

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Miller Manufacturing Company,

Court File No. _____

Plaintiff,

COMPLAINT

v.

Zhejiang Focus-On Imp. & Exp. Co. d/b/a
Focus-On Tools, and Tom Lai,
individually,

JURY TRIAL DEMANDED

Defendants.

NATURE OF THE ACTION

1. This an action by Minnesota Plaintiff Miller Manufacturing Company for breach of a Settlement Agreement dated July 2023 (attached as Exhibit A); copyright infringement under 17 U.S.C. §§ 101 et seq.; trademark infringement under 15 U.S.C. § 1114; violations of 15 U.S.C. § 1125; violations of the Minnesota Deceptive Trade Practices Act; and patent infringement under 35 U.S.C. § 271 et seq.
2. In 2022, as a result of Defendant Zhejiang Focus-On Imp. & Exp. Co. copying Miller's advertising images and selling product that infringes on Miller's intellectual property, Miller was forced to file a lawsuit in this Court: *Miller Manufacturing Company v. Zhejiang Focus-On Imp. & Exp. Co. d/b/a Focus-On Tools, and Tom Lai* (D. Minn. Case No. 0:22-CV-03035 JWB-DJF) (the "Prior Action").
3. The parties reached the Settlement Agreement in July 2023 wherein FOT agreed to cease use of Miller's intellectual property.

4. Today, Miller has learned that FOT is engaged in new and additional acts of copying and infringement violating the July 2023 Settlement Agreement.

5. In this action, Miller seeks a Court order of injunction, an order awarding money damages, and an order awarding attorneys' fees for the conduct complained-of herein.

THE PARTIES

6. Plaintiff Miller Manufacturing Company ("Miller") is a Minnesota corporation having its principal place of business located at 2910 Waters Road, Suite 150, Eagan, Minnesota 55121. Miller is a manufacturer and international distributor of farm, ranch, and pet products. Its products are sold through distributors that serve retailers of farm and ranch products in the United States, Canada, and in numerous countries around the world.

7. Defendant Zhejiang Focus-On Imp. & Exp. Co. ("Zhejiang") is a Chinese company doing business in the United States as Focus-On Tools ("FOT"). As described in the First Amended Complaint from the Prior Action dated May 23, 2023, Defendant Zhejiang was involved in a scheme to import into the United States products that knock-off the design of Miller's products, under the name Zhejiang Focus-On Imp. & Exp. Co. FOT purports, on its website, to have a history of manufacturing products and selling them into the United States. FOT's advertised principal place of business is located at 40F Intime Centre, 1600 Kejiguan Street, Binjiang District, Hangzhou, China 310052. *See* Exhibit B attached hereto; *see also* <https://focus-ontools.com/about/>. FOT's website has stated that FOT has a distribution center located at 878 West 400 North, Logan, Utah 84321 and sales offices in

Michigan, Utah, Nevada, Colorado, Canada and Minnesota. *See* ECF No. 22-1 of Prior Action at 2.

8. Tom Lai is the founder and current owner of FOT, and was signatory to the July 2023 Settlement Agreement as President of Focus-On Tools and individually.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this case under 28 U.S.C. §§ 1331 and 1338 and pursuant to the principals of supplemental jurisdiction under 28 U.S.C. § 1367.

10. Venue is agreed upon in Section 10 of the July 2023 Settlement Agreement. Venue is also proper under 28 U.S.C. § 1391, as FOT is offering its products to Minnesota customers, and has shipped and sold product to Minnesota customers.

FACTS

11. Miller is an American company that makes products in Glencoe, Minnesota. For over 80 years, Miller has been the leading designer, manufacturer, and marketer of supplies for farm, ranch, and pet use, which are sold under the brand names of Little Giant®, Hot-Shot®, Springer Magrath®, Double-Tuf®, Pet Lodge®, and API®. In 2022, Miller's growth added nearly 450 U.S.-based jobs.

12. Miller has acquired over 100 patents, trademarks, and copyrights with the United States Patent and Trademark Office and Copyright Register. At the time of this filing, United States Patent No. D693067 (attached hereto as Exhibit D) (the “’067 Patent”) is at

issue and being infringed. The '067 Patent claims the ornamental design as shown and described in the patent.

13. The '067 Patent, entitled WATERING DEVICE, was duly and legally issued on November 5, 2013, and names Gerald Scherbing and Todd Ulrich as the inventors. Miller is the assignee of the entire right, title, and interest in the '067 Patent.




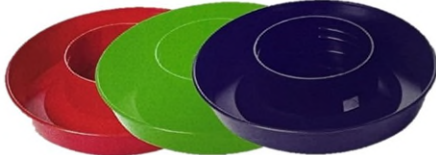
14. Miller advertises its complete line of products in a catalog and online via its website at <https://www.miller-mfg.com/>. Miller owns registered copyrights in its 2021, 2022, 2023, and 2024 catalogs (attached hereto as Exhibit E).

15. Miller is also the owner of a valid and subsisting Trademark Registration No. 4375057 on the Principal Register in the United States Patent and Trademark Office for the DOUBLE-TUF® registered trademark (attached hereto as Exhibit F). Miller has used the DOUBLE-TUF® registered trademark in commerce in connection with the distribution, sale, marketing, advertising and promotion of Miller's products, including its live animal traps.



16. As described in the Complaint of the Prior Action (ECF No. 1 of Prior Action) dated December 6, 2022, and in the First Amended Complaint (ECF No. 22 of Prior Action) dated May 23, 2023, on or around August 19-21, 2022, while attending a large industry convention hosted by Mid-States Distributing, LLC at the Phoenix Convention Center in Phoenix, Arizona, it came to Miller's attention that FOT had started selling knock-off

products copied from Miller’s catalogs with significant use of product images and product descriptions copied from Miller’s catalogs.

17. As pled in pages 5-12 of the First Amended Complaint (ECF No. 1 of Prior Action), the table below shows some of the exact images copied:

Miller’s Images	FOT Infringing Images
<p data-bbox="203 621 722 730">Model 806 “1 Quarter Water Plastic Feeder Base” (ECF No. 22-1 of Prior Action, Ex. C at 13)</p> 	<p data-bbox="803 621 1388 730">Model 80011 “1 Qt. Screw-On Feeder Base” (ECF No. 22-2 of Prior Action, Ex. G at 29)</p> 
<p data-bbox="203 1043 760 1155">Model 740 “1 Quarter Threaded Base” (ECF No. 22-1 of Prior Action, Ex. C at 13).</p> 	<p data-bbox="803 1043 1409 1117">Model 80010 “1 Qt. Screw-On Base” (ECF No. 22-2 of Prior Action, Ex. G at 29)</p> 

<p>Model 690 “1 Quart Screw-On Jar” (ECF No. 22-1 of Prior Action, Ex. C at 13)</p> 	<p>Model 80012 “1 Qt. Screw-On Jar” (ECF No. 22-2 of Prior Action, Ex. G at 29)</p> 
<p>Model 730 “1 Quart Threaded Quail Base” (ECF No. 22-1, Ex. C at 13)</p> 	<p>Model 80008 “1 Qt. Waterer Base” (ECF No. 22-2 of Prior Action, Ex. G at 25)</p> 
<p>Model 820 “20 inch Plastic Flip Top Feeder” (ECF No. 22-1 of Prior Action, Ex. C at 10; ECF No. 22-2, Ex. F at 2)</p> 	<p>Model 80013 “20 inch Flip-Top Ground Feeder” (ECF No. 22-2 of Prior Action, Ex. G at 25)</p> 

<p>Model 9826 “1 Quart Jar Waterer Base” (ECF No. 22-1 of Prior Action, Ex. C at 7)</p>  A circular metal base with a smaller circular jar nested inside it. The base has a slightly raised rim.	<p>Model 80015 “1 Qt. Galvanized Waterer Base” (ECF No. 22-2 of Prior Action, Ex. G at 27)</p>  A circular metal base with a smaller circular jar nested inside it. The base has a slightly raised rim.
<p>Model 9810 “1 Quart Round Jar Feeder Base” (ECF No. 22-1 of Prior Action, Ex. C at 7)</p>  A circular metal base with a central jar and six smaller circular openings around the perimeter. The base has a slightly raised rim.	<p>Model 80016 “1 Qt. Galvanized Jar Feeder Base” (ECF No. 22-2 of Prior Action, Ex. G at 27)</p>  A circular metal base with a central jar and six smaller circular openings around the perimeter. The base has a slightly raised rim.
<p>Model 9808 “6 inch Round Feeder” (ECF No. 22-1 of Prior Action, Ex. C at 7)</p>  A circular metal base with six circular openings around the perimeter. The number "9808" is printed at the bottom center of the image. <p>9808</p>	<p>Model 80108 “6 inch Galvanized Round Feeder” (ECF No. 22-2 of Prior Action, Ex. G at 27)</p>  A circular metal base with six circular openings around the perimeter.

Model BPF3 “3 Hole Feeder” (ECF No. 22-1 of Prior Action, Ex. C at 33)



Model 80312 “3 Hole Baby Pig Feeder” (ECF No. 22-2 of Prior Action, Ex. G at 36)



Model BPF2 “2 Hole Feeder” (ECF No. 22-1 of Prior Action, Ex. C at 33)



Model 80311 “2 Hole Baby Pig Feeder” (ECF No. 22-2 of Prior Action, Ex. G at 36)



Model 9112 “12 Pound Hanging Metal Poultry Feeder” (ECF No. 22-1 of Prior Action, Ex. C at 8; ECF No. 22-2 of Prior Action, Ex. F at 2)



Model 80021 “15 Lb. Galvanized Hanging Poultry Feeder” (ECF No. 22-2 of Prior Action, Ex. G at 28)



Model 914043 “30-Pound Hanging Metal Poultry Feeder” (ECF No. 22-1 of Prior Action, Ex. C at 8; ECF No. 22-2 of Prior Action, Ex. F at 3)



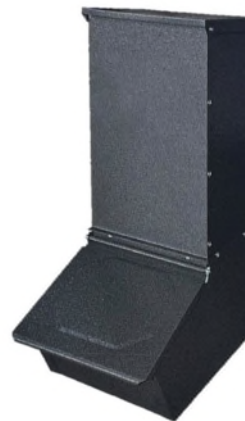
Model 80022 “30 Lb. Galvanized Hanging Poultry Feeder” (ECF No. 22-2 of Prior Action, Ex. G at 28)



Model HGFS “Single Door Hog Feeder 50-lb Capacity” (ECF No. 22-1 of Prior Action, Ex. C at 32; ECF No. 22-2 of Prior Action Ex. F at 3)



Model 80302 “Single Door Hog Feeder” (ECF No. 22-2 of Prior Action, Ex. G at 36)



Model HGFD “Double Door Hog Feeder 100-lb Capacity” (ECF No. 22-1 of Prior Action, Ex. C at 32; ECF No. 22-2 of Prior Action, Ex. F at 4)



Model 80303 “Double Door Hog Feeder” (ECF No. 22-2 of Prior Action, Ex. G at 36)



Model AF5SL “5 inch Feeder with Sifter Bottom and Lid” (ECF No. 22-1 of Prior Action, Ex. C at 79; ECF No. 22-2 of Prior Action, Ex. F at 4)



Model 80810/80812 “Rabbit Feeder with Sifter” (ECF No. 22-2 of Prior Action, Ex. G at 31)



Model AF5ML “5 inch Feeder with Metal Bottom and Lid” (ECF No. 22-1 of Prior Action, Ex. C at 79; ECF No. 22-2 of Prior Action, Ex. F at 5)



Model 80806 “5 inch Solid Feeder with lid” (ECF No. 22-2 of Prior Action, Ex. G at 31)



Model AN1 “Small Animal Nest” (ECF No. 22-1 of Prior Action, Ex. C at 78; ECF No. 22-2 of Prior Action, Ex. F at 5)



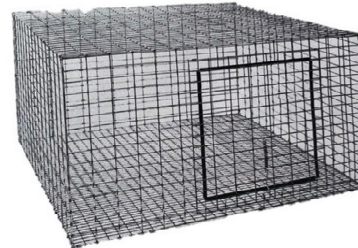
Model 80036 “Nesting Box” (ECF No. 22-2 of Prior Action, Ex. G at 27)



Model AH2424 “Rabbit Hutch” (ECF No. 22-1 of Prior Action, Ex. C at 77; ECF No. 22-2 of Prior Action, Ex. F at 6)



Model 80013/80815/8016 “Rabbit Cage” (ECF No. 22-2 of Prior Action, Ex. G at 32)



Model 153874 “3 Quart Plastic Enclosed Feed Scoop” (ECF No. 22-1 of Prior Action, Ex. C at 31; ECF No. 22-2 of Prior Action, Ex. F at 6)



Model 80047 “3 Qt. Enclosed Feed Scoop” (ECF No. 22-2 of Prior Action, Ex. G at 25)



Model 153850 “3 Quart Plastic Enclosed Feed Scoop” (ECF No. 22-1 of Prior Action, Ex. C at 31; ECF No. 22-2 of Prior Action, Ex. F at 7)



Model 80045 “3 Qt. Enclosed Feed Scoop” (ECF No. 22-2 of Prior Action, Ex. G at 25)



Model ACC1 “1 Pound Bag Wire Cage Clips” (ECF No. 22-1 of Prior Action, Ex. C at 78; ECF No. 22-2 of Prior Action, Ex. F at 6)



Model 80802 “1 Lb. Wire Clips” (ECF No. 22-2 of Prior Action, Ex. G at 31)





Model ACC1 “Wire Clip Pliers” (ECF No. 22-1 of Prior Action, Ex. C at 78; ECF No. 22-2 of Prior Action, Ex. F at 7)



Model 80803 “Wire Clip Pliers” (ECF No. 22-2 of Prior Action, Ex. G at 31)



<p>Models CH12, CH25 and CH50 “Chow Hound” (ECF No. 22-1 of Prior Action, Ex. C at 72)</p> 	<p>Models 80201, 80200 and 80202 “Dog Feeder” (ECF No. 22-2 of Prior Action, Ex. G at 19)</p> 
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18. Miller, on the one hand, and FOT and Mr. Lai, on the other hand, agreed upon settlement terms that principally included agreements to cease infringement of Miller’s patents, trademarks, and copyrights, to cease copying, and to destroy and recall product.

For example, the Settlement Agreement (Exhibit A) states:

AGREED TERMS

1. **Cessation of Use of the Intellectual Property.** FOT, its affiliates, and each of FOT’s and its affiliates’ respective officers, directors, agents, employees, and all those acting in concert or participation with any of them, shall themselves and cause all other persons or entities under their control to on or before the Effective Date, immediately and permanently cease all improper or illegal use of:

- (a) any use of Miller’s Intellectual Property;

(b) any use derived from Miller's Intellectual Property;

(c) any word, term, name, symbol, device, product configuration, product packaging, technical manual, user guide, textual content, product image, and any derivatives (or any combination thereof), or any other intellectual property or proprietary information that is identical or confusingly similar to, or a colorable imitation or dilutive of, or containing, Miller's Intellectual Property, as shown in **Exhibits A and B¹** in the United States and throughout the world; and

(d) any false designation of origin, false or misleading description of fact, or false or misleading representation of fact that is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of FOT with Miller, or as to the source or origin of, or sponsorship or approval by Miller of FOT's 2021 Catalog and corresponding product offerings in the United States and throughout the world.

2. **Exhaustion of Materials.** FOT shall have had until June 30, 2023 to destroy and/or dispose of the following materials that exist as of the Effective Date that include, in whole or in part, Miller's Intellectual Property in any capacity whatsoever. This includes all digital files of Miller product and printed materials.

3. **Removal of Materials from the Marketplace.** FOT shall take all necessary steps to remove from public view and access in the United States and the world by no later than June 30, 2023, all materials, including, but not limited to, catalogs, marketing materials, signs, displays, labels, promotional and packaging materials, websites, platform websites, product pages, and metadata that use, feature, or bear:

(a) any improper or illegal use of Miller's Intellectual Property;

(b) any word, term, name, symbol, device, product configuration, product packaging, technical manual, user guide, textual content, product image, and any derivatives (or any combination thereof), or any other intellectual property or proprietary information that is identical or confusingly similar to, or a colorable imitation or dilutive of, Miller's Intellectual Property;

(c) any reference to Miller or Miller's Intellectual Property; and

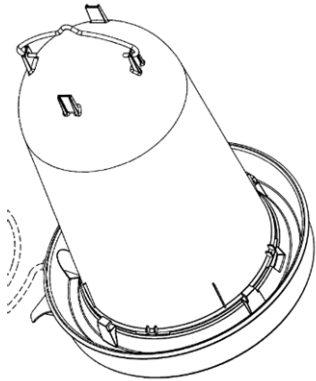

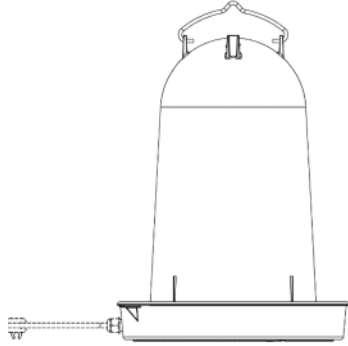

(d) any false designation of origin, false or misleading description of fact, or false or misleading representation of fact that is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of FOT with Miller, or as to the source or origin of, or sponsorship or approval by Miller of FOT's 2021 Catalog and corresponding product offerings.

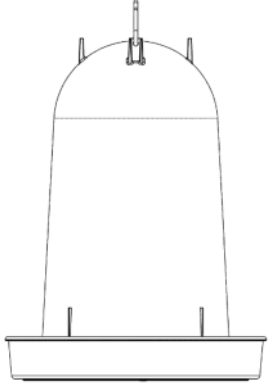

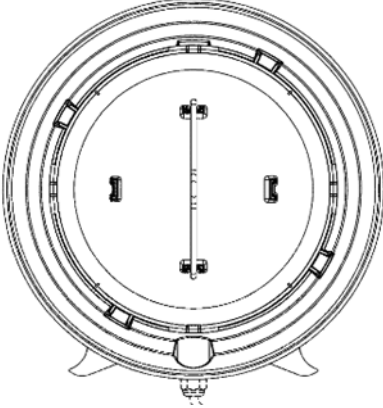

The purpose of this section is to grant Miller the same rights as granted by federal law (no more and no less) relating to the protection of patents, trademarks, and copyrights.

(Exhibit A, Settlement Agreement).

19. Contradictory to the Settlement Agreement, FOT is now offering for sale, at retailer L and M Fleet Supply (and perhaps elsewhere), a Poultry Starter Kit having a Water Device that infringes the ‘067 Patent. FOT’s Poultry Starter Kit is available online at <https://www.landmsupply.com/farm-pro-poultry-starter-kit>.

20. Below are comparisons between exemplary figures of the ’067 Patent and the FOT Watering Device, which indicate infringement, for example, due to the identical and/or near identical appearance of the product features and products as a whole.

Fig.	Description	Miller’s D693,067 Design	FOT Watering Device
1	“...a side perspective view of the watering device”		
2	“...a front view of the watering device”		

3	“... a side view of the watering device”		
4	“...a top view of the watering device”		

21. As evidenced above, the design of the FOT Watering Device is substantially the same as the patented design of the '067 Patent. The designs are so similar that an ordinary observer would be deceived by the substantial similarity between the designs so as to purchase the FOT Watering Device believing it to be the design of the '067 Patent. For example, aspects of the handle, body, and bottom portion of the FOT Watering Device are the same or substantially the same as the patented design of the '067 Patent such that the overall appearance of the FOT Watering Device is substantially the same as the design of the '067 Patent.

22. FOT and Mr. Lai have likely known of the existence of the '067 Patent and Miller's own beginner poultry kit and watering device associated with the '067 Patent at least prior to the infringement, for example, based on FOT and Lai's involvement in the farm supplies industry, based on their interaction with retailers that sell both the FOT and Miller products at issue, and based on the near identical nature of the FOT Watering Device to the design of the '067 Patent and associated Miller beginner poultry kit. Images of Miller's poultry kit and FOT's poultry kit are shown below for reference – each including a watering device.



23. In addition, records from United States Customs (*see* Exhibit C attached hereto) show that as recently as April 28, 2024, FOT has imported 2-piece live animal traps (the “FOT Traps”) that appear to be the same FOT Traps described and shown in the First Amended Complaint of the Prior Action, for example at paragraphs 22-34 thereof. (*See* ECF No. 22 of Prior Action, ¶¶ 22-34).

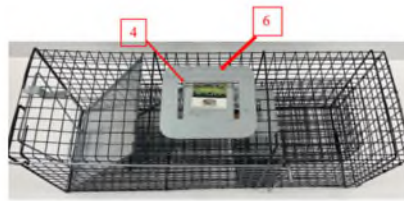
24. The FOT Traps are copies of the Miller Traps. Examples of the FOT Traps and the Miller Traps are shown below. According to FOT’s website, FarmPro is one of FOT’s brands. *See* ECF No. 22-3 of Prior Action, Exhibit J.¹



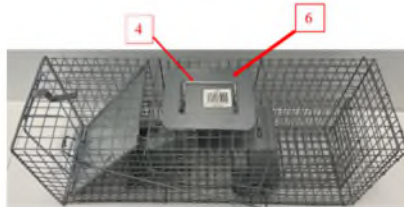
25. Both the Miller Traps and the FOT Traps contain one large trap and one small trap. The large trap in both the Miller and FOT products measures 32”x12”x10” and the small trap in both the Miller and FOT products measures 24”x7”x7”. Further, both the Miller Traps and FOT Traps use 1”x1” square wall construction of wires consisting of diameters of .16” and .08”. The FOT Traps also copy the Miller Traps’ top rectangular handle (4) and hand guard (6), as show below:

¹ *See also* <https://focus-ontools.com/brands/>

Miller Traps



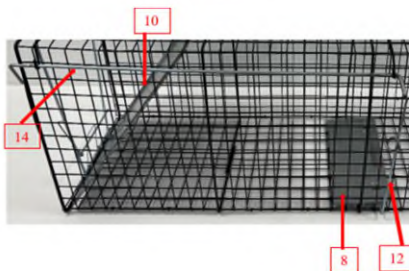
FOT Traps



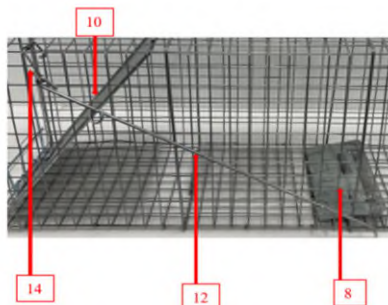
26. The FOT Traps' doors (20) are identical to the Miller Traps' doors (20) in that they are offset at 55° (A) from horizontal when closed.

27. The FOT Traps have bait pans (8) that are identical to those in the Miller Traps and, like the Miller Traps, have trap doors (10) that are connectable by two interconnected rods (12) and (14).

Miller Traps

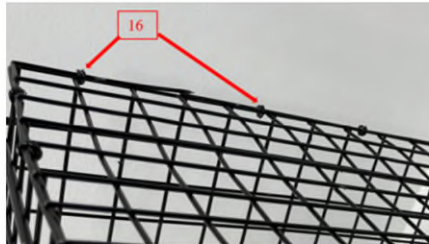


FOT Traps



28. Both the FOT Traps and Miller Traps have identical coil wire (16) assembly securements.

Miller Traps



FOT Traps



29. The FOT large trap has a closed door lock (18) that is identical to the closed door lock of the large Miller trap.

Miller Traps



FOT Traps

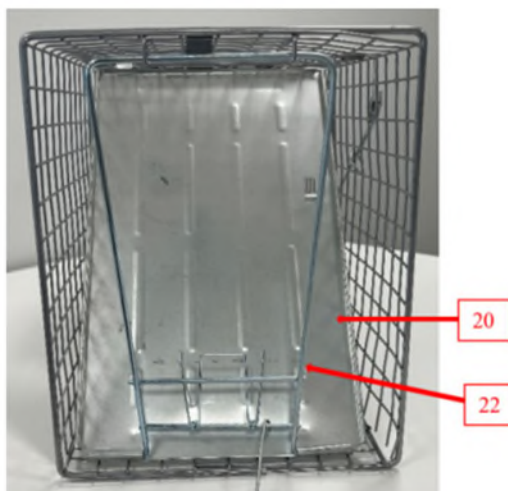


30. The FOT Traps and the Miller Traps have identical galvanized trap doors (20) and identical inverted U-shaped double coil spring based trap door bails (22).

Miller Traps

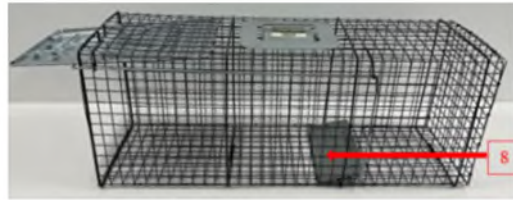


FOT Traps

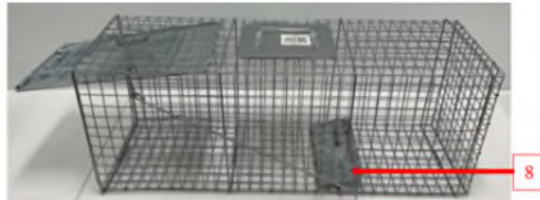


31. The FOT Traps and the Miller Traps have identical galvanized pivoting bait pans and the bait pans (8) are located in identical locations.

Miller Traps



FOT Traps



32. The FOT Traps have also contained a product insert that identified the product as “DOUBLE-TUF.” This infringes on Miller’s DOUBLE-TUF® registered trademark.

FOT Traps Product Insert



33. The QR code contained in the FOT Traps’ product insert directs consumers to Farm & Home Supply website catalog. On page two of the website catalog, a consumer would

locate the FOT Traps and, as shown below, the illegal use of Miller’s DOUBLETUF® registered trademark. See ECF No. 22-3 of Prior Action, Exhibit K.

Page 2 of Farm & Home Supply Website Catalog



34. Consumers clicking on the FOT Traps product have been directed to the Farm & Home Supply website where the consumers can purchase the product. Thus, as shown below, FOT illegally has used Miller’s DOUBLETUF® registered trademark. See ECF No. 22-3 of Prior Action, Exhibit L.

Farm and Home Supply Website

Home > Double-Tuf Live Animal Cage Trap Combo Pack ELT42

DOUBLE-TUF LIVE ANIMAL CAGE TRAP COMBO PACK ELT42
 ★★☆☆ (4 Reviews)
\$39.99
 or 4 interest-free payments of \$10.00 with **afterpay**

SKU 41200005 - This combo pack features two traps in the most popular sizes. Both are Single-Door Entry Live Traps that catch unwanted animals without injury so they can be humanely disposed of or relocated. Features a spring-loaded door that is easy to bait and set and quick to release. [More](#)

SHIP TO HOME
 Not Available For Ship To Home

PICK UP IN STORE
[Change Pick Up Store](#)

We apologize, but we can no longer sell or ship to CA as a result of PROP 65. Pricing and availability may vary by store. Please visit our FAQ and support pages for details.

QTY

[f](#) [t](#) [y](#) [h](#)

35. FOT's infringement of Miller's registered trademark and the Miller Traps not only would confuse a consumer as to what product they are actually purchasing, but also confused Farm & Home Supply. Farm & Home Supply sold the FOT Traps and the Miller Traps under the same SKU number 41200005. *See* ECF No. 22-3 of Prior Action, Exhibit L.

36. In addition, during relevant times, FOT has imported pig and/or hog feeders that have, at a minimum, been distributed to Watseka Rural King in Watseka, Illinois (1,683 cartons on February 20, 2018). (*See* ECF No. 22-3 of Prior Action, Ex. H). FOT's conduct regarding such products may infringe or otherwise violate Miller's intellectual property

rights, including but not limited to, those associated with the Settlement Agreement (Exhibit A).

37. In addition, FOT has imported rabbit hutch kits that been distributed to Buchheit, Inc. in Perryville, Missouri (1,473 cartons on October 26, 2018). (*See* ECF No. 22-3 of Prior Action, Ex. H). FOT's conduct regarding such products may infringe or otherwise violate Miller's intellectual property rights, including but not limited to, those associated with the Settlement Agreement (Exhibit A).

COUNT I

BREACH OF SETTLEMENT AGREEMENT

38. Miller incorporates into this section the allegations contained in each paragraph herein.

39. A contract (i.e., the Settlement Agreement, Exhibit A) exists between Miller, on the one hand, and Zhejiang d/b/a FOT and Tom Lai, on the other hand. The terms of the Settlement Agreement are set forth in Exhibit A filed herewith.

40. For example, pursuant to Section 1 of the Settlement Agreement, FOT and Mr. Lai (collectively, "Defendants") agree to "immediately and permanently cease all improper or illegal use of (a) any use of Miller's Intellectual Property; any use derived from Miller's Intellectual Property; (b) any use derived from Miller's Intellectual Property; (c) any word, term, name, symbol, device, product configuration, product packaging, technical manual, user guide, textual content, product image, and any derivative (or any combination thereof),

or any other intellectual property or proprietary information that is identical or confusingly similar to, or a colorable imitation or dilutive of, or containing, Miller’s Intellectual Property,” which includes its patents, trademarks, and copyrights as provided in the Settlement Agreement, examples of which are filed herewith as Exhibits D, E, F; and (d) any false, misleading, or confusing reference to Miller or its product offerings. *See* Exhibit A, Section 1.

41. Pursuant to Section 2 of the Settlement Agreement, Defendants agree to “destroy and/or dispose of the [] materials that exist as of the Effective Date that include, in whole or in part, Miller’s Intellectual Property in any capacity whatsoever.” *See* Exhibit A, Section 2.

42. Pursuant to Section 3 of the Settlement Agreement, Defendants agree to “take all necessary steps to remove from public view and access . . . all materials . . . that use, feature, or bear” Miller’s intellectual property or any false, misleading, or confusing reference to Miller or its product offerings. *See* Exhibit A, Section 3.

43. At all times, Miller has performed any and all necessary obligations pursuant to the Settlement Agreement.

44. Defendants are in breach of Sections 1-3 of the Settlement Agreement at least by making, using, offering to sell, and/or selling within the United States or importing into the United States the FOT Watering Device. Such conduct infringes Miller’s intellectual property, such as the ’067 Patent shown in Exhibit D hereto. The ’067 Patent is included

in “Miller’s Intellectual Property” as recited in the Settlement Agreement. Specifically, the ‘067 Patent is included in Exhibit A to the Settlement Agreement, and Exhibit A is expressly included in Miller’s Intellectual Property. *See* Exhibit A, Settlement Agreement at 1, 6 of 44. Therefore, Defendants’ infringement of the ‘067 Patent constitutes breach of the Settlement Agreement.

45. Defendants are in breach of Sections 1-3 of the Settlement Agreement through the offers for sale and other uses of the FOT Traps as described herein. Such conduct infringes Miller’s intellectual property such as, for example, the DOUBLE-TUF® registered trademark shown in Exhibit F.

46. Defendants are in breach of Sections 1-3 of the Settlement Agreement through the offers for sale and other uses of the FOT Infringing Images reproduced at paragraph 17 herein. Such conduct infringes Miller’s intellectual property such as, for example, Miller’s copyrights listed in Exhibit E.

47. Miller has suffered damage as a result of such breach. For example, the aforementioned wrongful acts of Defendants have caused and are causing great injury and damage to Miller (e.g., lost sales, price erosion, reputational harm), and unless this Court restrains Defendants from the further commission of said acts, Miller will suffer irreparable injury for which it has no adequate remedy at law. In fact, pursuant to Section 10 of the Settlement Agreement, “Each party acknowledges that a breach or threatened breach of any of its obligations under this Agreement would give rise to *irreparable harm* to the

other Party for which monetary damages would not be an adequate remedy and hereby agrees that in the event of a breach . . . the aggrieved Party shall . . . be entitled to equitable relief including a temporary restraining order [and/or] an injunction.” *See* Exhibit A (emphasis added).

COUNT II

COPYRIGHT INFRINGEMENT

48. Miller incorporates into this section the allegations contained in each paragraph herein.

49. Miller’s Copyrighted Works (those provided in association with Exhibit E) constitute an original work of authorship and are copyrightable subject matter under 17 U.S.C. §§ 101 et seq. and the laws of the United States.

50. Miller owns the copyrights to the Copyrighted Works and has complied with all respects with the Copyright Act and all other laws governing copyrights, and has secured the exclusive rights and privileged in and to the copyrights of the Copyrighted Images.

51. Defendants’ unauthorized reproduction and dissemination of Miller’s Copyrighted Works in their catalog(s) is in violation of 17 U.S.C. §§ 106 and 501 et seq.

52. Defendants’ unauthorized reproduction and dissemination of Miller’s Copyrighted Works is also a violation of 17 U.S.C. § 506, with applicable criminal penalties as specified in 18 U.S.C. § 2319.

53. Defendants' past, current and ongoing acts of copyright infringement are willful, intentional, and purposeful, and in complete disregard of Miller's rights. Defendants have engaged in copyright infringement directly or with knowledge of the infringement.

54. The aforementioned wrongful acts of Defendants have caused and are causing great injury and damage to Miller, and unless this Court restrains Defendants from the further commission of said acts, Miller will suffer irreparable injury for which it has no adequate remedy at law.

55. Miller is entitled to its actual damages, including its lost profits, and to recover the improper profits obtained by Defendants through their infringement. In addition, Miller reserves the right to elect statutory damages as provided under the Copyright Act to the extent allowable under law. Miller is also entitled to the disgorgement of Defendants' benefit from infringement, including, but not limited to any profits recovered by Defendant for their infringing actions.

COUNT III

TRADEMARK INFRINGEMENT

56. Miller incorporates into this section the allegations contained in each paragraph herein.

57. Defendants' unauthorized use in commerce of Miller's DOUBLE-TUF® registered trademark as described herein is likely to deceive consumers as to the origin, source, sponsorship, or affiliation of Defendants' goods, and is likely to cause consumers to

believe, contrary to fact, that Defendants' goods are sold, authorized, endorsed, or sponsored by Miller, or that Miller is in some way affiliated with or sponsored by Miller. Defendants conduct therefore constitutes trademark infringement in violation of 15 U.S.C. § 1114(1).

58. Upon information and belief, Defendants committed the foregoing acts of infringement with full knowledge of Miller's prior rights in the DOUBLE-TUF® registered trademark and with the willful intent to cause confusion and trade on Miller's goodwill.

59. Defendants' conduct is causing immediate and irreparable harm and injury to Miller, and to its goodwill and reputation, and will constitute to both damage Miller and confuse the public unless enjoined by this court. Miller has no adequate remedy at law.

60. Miller is entitled to, among other relief, injunctive relief and an award of actual damages, Defendants' profits, enhanced damages and profits, reasonable attorneys' fees, and costs of the action under Sections 34 and 35 of the Lanham Act, 15 U.S.C. §§ 1116, 1117, together with prejudgment and post-judgment interest.

COUNT IV

VIOLATION OF LANHAM ACT SECTION 43(a) (15 U.S.C. § 1125)

61. Miller incorporates into this section the allegations contained in each paragraph herein.

62. By offering and advertising for sale a number of identical or substantially similar products to those sold by Miller – e.g., the FOT Traps, FOT Watering Device, and the products subject of the FOT Infringing Images – Defendants have used in commerce a false designation of origin that is likely to cause confusion, mistake, or deceive consumers as to the affiliation, connection of Defendants with Miller, and/or association as to the origin, sponsorship, or approval of Defendants’ goods, services, and/or commercial activities by another person in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

63. Additionally, by offering and advertising for sale a number of identical or substantially similar products to those sold by Miller, and using Miller’s Copyrighted Works in doing so, Defendants have, in commercial advertising and/or promotion, misrepresented the nature, characteristics, qualities, and/or geographic origin of Defendants’ goods, services, or commercial activities in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

64. Further, Defendants’ unauthorized use in commerce of the DOUBLE-TUF® registered trademark as alleged herein is likely to deceive consumers as to the origin, source, sponsorship, or affiliation of Defendants’ goods and is likely to cause consumers to believe, contrary to fact, that Defendants’ goods are sold, authorized, endorsed, or sponsored by Miller, or that Defendants are in some way affiliated with or sponsored by Miller. Defendants’ unauthorized use in commerce of the DOUBLE-TUF® registered trademark as alleged herein constitutes use of a false designation of origin and misleading description and representation of fact.

65. Defendants' acts, each of which involved and was made in connection with interstate commerce, have caused a likelihood of injury to Miller in the form of declining sales, negative online reviews, irreparable damage to the Miller brand, and loss of goodwill.

66. Defendants' conduct as alleged above is willful and is intended to, and is likely to, cause confusion, mistake, or deception as to the affiliation, connection, or association of Defendants with Miller.

COUNT V

VIOLATION OF MINNESOTA'S DECEPTIVE TRADE PRACTICES ACT

67. Miller incorporates into this section the allegations contained in each paragraph herein.

68. Through the use of Miller's DOUBLE-TUF® registered trademark, Defendants have passed off their goods as those of Miller; caused a likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of Defendants' goods; and misrepresented that Defendants' goods are of a particular standard, quality or grade, or that Defendants' goods are of particular style or model, all in violation of Minn. Stat. § 324D.44.

69. By their deceptive trade practices, Defendants have caused, and will continue to cause, injury and damage to Miller. On information and belief, Defendants may continue in their unlawful acts to the irreparable damage and detriment of Miller unless enjoined by this Court.

COUNT VI

PATENT INFRINGEMENT

70. Miller incorporates into this section the allegations contained in each paragraph herein.

71. Defendants have been and are infringing the '067 Patent by making, using, selling, or offering for sale in the United States, and/or importing into the United States, including within this judicial district, the FOT Watering Device in violation of at least 35 U.S.C. § 271(a).

72. Defendants' infringement has been, and continues to be knowing, intentional, and willful as described herein. Due to widespread and egregious copying, for example, this case is exceptional and, therefore, Miller is entitled to an award of attorneys' fees pursuant to 35 U.S.C. § 285.

73. Defendants' acts of infringement of the '067 Patent have caused and will continue to cause Miller damages for which Miller is entitled to compensation pursuant to 35 U.S.C. §§ 284 or 289.

74. Defendants' acts of infringement of the '067 Patent have caused and will continue to cause Miller immediate and irreparable harm unless such infringing activities are enjoined by this Court pursuant to 35 U.S.C. § 283.

JURY TRIAL DEMANDED

75. Plaintiff demands a jury trial on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE Plaintiff requests judgment as follows:

1. An order that Defendant Zhejiang, its directors, members, officers, agents, servants, employees, subsidiaries, affiliates, and all persons in active concert or participation with, through, or under it, including Defendant Lai, at first during the pendency of this action and thereafter permanently, be enjoined and restrained from:

(a) any use of Miller's intellectual property such as that provided in Exhibits D, E, F filed herewith, including any use of the FOT Traps, the FOT Watering Device, and the FOT Infringing Images,

(b) any use derived from Miller's intellectual property such as that provided in Exhibits D, E, F filed herewith,

(c) any word, term, name, symbol, device, product configuration, product packaging, technical manual, user guide, textual content, product image, and any derivatives (or any combination thereof), or any other intellectual property or proprietary information that is identical or confusingly similar to, or a colorable imitation or dilutive of, or containing, Miller's intellectual property such as that provided in Exhibits D, E, F filed herewith, in the United States and throughout the world; and

(d) any false designation of origin, false or misleading description of fact, or false or misleading representation of fact that is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of FOT with Miller, or as to

the source or origin of, or sponsorship or approval by Miller of at least FOT's 2021 catalog and corresponding product offerings in the United States and throughout the world.

2. An Order to destroy and/or dispose of all materials in Defendants' possession, custody, or control that include, in whole or in part, any unauthorized use of Miller's intellectual property such as that provided in Exhibits D, E, F filed herewith.

3. An Order to take all necessary steps to remove from public view and access all materials that use, feature, or bear any Miller intellectual property, such as that provided in Exhibits D, E, F, or any false, misleading, or confusing reference to Miller or its product offerings.

4. A judgment that Defendants have directly infringed the '067 Patent in violation of 35 U.S.C. § 271(a).

5. A grant of injunction, pursuant to the Patent Act, permanently enjoining Defendants, their 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, contributing to the infringement of, or inducing infringement of the '067 Patent, for example, by making, using, selling, offering for sale in the United States or importing into the United States the FOT Water Device.

6. An Order causing Defendants to account and pay damages adequate to compensate Miller for Defendants' infringement of the '067 Patent and pre-judgment and post-judgment interest and costs, pursuant to 35 U.S.C. § 284.

7. An Order that the damages award be increased up to three times the actual amount assessed, pursuant to 35 U.S.C. § 284.

8. An Order awarding Miller Defendants' profits pursuant to 35 U.S.C. § 289.
9. An Order declaring this case exceptional and awarding Miller its reasonable attorney fees, pursuant to 35 U.S.C. § 285.
10. A judgment for Miller and against Defendants for all other monetary damages available under the additional statutory and common laws as applicable.
11. An Order awarding Miller's additional reasonable attorneys' fees and costs, if any, pursuant to 17 U.S.C. § 505, 15 U.S.C. § 1117, and the July 2023 Settlement Agreement.
12. An Order that Defendants be required to pay all additional pre- and post-judgment interest amounts due.
13. An Order that Miller takes such other and further relief as the Court may deem just and proper.

Dated: May 31, 2024

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