle (e.g., camper or motorhome) for towing a towed vehicle (e.g., car, sport utility vehicle, or pickup). Tow bars are typically connected to the rear end of the towing vehicle and to the front end of the towed vehicle.

4. Tow bars for moving towed vehicles along public roadways must be designed to accommodate rapidly changing variations in attitude that operatively arise between the towing and towed vehicles. One such variation in attitude between the vehicles is the instantaneous ascent/descent orientation between the towing and the towed vehicles about a transverse, horizontal axis, sometimes referred to as the “pitch” axis.

5. Another variation in attitude between the vehicles is the instantaneous rotation between the towing and the towed vehicles about a vertical axis, sometimes referred to as the “yaw” axis, such as when the towed vehicle is being pulled around an unbanked corner.

6. Yet another variation in attitude between the vehicles is the instantaneous sidewise tilt between the towing and the towed vehicles about a longitudinal, horizontal axis, sometimes referred to as the “roll” axis, such as the rocking motion which occurs when traversing uneven or rough pavement.

7. Prior art is replete with tow bar designs that have been developed in an attempt to accommodate the constantly changing roll, yaw and pitch phenomena between the towing and the towed vehicles. While traditional hitch ball-receiver combinations may accommodate yaw, however, their ability to accommodate either roll or pitch is extremely limited. Failure to closely abide by such limitations can produce disastrous and even fatal results.

8. The dispute here involves two patents for improved tow bars that help the towed vehicle more closely track the towing vehicle during operation for better accommodating yaw, pitch and roll phenomena between the vehicles. The two patents for improved tow bars further provide simple, uncomplicated means for stowing the tow bar on the towing vehicle in a safe and secure manner.

9. Defendant’s tow bar product infringes those patents because, among other things,

it utilizes the same means to accommodate the yaw, pitch and roll phenomena associated with towing a towed vehicle, in addition to the same means to stow the tow bar on the towing vehicle as claimed in those patents.

### **THE PARTIES**

10. Plaintiff Automatic Equipment Manufacturing Company d/b/a Blue Ox (“Plaintiff” or “Blue Ox”) is a Nebraska corporation with a principal place of business located in Pender, Nebraska. Blue Ox is engaged in the business of distribution and sale of various towing products, including tow bars.

11. Upon information and belief, Defendant Yingzi Shi is an individual d/b/a FDSNH or KLBNM (“Defendant”) residing at No. 502, Unit 1, Building 12, Kangle Xianggang Cheng, Xihu District, Hangzhou, Zhejiang, China 310012.

### **JURISDICTION AND VENUE**

12. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a). This action involves claims arising under the patent laws of the United States, 35 U.S.C. § 1, *et seq.* The Court has jurisdiction over Plaintiffs’ state law claims pursuant to 28 U.S.C. § 1338 because they present a substantial issue of patent law.

13. Alternatively, this Court has supplemental jurisdiction over the claims in this action which arise under the statutory and common laws of the state of Nebraska pursuant to 28 U.S.C. § 1367(a) because the state law claims are so related to the federal claims that they form a part of the same case or controversy and arise from a common nucleus of operative facts.

14. Personal jurisdiction and venue are proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and/or 1391(c). Venue is proper in this Court pursuant to 28 U.S.C. § 1391. This Court has personal jurisdiction over Defendants because they conduct business in this jurisdiction, such

as offering the infringing product for sale via online retailers such as Amazon who sell the infringing products nationwide, including into the State of Nebraska.

### **FACTUAL BACKGROUND**

#### **A. The Asserted Patents.**

15. This action involves infringement of U.S. Patent No. 8,505,952 (“the ’952 Patent”) and U.S. Patent No. 8,690,181 (“the ’181 Patent”) (collectively, the “Asserted Patents”) by Defendant’s manufacture, use and sale of a tow bar marketed under the name BX7420 AVAIL TOW BAR (hereinafter, the “BX7420 Tow Bar”) as a direct replacement for Plaintiff’s patented tow bar sold under the name AVAIL.

16. On August 13, 2013, the U.S. Patent and Trademark Office (hereinafter, the “USPTO”) issued the ’952 Patent entitled “Light-Weight Tow Bar For Vehicles And Leg Lock Therefor.” A copy of the ’952 Patent is attached hereto as Exhibit A.

17. Plaintiff has been, at all relevant times, the sole owner of the ’952 Patent with the right to enforce.

18. By virtue of its status as sole owner of the ’952 Patent, Plaintiff has the right to exclude others from making, using, selling or offering to sell, or importing into the United States embodiments of the inventions claimed in the ’952 Patent. Plaintiff has not authorized Defendant to make, use, sell or offer to sell, or import into the United States any invention claimed in the ’952 Patent.

19. On April 8, 2014, the USPTO issued the ’181 Patent entitled “Tow Bar Having Compact Swivel Unit With Pin-Less Stowing Lobes.” A copy of the ’181 patent is attached hereto as Exhibit B.

20. Plaintiff has been, at all relevant times, the sole owner of the ’181 Patent with the

right to enforce.

21. By virtue of its status as sole owner of the '181 Patent, Plaintiff has the right to exclude others from making, using, selling or offering to sell, or importing into the United States embodiments of the inventions claimed in the '181 Patent. Plaintiff has not authorized Defendant to make, use, sell or offer to sell, or import into the United States any invention claimed in the '181 Patent.

22. Plaintiff has been making, using, selling and offering to sell tow bars covered by the Asserted Patents under the mark AVAIL and has given notice to the public that the same is patented by fixing on the product itself or on product packaging the word "patent" together with the number of the patents.

**B. The Asserted Trademarks.**

23. Plaintiff owns exclusive common law rights throughout the U.S. to the AVAIL and BX7420 marks (hereinafter, the "Trademarks") for use in connection with tow bars for towing vehicles.

24. The AVAIL and BX7420 Trademarks are in full force and effect and entitled to broad protection. Plaintiff has been using and promoting the AVAIL and BX7420 Trademarks in commerce for use in connection with tow bars for vehicles since at least as early as October 31, 2014.

25. Specifically, Plaintiff has been using and promoting the AVAIL mark in connection with two types of tow bars: (1) the BX7420 AVAIL tow bar having a 2 inch receiver; and (2) the BX7425 AVAIL tow bar having a 2.5 inch receiver.

26. Plaintiff has expended enormous amounts of time, effort, capital and resources and, in that respect, owns extremely valuable proprietary rights to the AVAIL and BX7420

Trademarks in the towing industry.

27. Plaintiff's AVAIL tow bars are only sold through select authorized dealers vetted by Plaintiff. In particular, customers can only purchase Plaintiff's AVAIL tow bars through (1) Plaintiff's interactive website, *available at, e.g.,* <https://www.blueox.com/product/bx7420-avail-tow-bar/>; (2) Plaintiff's interactive storefront website via online retailer Amazon, *available at, e.g.,* <https://www.amazon.com/Blue-Ox-BX7420-Tow-Bar/dp/B00PG2V14G>; and (3) through select authorized dealers online and in brick and mortar retail stores.

28. Plaintiff has sought to supplement and enhance its common law rights to the AVAIL mark by filing a U.S. federal trademark application with the USPTO, namely, U.S. Serial No. 97/234,839 ("the AVAIL federal trademark application").

29. Plaintiff is the sole owner of the AVAIL federal trademark application.

30. The AVAIL federal trademark application has a filing date of January 24, 2022 and a date of first use of October 31, 2014.

31. The AVAIL federal trademark application is used in connection with goods, particularly "tow bars for vehicles." A copy of the AVAIL federal trademark application is attached hereto as Exhibit C.

**C. Defendant's Infringement of the Asserted Patents.**

32. Defendant is the manufacturer of a competing tow bar sold in the United States under the marks "BX7420 AVAIL TOW BAR" and "BX7420 TOW BAR" (hereinafter, the "Accused Device"). A copy of Defendant's "BX7420 Avail Tow Bar Operation Manual & Installation Instructions" for the Accused Device is attached hereto as Exhibit D.

33. Defendant markets and sells the Accused Device as a direct replacement for Blue Ox's patented BX7420 AVAIL tow bar. Sample screenshots of the Accused Device sold on

Amazon are attached hereto as Exhibit E.

34. Defendant has and continues to knowingly, intentionally and willfully infringe either directly or indirectly, literally or under the doctrine of equivalents, engage in acts of contributory infringement, and/or induce the infringement of the Asserted Patents by making, using, selling, offering for sale and/or importing the Accused Device that falls within the scope of multiple claims contained in the '952 Patent and the '181 Patent.

35. Defendant has actual and/or constructive notice concerning the Asserted Patents, including notice and knowledge that the Asserted Patents exist and sufficient information to conclude that the manufacture, use, sale, offer for sale and/or import of the Accused Device infringes multiple claims of the Asserted Patents.

36. Defendant has possessed knowledge of the Asserted Patents and their claims since at least as early as July 1, 2017 when Plaintiff's AVAIL tow bars were first sold displaying the word "patent" together with the number of the Asserted Patents. Furthermore, a copy of a notification letter sent to FDSNH on or about January 24, 2022 is attached hereto as Exhibit F. A copy of a follow-up letter sent to Defendant's counsel on or about March 18, 2022 is attached hereto as Exhibit G.

37. Notwithstanding the foregoing, Defendant has continued to manufacture and sell the infringing products and wholly failed to respond to Plaintiff's letters of January 24, 2022 and March 18, 2022, cease their infringement of the Asserted Patents or otherwise comply with Plaintiff's demands.

38. Defendant knew or should have known that the Accused Device infringes one or more claims of each of the Asserted Patents.

39. Defendant knew or should have known that by selling the Accused Device to third

parties, Defendant thereby induced those third parties to directly infringe one or more claims of the Asserted Patents through their use or sale of the Accused Device.

40. Defendant has possessed knowledge that through its marketing, product labels and instructions in connection with the offer for sale and sale of the Accused Device, Defendant's sale of the Accused Device to third parties would result in direct infringement of one or more claims of the Asserted Patents and would constitute induced infringement of one or more claims of the Asserted Patents. *See* Exhibits D, E. Upon information and belief, one or more of the third parties has engaged in the underlying act of direct infringement of one or more claims of the Asserted Patents through their use or sale of the Accused Device.

41. Upon information and belief, Defendant specifically intended for customers of the Accused Device to directly infringe one or more claims of the Asserted Patents through those customers' use or sale of the Accused Device and knew that such acts would constitute infringement of one or more claims of the Asserted Patents.

**D. Defendant's Infringement of the Asserted Trademarks.**

42. Long after Plaintiff's adoption and use of the AVAIL and BX7420 Trademarks, Defendant wrongfully adopted and began using the same marks in connection with the sale, offering for sale, distribution and advertising of competing tow bars. Customers from anywhere can purchase Defendant's "BX7420 AVAIL TOW BAR" and "BX7420 TOW BAR" online through, *e.g.*, Amazon. *See* Exhibits D, E.

43. Upon information and belief, Defendant knew and was well aware of Plaintiff's valuable proprietary rights or Defendant adopted its infringing name with reckless indifference to Plaintiff's valuable proprietary rights.

44. On or about January 24, 2022 and March 18, 2022, Plaintiff's counsel notified



Defendant of Plaintiff's proprietary trademark rights and asked that Defendant immediately cease and desist its infringing conduct.

45. To date, Defendant has failed to respond to Plaintiff's letters of January 24, 2022 and March 18, 2022, cease their infringing use of Plaintiff's AVAIL and BX7420 Trademarks or otherwise comply with Plaintiff's demands.

46. Defendant has sold, offered for sale and distributed tow bars under the "AVAIL" name having a product number "BX7420," despite full knowledge that such conduct infringes the proprietary rights of Plaintiff. These tow bars are advertised and offered for sale on a nationwide basis through, *e.g.*, Amazon. *See* Exhibits D, E.

47. Defendant's infringing acts as alleged herein have resulted in actual confusion as evidenced by at least one customer asking on Amazon whether the Defendant's tow bar was "a blue ox tow bar?" *See* Exhibit E.

48. Defendant is not now, nor has it ever been associated, affiliated or connected with or endorsed or sanctioned by Plaintiff.

49. Defendant's use of the AVAIL mark and BX7420 product number in its name has caused and is likely to continue to cause consumers, the public and trade to erroneously believe that the tow bar sold by Defendant emanate or originate from Plaintiff, and that said tow bar is authorized, sponsored or approved by Plaintiff, which it is not.

50. Defendant has acted with reckless disregard for Plaintiff's valid rights and/or was willfully blind in connection with its unlawful activities. Alternatively, Defendant intentionally engaged in its infringing activities.

51. As a consequence of Defendant's wrongful conduct, Plaintiff has suffered irreparable harm and damage.

52. Plaintiff has no adequate remedy at law.

**COUNT ONE**  
**INFRINGEMENT OF THE '952 PATENT**

53. Plaintiff incorporates by reference the preceding allegations of this Complaint.

54. Defendant, without permission or license from Plaintiff, has unlawfully and wrongfully made, imported, used, sold or offered for sale, and are now making, importing, using, selling or offering for sale, including within this judicial district, the tow bar marketed as the “BX7420 AVAIL TOW BAR” or the “BX7420 TOW BAR.” Pursuant to 35 U.S.C. § 271, such conduct constitutes direct or indirect infringement, literally or under the doctrine of equivalents, of the '952 Patent.

55. Defendant’s activities with respect to the tow bar marketed and sold as the “BX7420 AVAIL TOW BAR” or the “BX7420 TOW BAR” contain, embody, and employ the inventions described and claimed in the '952 Patent, in violation of Plaintiff’s exclusive rights thereunder, and infringe multiple claims of the '952 Patent, in violation of 35 U.S.C. § 271.

56. Non-limiting examples of such infringement include claims 1, 5, 7, 12 and 13 of the '952 Patent, as illustrated in the claim chart attached hereto as Exhibit H.

57. Defendant possesses knowledge that by selling the tow bar marketed as the “BX7420 AVAIL TOW BAR” or the “BX7420 TOW BAR” to third parties, Defendant thereby induces those third parties to infringe one or more claims of the '952 Patent through their use or sale of the tow bars marketed and sold as the “BX7420 AVAIL TOW BAR” or the “BX7420 TOW BAR.”

58. Defendant’s unlawful making, importing, using, selling or offering for sale, or contributing to the making, importing, using, selling or offering to sell, or unlawfully inducing others to make, import, use, sell or offer to sell, the tow bar marketed as the “BX7420 AVAIL

TOW BAR” or the “BX7420 TOW BAR” within the United States including within this judicial district constitutes direct and/or indirect infringement of one or more claims of the ’952 Patent under 35 U.S.C. § 271.

59. On information and belief, Defendant has derived, received, and will unless restrained and/or enjoined, derive and receive from the aforesaid infringement of the ’952 Patent, substantial gains, profits, and advantages, including gains profits and advantages from regular making and sales of infringing devices within this judicial district, in amounts to be proven at trial. As a direct and proximate result of the aforesaid infringement, Plaintiff has been, and will be, greatly damaged and have been, and will be, deprived and prevented from receiving, if such further infringement is not restrained and enjoined by this Court, all the gains and profits to which Plaintiff is lawfully entitled and which it would have derived and received, but for the aforesaid infringement by Defendant.

60. Defendant’s infringement occurred with knowledge of the ’952 Patent and thus has been, and will continue to be, willful and deliberate. Defendant has sought to use the patented technology without regard for the ’952 Patent. Defendant’s egregious conduct constitutes willful and deliberate infringement, which entitles Counterclaim-Plaintiffs to enhanced damages under 35 U.S.C. § 285.

**COUNT TWO**  
**INFRINGEMENT OF THE ’181 PATENT**

61. Plaintiff incorporates by reference the preceding allegations of this Complaint.

62. Defendant, without permission or license from Plaintiff, has unlawfully and wrongfully made, imported, used, sold or offered for sale, and are now making, importing, using, selling or offering for sale, including within this judicial district, the tow bar marketed as the “BX7420 AVAIL TOW BAR” or the “BX7420 TOW BAR.” Pursuant to 35 U.S.C. § 271, such

conduct constitutes direct or indirect infringement, literally or under the doctrine of equivalents, of the '181 Patent.

63. Defendant's activities with respect to the tow bar marketed and sold as the "BX7420 AVAIL TOW BAR" or the "BX7420 TOW BAR" contain, embody, and employ the inventions described and claimed in the '181 Patent, in violation of Plaintiff's exclusive rights thereunder, and infringe multiple claims of the '181 Patent, in violation of 35 U.S.C. § 271.

64. Non-limiting examples of such infringement include claims 1-16 of the '181 Patent, as illustrated in the claim chart attached hereto as Exhibit I.

65. Defendant possesses knowledge that by selling the tow bar marketed as the "BX7420 AVAIL TOW BAR" or the "BX7420 TOW BAR" to third parties, Defendant thereby induces those third parties to infringe one or more claims of the '181 Patent through their use or sale of the tow bars marketed and sold as the "BX7420 AVAIL TOW BAR" or the "BX7420 TOW BAR."

66. Defendant's unlawful making, importing, using, selling or offering for sale, or contributing to the making, importing, using, selling or offering to sell, or unlawfully inducing others to make, import, use, sell or offer to sell, the tow bar marketed as the "BX7420 AVAIL TOW BAR" or the "BX7420 TOW BAR" within the United States including within this judicial district constitutes direct and/or indirect infringement of one or more claims of the '181 Patent under 35 U.S.C. § 271.

67. On information and belief, Defendant has derived, received, and will unless restrained and/or enjoined, derive and receive from the aforesaid infringement of the '181 Patent, substantial gains, profits, and advantages, including gains profits and advantages from regular making and sales of infringing devices within this judicial district, in amounts to be proven at

trial. As a direct and proximate result of the aforesaid infringement, Plaintiff has been, and will be, greatly damaged and have been, and will be, deprived and prevented from receiving, if such further infringement is not restrained and enjoined by this Court, all the gains and profits to which Plaintiff is lawfully entitled and which it would have derived and received, but for the aforesaid infringement by Defendant.

68. Defendant's infringement occurred with knowledge of the '181 Patent and thus has been, and will continue to be, willful and deliberate. Defendant has sought to use the patented technology without regard for the '181 Patent. Defendant's egregious conduct constitutes willful and deliberate infringement, which entitles Counterclaim-Plaintiffs to enhanced damages under 35 U.S.C. § 285.

**COUNT THREE**  
**COMMON LAW**

69. Plaintiff incorporates by reference the preceding allegations of this Complaint.

70. Plaintiff's AVAIL and BX7420 Trademarks are strong and entitled to broad protection.

71. Based upon Plaintiff's extensive advertising and promotion of its tow bars under the AVAIL and BX7420 Trademarks, the volume of revenues it has derived in connection with the Trademarks, and the popularity of the Trademarks, the Trademarks are immediately associated by purchasers, the public and the trade as being a product, name or affiliate of Plaintiff.

72. Defendant's conduct as described above constitutes Defendant's use in commerce of Plaintiff's AVAIL and BX7420 Trademarks.

73. Defendant has intentionally used the AVAIL and BX7420 Trademarks knowing that it is the exclusive property of Plaintiff in connection with the sale, offering for sale,

distribution and advertising of goods in the towing industry.

74. Defendant's conduct described above creates the false and misleading impression that Defendant is sanctioned, permitted, authorized or otherwise approved by Plaintiff to use the AVAIL and BX7420 Trademarks to advertise, market, offer for sale and/or sell tow bars when, in fact, Defendant is not so authorized.

75. Defendant is now engaging in the aforementioned activity with the intent to confuse and deceive consumers, the public and the trade.

76. Defendant's aforesaid use of the same name "AVAIL" and same product number BX7420, has caused, and is likely to cause, confusion, mistake and deception with Plaintiff and/or its products that are sold under the AVAIL and BX7420 Trademarks, and will undoubtedly result in the belief by purchasers, consumers, the public and the trade that Defendant and/or its products are connected with, sponsored by or approved by Plaintiff.

77. On information and belief, Defendant's wrongful conduct has been willful, intentional and/or in reckless disregard of Plaintiff's aforesaid rights.

78. Defendant's wrongful conduct has resulted in irreparable damage to Plaintiff and will continue to irreparably damage Plaintiff until enjoined by this Court. Plaintiff is without an adequate remedy at law.

79. The aforementioned acts of Defendant constitute infringement, dilution, unfair competition and deceptive trade practices under the common law of the State of Nebraska.

#### **COUNT FOUR**

#### **VIOLATION OF STATE DECEPTIVE TRADE PRACTICES ACTS**

80. Plaintiff incorporates by reference the preceding allegations of this Complaint.

81. The conduct of Defendant constitutes deceptive trade practices in violation of the Nebraska Deceptive Trade Practices Act, Nebraska Revised Code § 87-301 *et. seq.*

82. As a result of the conduct of Defendant, Plaintiff is entitled to all of the legal remedies under the Nebraska Deceptive Trade Practice Act.

**COUNT FIVE**

**VIOLATION OF STATE ANTI-DILUTION LAWS**

83. Plaintiff incorporates by reference the preceding allegations of this Complaint.

84. The conduct of Defendant as stated above is diluting the distinctive quality of the AVAIL and BX7420 Trademarks in violation of Nebraska Revised Code § 87-140 *et. seq.*

56. As a result of the conduct of Defendant, Plaintiff is entitled to all of the legal remedies under Nebraska Revised Code § 87-140 *et. seq.*

**JURY DEMAND**

85. Plaintiff demands a jury on all issues so triable.

**PRAYER FOR RELIEF**

WHEREFORE Plaintiff Automatic Equipment Manufacturing Company d/b/a Blue Ox prays for an Order from this Court that:

A. Judgment be entered in favor of Plaintiff and against Defendant on Counts 1-5 of the Claims;

B. Judgment be entered that Defendant's patent and trademark infringement has been willful;

C. Defendant and each of their officers, directors, agents, servants, employees and representatives, and those persons in active concert or participation with them or any of them, be preliminarily and permanently enjoined and restrained from directly or indirectly making or causing to be made, offering for sale, selling or causing to be sold, importing or causing to be imported, or using or causing to be used any product in accordance with or embodying any invention(s) set forth and claimed in the Asserted Patents, including the tow bar marketed as the

“BX7420 AVAIL TOW BAR” or the “BX7420 TOW BAR”;

D. Defendant be directed to account to Plaintiff for all gains, profits and advantages realized by Defendants from manufacturing and marketing of tow bars resulting in infringement of any claim of the '952 and/or '181 Patents and unlawful use and practice of the invention(s) claimed in and by the Asserted Patents, from the beginning of selling the tow bar marketed as the “BX7420 AVAIL TOW BAR” or the “BX7420 TOW BAR,” and other products sold in connection therewith, and other products which infringe the Asserted Patents, up to and including the time of trial;

E. Defendant be ordered to pay to Plaintiff, pursuant to 35 U.S.C. § 284, such damages as have been sustained by Plaintiff as a result of said infringement by Defendant up to the time of trial, but in no event less than a reasonable royalty for the use made of the inventions of the Asserted Patents by the Defendant, as well as treble damages for willful infringement under 35 U.S.C. § 284, together with interest and costs;

F. Defendant and each of their officers, agents, servants, employees, franchisees and attorneys, and all those persons in active concert or participation with them, be preliminarily and permanently enjoined from using in any manner the names “AVAIL” and “BX7420” as a trademark, and whether alone or in association with other words or symbols.

G. Defendant be required, in accordance with state law, to deliver to Plaintiff for destruction all items which in any way or manner depict the names “AVAIL” and “BX7420,” whether used alone or in association with other words or symbols.

H. Plaintiff shall be awarded all damages it has sustained as a consequence of Defendant’s infringement of the “AVAIL” and “BX7420” Trademarks or any unfair competition.



I. Awarding Plaintiff all gains, profits, and advantages derived by the Defendant's infringement of the "AVAIL" and "BX7420" Trademarks or any unfair competition and that the same be held in constructive trust for the benefit of Plaintiff.

J. Awarding Plaintiff prejudgment interest on all recoverable damages at the legal pre-judgment rate and interest on said sums at the legal judgment rate from the date of said judgment.

K. Awarding Plaintiff reasonable attorneys' fees based upon a finding that the case is exceptional under 35 U.S.C. § 285.

L. Awarding Plaintiff attorney's fees and costs of the action as authorized by law.

M. Awarding Plaintiff treble the amount of actual damages suffered by it as authorized by law.

N. Awarding any other remedy to which Plaintiff may be entitled and that the Court concludes is appropriate.

Plaintiff requests a jury trial in Omaha, Nebraska on all issues so triable.

Dated this 26<sup>th</sup> day of January 2023

Automatic Equipment Manufacturing Co.  
d/b/a Blue Ox, Plaintiff

By: /s/Luke C. Holst

Brian T. McKernan, NE #22174  
Luke C. Holst, NE #23834  
McGrath North Mullin & Kratz, PC LLO  
Suite 3700 First National Tower  
1601 Dodge St.  
Omaha, NE 68102  
(402) 341-3070  
(402) 952-6896 fax  
bmckernan@mcgrathnorth.com  
lholst@mcgrathnorth.com

*Attorneys For Plaintiff*