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9

10
11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13 Monsta Athletics, LLC, a California
14 Limited Liability Company

15 Plaintiff,

16 v.

17 Easton Diamond Sports, LLC, a
18 Delaware Limited Liability Corporation,
Rawlings Sporting Goods Company,
19 Inc., a Delaware Corporation

20 Defendants.
21
22

CASE NO. 5:23-cv-00963

**MONSTA ATHLETICS, LLC'S
COMPLAINT FOR FALSE
MARKING**

DEMAND FOR JURY TRIAL

23
24
25 Monsta Athletics LLC, by and through its counsel of record, for its Claims
26 against Easton Diamond Sports, LLC and Rawlings Sporting Goods Company, Inc.,
27 asserts as follows:
28

PARTIES

1
2 1) Monsta Athletics, LLC (“Monsta”), is a California Limited Liability
3 Company having a principal place of business at 1090 5th street, Suite 115,
4 Calimesa, California 92223.

5 2) Easton Diamond Sports, LLC (“Easton”), is a Delaware Limited Liability
6 Company having an address of 3500 Willow Lane, Thousand Oaks, California
7 91361.

8 3) Rawlings Sporting Goods Company, Inc. (“Rawlings”), is a Delaware
9 corporation having an address at 510 Maryville University Drive, Suite 110, Saint
10 Louis, MO 63141, and a subsidiary having an address of 3500 Willow Lane,
11 Thousand Oaks, California 91361.

12 **JURISDICTION AND VENUE**

13 4) This Court has jurisdiction over Monsta’s Claim pursuant to 28 U.S.C. §§
14 1338(a), 1367, 2201, and 2202.

15 5) Easton filed a Complaint for Patent Infringement against Monsta on
16 September 24, 2021, Easton Diamond Sports, LLC v. Monsta Athletics, LLC, Case
17 no. 2:21-cv-7642 in the United States District Court, Central District of California
18 (the “California Complaint”).

19 6) There is an existing controversy concerning Easton’s and Rawlings’ false
20 marking of bats made, offered and sold by Easton/Rawlings with U.S. Patent No.
21 6,997,826 (the “‘826 Patent”).

22 7) A true and correct copy of the ‘826 Patent is attached as Exh. A.

23 8) The Court has personal jurisdiction over Easton on the Claim because Easton
24 has purposefully availed itself of the benefits and laws of this jurisdiction, including
25 by filing the California Complaint in this jurisdiction as against Monsta and by
26 falsely marking, advertising and/or selling its falsely marked products in this
27 jurisdiction.

1 9) The Court has personal jurisdiction over Rawlings on the Claim because
2 Rawlings has purposefully availed itself of the benefits and laws of this jurisdiction
3 by falsely marking, advertising and/or selling products in this jurisdiction.

4 10) Venue is proper on the Claims under 28 U.S.C. §1391(b)-(c).

5 **BACKGROUND FACTS**

6 11) On information and belief, Easton is a subsidiary of Rawlings Sporting
7 Goods Company, Inc., each of which have an interest in the action.

8 12) On information and belief, Rawlings and Easton sell baseball and softball
9 bats and related products under the RAWLINGS®, EASTON®, MIKEN® and
10 WORTH® brands.

11 13) On information and belief, Rawlings/Easton form one of the largest
12 manufacturers and sellers of ball bats in the United States.

13 14) On information and belief, Rawlings/Easton have a substantial market share
14 for the non-wood softball and hardball bats in the United States.

15 15) Easton filed a Complaint before the International Trade Commission (“ITC”)
16 initiating an investigation, Inv. No. 337-TA-1283, In the Matter of CERTAIN
17 COMPOSITE BASEBALL AND SOFTBALL BATS AND COMPONENTS
18 THEREOF (the “ITC Action”) on September 24, 2021.

19 16) Monsta was one of three named Respondents in the ITC Action.

20 17) The action initiated by the California Complaint was stayed pending
21 completion and any and all appeals of the ITC Action.

22 18) The Easton bats that Easton claimed in the ITC Action utilize the technology
23 of the ‘826 Patent do not literally embody any claim of the ‘826 Patent.

24 19) On information and belief, the Rawlings and Easton websites identify the
25 EASTON® bat models that provide the marking notice for the EASTON® bat
26 models that embody the ‘826 Patent.

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1 20) The EASTON® bats that Rawlings and Easton advertised and marked as
2 embodying the technology of the ‘826 Patent do not literally embody any claim of
3 the ‘826 Patent.

4 21) Monsta’s bats have been made according to its U.S. Patent No. 9,005,056,
5 which generally describes a bat having a hollow outer barrel enclosing a floating
6 inner barrel.

7 22) Monsta’s floating inner barrel technology bats were first introduced in the
8 summer of 2012 for the slow pitch softball market.

9 23) Monsta’s floating inner barrel technology bats consistently outperform
10 composite bats made by Rawlings/Easton both in hitting distance and durability.

11 24) Monsta started offering bats featuring its patented floating inner barrel
12 technology for slow pitch softball in 2013.

13 25) Monsta’s bats for slow pitch softball directly compete against Easton’s bats
14 for slow pitch softball.

15 26) Monsta started offering bats featuring its patented floating inner barrel
16 technology for fast pitch softball in 2016 and it is in the process of getting
17 certification approvals for hardball bats.

18 27) Monsta’s bats for fast pitch softball and hardball directly compete against
19 Easton’s bats for fast pitch softball and hard ball.

20 28) The fast pitch softball and hardball markets are markets in which
21 Rawlings/Easton enjoy a substantial market share generating millions of dollars
22 annually for Rawlings/Easton.

23 29) Monsta’s entry into the fast-pitch softball and hardball bat market with its
24 patented floating inner barrel technology bats is a substantial challenge to Rawlings
25 and Easton’s share of the fast-pitch softball and hardball bat markets.

26 30) Easton filed the ITC Action asserting infringement of the ‘826 Patent seeking
27 to exclude Monsta from importing bat components required for Monsta’s bats.
28

1 31) Easton filed a Motion for Summary Determination of Infringement as against
2 Monsta in the ITC Action.

3 32) Easton's Motion for Summary Determination was directed against Monsta's
4 double wall bats having a sheet of skim material between an inner and an outer
5 barrel.

6 33) Easton's Motion for Summary Determination was supported by a declaration
7 from a proposed technical expert, William B. Giannetti.

8 34) Mr. Giannetti is one of the named inventors of U.S. Patent 6,764,419 having
9 a filing date of January 3, 2003 and assigned to Jas D. Easton, Inc., that described a
10 "multi-wall" bat design having "an inner barrel wall that may be separated from the
11 outer barrel wall by a bond-inhibiting layer 36, which prevents the inner and outer
12 barrel walls from bonding to one another during curing of the bat 10." *See* '419
13 Patent at 4:39-44.

14 35) The 6,764,419 Patent claim 4 provides: "The ball bat of Claim 3 further
15 comprising a bond-inhibiting layer separating the inner barrel wall from the inner
16 layer of the outer barrel wall." *See* '419 Patent at 7:1-3.

17 36) The Declaration of William B. Giannetti filed by Easton in the ITC action did
18 not disclose that his 6,764,419 patent is prior art to the '826 Patent and that his
19 patent taught a multi-wall bat having an inner layer separated from an outer layer
20 by a bond inhibiting layer.

21 37) The Declaration of William B. Giannetti filed in support of Easton's Motion
22 for Summary Determination of Infringement was excluded by the ITC Judge.

23 38) Easton's Motion for Summary Determination of Infringement of the '826
24 Patent as against Monsta was denied.

25 39) After denying Easton's Summary Determination Motion, the ITC judge
26 issued an Order to Show Cause to Easton as to why the ITC Action as against
27 Monsta should not be dismissed.

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1 40) After over a year of litigation in the ITC Action requiring Monsta to spend
2 hundreds of thousands of dollars on attorneys, and the denial of a Summary
3 Determination of Infringement Motion, Easton dismissed all of its claims in the
4 ITC Action as against Monsta.

5 **The ‘826 Patent and the prior art**

6 41) U.S. Application no. 10/383,242 (the “‘242 Appl.”) leading to the ‘826
7 Patent was originally filed on March 7, 2003, and it was assigned to a Canadian
8 company, CE Composites, also known as Combat Sports.

9 42) A true and correct copy of the file history of the 10/383,242 Application file
10 history as provided by Easton in the ITC Action is attached as Exh. B.

11 43) On information and belief, Easton acquired the ‘826 Patent, and other assets
12 including patent applications and patents assigned to CE Composites, out of CE
13 Composites’ bankruptcy proceeding.

14 44) Easton did not own the 10/383,242 Application during the prosecution of the
15 application leading to the ‘826 Patent.

16 45) Former officers of CE Composites who were involved in the prosecution of
17 the application, including at least named inventor William Terrance Sutherland,
18 hold, or in the past held, senior positions within Easton.

19 46) On information and belief, the first named inventor, William Terrance
20 Sutherland, was aware of a multi-composite wall bat having polypropylene sheet
21 releasing layers between the respective composite layers made by Miken and sold
22 starting in 2002 as the Miken “ULTRA” bat, a prior art product that predated the
23 filing of the 10/383,242 Application.

24 47) The applicants for the 10/383,242 Application did not disclose the known
25 structure of the Miken ULTRA bat to the U.S. Patent Office during the prosecution
26 of the 10/383,242 Application.

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1 48) Miken filed an application for a patent on its design of the “ULTRA” bat on
2 May 24, 2004, which was assigned application serial no. 10/844,476.

3 49) On information and belief, Rawlings acquired Miken’s assets, patent
4 applications and patents in 2004.

5 50) The Miken ULTRA bat was constructed according to the inventions
6 disclosed in U.S. Application no. 10/844,476, according to an Affidavit signed
7 under Section 1001 of Title 18 of the United States Code by Matthew Vacek,
8 Miken’s Director of Engineering, and George Griffith, the founder of Miken Sports.

9 51) In an Affidavit signed on September 7, 2006 under Section 1001 of Title 18
10 of the United States Code by Matthew Vacek, Miken’s Director of Engineering,
11 filed in the U.S. Application no. 10/844,476, Mr. Vacek described the construction
12 of the ULTRA bats dating to 2002:

13 The Miken ULTRA II bat which was made and sold prior to March 7,
14 2003, was a composite bat which included two integrally formed
15 carbon composite sleeves separated by a releasing layer of
16 polypropylene. The ULTRA II bat was constructed by wrapping
17 carbon prepreg material around a mandrel to form the inner sleeve.
18 The carbon prepreg was then wound with a releasing layer of 5/8”
19 wide polypropylene tape applied so that one-half of each wrap
20 overlapped the previous wrap, thus resulting in a polypropylene layer
21 having twice the thickness of he tape. Then a second layer of prepreg
22 material was wrapped around the releasing layer to define the outer
23 sleeve, The bat assembly was then wrapped with another layer of
24 polypropylene tape and two layers of nylon tape to hold it tightly
25 together and was baked for one hour or more at 250°F. Then the outer
26 layer of poly tape and two nylon tape layers were cut off. This
27 resulted in a releasing layer which engaged both the inner and outer
28 sleeves but was not adhered to either of the inner or outer sleeves.
Then the assembly was dipped in wax in preparation for the
application of additional carbon and Kevlar layers. Then the entire
assembly was placed in a shell mold and the mold was injected with
epoxy.

52) According to the sworn Affidavit of Mr. Vacek, the ULTRA bat that
predated the filing of the application for the ‘826 Patent included an inner

1 composite layer and an outer composite layer separated by a non-adhering
2 polypropylene tape, which is simply a thin sheet of material.

3 53) As described in the Abstract, the '826 Patent is directed to "[a] single
4 member tubular baseball or softball bat of unitary construction comprised of an
5 elongated handle portion and a striking or barrel portion wherein the barrel portion
6 has internal and external cylindrical layers separated by one or more separation
7 barriers, which are not bonded to said layers, located internally within the barrel
8 thickness, and being in intimate contact with these layers." *See* Exh. A '826 Patent
9 at pg. 1, Abstract.

10 54) The '826 Patent expressly acknowledges that a number of composite bat
11 patents, including double wall composite bats, predated the alleged invention of the
12 '826 Patent.

13 55) The '826 Patent discloses: "U.S. Pat. No. 5,303,917 to Uke discloses a two
14 member bat of thermoplastic and composite materials." *id.* at col. 1:49-53; "U.S.
15 Pat. No. 6,322,463B1 to Chauvin discloses the method of tuning a unitary member
16 all composite bat without separation barrier(s) making it a single-wall bat..." *id.* at
17 col. 1:60-64; "U.S. Pat. No. 6,461,760B1 to Higginbotham discloses the bat of U.S.
18 Pat. No. 6,053,828 with a composite shell formed to an outer shell. As the
19 composite is bonded to the outer shell this construction acts as a double-wall bat."
20 *id.* at col. 2:6-10; "U.S. Pat. No. 6,425,836B1 to Mizuno discloses a two member
21 bat with a lubricated coating between layers or a weak boundary layer formed on
22 the surfaces of the inner member." *id.* at col. 2:11-15; "U.S. Patent Pub.
23 2001/0094882 A1 by Clauzin discloses a two member bat consisting of an outer
24 shell and an insert laminate partially bonded to the shell." *id.* at col. 2:16-18.

25 56) The '826 Patent depicts admitted prior art bat designs in Figs. 1 and 2 (*id.*,
26 sheet 1 of 3), and describes the prior art in the specification. *Id.* at col. 4:17-25.

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1 57) Despite describing a number of prior art double wall bat patents, the
2 Applicants for the ‘826 Patent did not disclose their knowledge of the Miken
3 ULTRA multi wall composite bats sold in 2002 having the polypropylene non-
4 adhering releasing layer tape between composite sleeves.

5 58) After describing the prior art, the “Summary of the Invention” of the ‘826
6 describes the asserted invention as “a single member or unitary double-wall
7 baseball bat” (*see* Exh. A, ‘826 Patent at col. 2:28-29); “[t]he double-wall bat
8 embodiment of the present invention is effectively a single member bat of unitary
9 construction” (*id.* at col. 2:51-53); “in a double-wall baseball bat of unitary
10 construction ... a barrel wall formed by internal and external cylindrical layers if
11 material separated by a separation barrier...” (*id.* at col. 2:59-65).

12 59) While Figures 1 and 2 depict prior art double-wall bats, Figures 3, 5 and 6 of
13 the ‘826 Patent are all described as depicting double-wall bats according to the
14 invention. *Id.* at col. 3:27-49, 3:57-45.

15 60) The Detailed Description of the Invention then describes the double-wall bats
16 of Figures 3, 5 and 6, as well as fabrication processes for the various embodiments.
17 *Id.* at col. 4:45-6:48.

18 61) The Description briefly addresses the triple wall design of Figure 4 as
19 another embodiment of the invention. *Id.* at 6:57-65.

20 62) In the Description, the focus is primarily on the double-wall embodiments.
21 Reflecting the focus of the specification, the application originally included two
22 independent apparatus claims and three independent process claims.

23 63) Process claims 22 and 24 as filed in the ‘242 Appl. described fabrication
24 steps including “wrapping a separation barrier around said internal layer” (claim
25 22) and “wrapping a separation barrier around said internal tube” (claim 24).

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1 64) Process claim 26 as filed in the ‘242 Appl. described: “placing a separation
2 barrier within said external tube; and placing an internal layer of material within
3 said separation barrier,” (Claim 26).

4 65) The process claims in the ‘242 Appl. as filed described wrapping the
5 separation barrier (Claims 22 and 24), or inserting a tubular separation barrier
6 inside of an external shell (claim 26).

7 66) During the prosecution, independent process claims 22, 24 and 26 in the ‘242
8 Appl. were all withdrawn and abandoned.

9 67) During the prosecution, independent Claim 12 in the ‘242 Appl. was
10 amended to be dependent from claim 1 after being rejected.

11 68) Independent claim 1, as filed, recited: “A double-wall single member
12 baseball bat of unitary construction, comprising a cylindrical handle portion for
13 gripping, a cylindrical tubular barrel portion for striking, and a tapered mid-section
14 connecting said handle portion and said barrel portion, wherein a major part of said
15 barrel portion comprises a barrel wall formed by internal and external cylindrical
16 layers of material separated by a separation barrier which is unbonded to at least
17 one of said layers, said separation barrier being in intimate contact with said layers
18 over all of its area.” *See* Exh. B, ‘826 File Hist. at pg. 16 of 231.

19 69) During the prosecution of the ‘242 Appl., Independent Claim 1 was amended
20 several times.

21 70) To illustrate the amendments to the independent claim 1 during the course of
22 the prosecution, in the chart below the original apparatus claim verbiage is provided
23 in the left column and the issued claim verbiage is in the right column, with text
24 added during prosecution underlined:

Original independent apparatus claim 1	Issued apparatus claim 1
1. A double-wall single member baseball bat of unitary construction, comprising a cylindrical handle portion for gripping, a cylindrical tubular barrel portion for striking,	1. A baseball bat comprising a cylindrical handle portion for gripping, a cylindrical tubular barrel portion for striking, and a tapered mid-section connecting said handle portion and said barrel portion,

1 and a tapered mid-section connecting said
2 handle portion and said barrel portion,
3 wherein a major part of said barrel portion
4 comprises a barrel wall formed by internal
5 and external cylindrical layers of material
6 separated by a separation barrier which is
7 unbonded to at least one of said layers, said
8 separation barrier being in intimate contact
9 with said layers over all of its area.

wherein a major part of said barrel portion
comprises a barrel wall thickness formed by
internal and external cylindrical structural
layers of material separated by a separate
nonstructural layer forming a separation
barrier which is: a) non-adherent to the
material of both the internal and external
cylindrical structural layers and unbonded to
at least one of said adjacent structural layers,
b) in the form of thin, conformable, solid,
tubular polymeric materials, c) in intimate
contact with said internal and external
cylindrical structural layers over all of its
area, and d) nonstructural in that it does not,
of itself, contribute significantly to the
stiffness and strength of the barrel portion of
the bat.

11 71) The original independent Claims 1 and 12 were rejected in an Office Action
12 dated June 28, 2004, in view of the prior art patent to Misono, U.S. Pat. No.
13 6,425,836.

14 72) The '826 Patent acknowledged Misono as prior art, admitting: "Similarly,
15 U.S. Pat. No. 6,425,836 to Misuno discloses a two member bat with a lubricated
16 coating between layers or a weak boundary layer formed on the surfaces of the
17 inner member." *See* Exh. A, '826 Patent at col. 2:11-14

18 73) The Office Action rejected the claims under 35 U.S.C. 102(b), indicating:
19 "the claims are clearly anticipated with the exception of claims 9 and 10." *See* Exh.
20 B, File Hist. at 69 of 231.

21 74) In response to the Office Action, the applicants submitted an amendment and
22 remarks. *Id.* at 75-87 of 231.

23 75) The first amendments to claim 1 filed in the '242 Appl. are reproduced
24 below, with the additions underlined and the deletions in strike through font:

25 1. A ~~doublewall single member~~ baseball bat ~~of unitary construction~~,
26 comprising a cylindrical handle portion for gripping, a cylindrical
27
28

1 tubular barrel portion for striking, and a tapered mid-section
2 connecting said handle portion and said barrel portion,
3 wherein a major portion of said barrel portion comprises a barrel wall
4 formed by internal and external cylindrical layers of material separated
5 by a separation barrier which is unbonded to at least one of said layers,
6 said separation barrier being in the form of a thin, conformable solid
7 sheet which is in intimate contact with said layers over all of its area.

8 (*Id.* at 80 of 231).

9 76) By these amendments, claim 1 provided: “a barrel wall formed by internal
10 and external cylindrical layers of material separated by a separation barrier which is
11 unbonded to at least one of said layers”.

12 77) Claim 1 as amended was directed to a bat barrel with only a non-structural
13 separation barrier between an internal structural layer and an external structural
14 layer - a double-wall bat.

15 78) The Applicants amended the claim to define the non-structural separation
16 barrier as a “thin, conformable, solid sheet”.

17 79) Despite the amendments, independent claims 1 and 12 were again rejected in
18 a Final Office Action dated December 10, 2004. *Id.* at. 90-94 of 231.

19 80) The Final Office Action rejected the claims as being anticipated by the
20 Misono patent.

21 81) The rejection states: “In response to the applicant’s remarks, a thin
22 conformable, solid sheet has been claimed as the separation barrier. Misono’s layer
23 7 as described in Col. 9, lines 14 clearly meets this limitation. As noted by Misono,
24 this is a ‘weak’ layer and clearly not a ‘rigid structural’ member. As disclosed by
25 Misono, and demonstrated to the examiner during the prosecution of Misono, this is
26 merely a thin foil like layer solely for the purpose of preventing bonding between
27 members 6 and 8.” *Id.* at 93 of 231 (emphasis added).

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1 82) In a “Response After Final Office Action” (id. at 119-140 of 231), claim 1
2 (and claim 12) was again amended in the ‘242 Appl., to recite:

3 1) (currently amended) A baseball bat comprising a cylindrical
4 handle portion for gripping, a cylindrical tubular barrel portion for
5 striking, and a tapered mid-section connecting said handle portion and
6 said barrel portion,

7 wherein a major part of said barrel portion comprises a barrel
8 wall thickness formed by internal and external cylindrical structural
9 layers of material separated by a separate nonstructural layer forming a
10 separation barrier which is:

- 11 a) unbonded to at least on of said adjacent structural layers, said
12 separation barrier being
13 b) in the form of a thin conformable, solid, sheet which is tubular
14 material
15 c) in intimate contact with said internal and external cylindrical
16 structural layers over all of its area, and
17 d) nonstructural in that it does not, of itself, contribute significantly to
18 the stiffness and strength of the barrel portion of the bat. Id. at 123 of
19 231.

20 83) A revised Response After Final was filed due to the original filing being
21 defective in the amendment of the claims. *Id.* at 119 of 231.

22 84) By amending Claim 1 to recite: “a barrel wall thickness formed by internal
23 and external cylindrical structural layers of material separated by a separate
24 nonstructural layer forming a separation barrier”, Claim 1 is limited to a bat having
25 the thickness of its barrel formed from an internal cylindrical structural layer and an
26 external cylindrical structural layer separated only by a nonstructural layer.

27 85) By amending Claim 1 to change the phrase “thin conformable, solid, sheet”
28 to “thin conformable, solid, tubular material” the applicants clearly represented to
the Patent Office that “solid, tubular material” is narrower than, and excludes, a
“solid sheet”.

86) The limitation “thin conformable, solid, tubular material” cannot be literally
construed to cover a tape or sheet of polypropylene releasing layer wrapped around
the inner sleeve as that structure was in the prior art Miken ULTRA bat known to

1 the first named inventor of the '826 Patent, yet not disclosed to the Patent Office,
2 without making the claims of the '826 Patent unenforceable for inequitable
3 conduct.

4 87) In the same amendment, Easton added new claims, including new claim 28
5 which became claim 18 in the '826 Patent. New claim 28 as filed initially recited:

6 28) A baseball bat comprising a cylindrical handle portion for
7 gripping, a cylindrical tubular barrel portion for striking, and a tapered
8 mid-section connecting said handle portion and said barrel portion,
9 wherein a major part of said barrel portion comprises a barrel wall
10 thickness formed by an un-even number of alternating, thick, structural
11 layers of material separated by thin, separate, non-structural material
12 layers, wherein each of said nonstructural layers is: a) unbonded to at
13 least one of said adjacent structural layers, b) in the form of a thin,
14 conformable solid, tubular material, c) in intimate contact with said
15 structural material layers over all of its area, and d) nonstructural in
16 that it does not, of itself, contribute significantly to the stiffness and
17 strength of the barrel portion of the bat. *See* Exh. B, at 127-128 of
18 231.

19 88) In this new claim 28, the applicants did not describe the non-structural layer
20 as being a sheet of material, they chose to describe the non-structural layer as a
21 "solid, tubular material." *See* Exh. B at 127-128 of 231.

22 89) In the Remarks explaining the claim amendments the applicants stated: "the
23 separation barrier of the present invention is in the form of a thin conformable layer
24 that lacks the structural rigidity of a sleeve or cylinder, it is nevertheless a *solid*
25 *tubular member* and therefor more than a surface condition." *Id.* at 134 of 231
26 (emphasis added).

1 90) The Remarks also stated: “Claims 1 and 12 have been amended to substitute
2 “tubular material” for “sheet” ... this amendment better conforms the claims with
3 the language used in the disclosure.” *Id.* at 134 of 231.

4 91) The disclosure of the specification defines “tubular” as meaning “hollow
5 inside”. *See* Exh. A, ‘826 Patent at col. 1:18-19.

6 92) The Applicants further stated: “The feature that the separation barrier of the
7 present invention is in the form of a solid, conformable, tubular layer that lacks the
8 structural rigidity of a sleeve or cylinder has now been made more explicit in claims
9 1 and 2, and in Claim 28...” *See* Exh. B, File Hist. at 135 of 231.

10 93) By the amendments and the Remarks as well as the prior art ULTRA bat
11 construction described by Mr. Vasek’s Affidavit, Easton is estopped from asserting
12 that the claims cover a non-structural layer that is anything other than a solid
13 tubular member and not a sheet of polypropylene releasing material.

14 94) Even after its amendments disclaiming a “sheet,” the claim was again
15 rejected over the Misono reference. *See* Exh. B, File Hist. at 145 of 231 (Advisory
16 Action date Apr. 14, 2005); *see also id.* at 150 of 231 (submitting an RCE
17 application that incorporated the After Final Amendment); *id.* at 156 of 231
18 (rejecting most claims based on Misono).

19 95) In response, the Applicants filed yet another amendment to the claims on
20 May 27, 2005. *Id.* at 163-171 of 231. In that amendment, independent claims 1 and
21 28 were further amended as follows, with the added terms underlined:

22 1. (currently amended) A baseball bat comprising a cylindrical handle
23 portion for gripping, a cylindrical tubular barrel portion for striking,
24 and a tapered mid-section connecting said handle portion and said
25 barrel portion,
26 wherein a major part of said barrel portion comprises a barrel wall
27 thickness formed by internal and external cylindrical structural layers
28

1 of material separated by a separate nonstructural layer forming a
2 separation barrier which is:

- 3 a) non-adherent to the material of both the internal and external
4 cylindrical structural layers and unbonded to at least one of said
5 adjacent structural layers,
6 b) in the form of a thin conformable, solid, tubular polymeric
7 material,
8 c) in intimate contact with said internal and external cylindrical
9 structural layers over all of its area, and
10 d) nonstructural in that it does not, of itself, contribute significantly
11 to the stiffness and strength of the barrel portion of the bat.

12 28. (currently amended) A baseball bat comprising a cylindrical
13 handle portion for gripping, a cylindrical tubular barrel portion for
14 striking, and a tapered mid-section connecting said handle portion and
15 said barrel portion,

16 wherein a major part of said barrel portion comprises a barrel wall
17 thickness formed by an un-even number of alternating layers
18 comprising thick, structural layers of material separated by thin,
19 separate, non-structural material layers, wherein each of said
20 nonstructural layers is: a) unbonded to at least one of said adjacent
21 structural layers, b) in the form of a thin, conformable solid, tubular
22 material, c) in intimate contact with said structural material layers over
23 all of its area, and d) nonstructural in that it does not, of itself,
24 contribute significantly to the stiffness and strength of the barrel
25 portion of the bat.

1 96) By the amendments made during prosecution of claim 1, the literal scope of
2 Claim 1 is limited to a nonstructural layer that is both non-adherent to the material
3 of both the internal and external cylindrical structural layers and it is a thin
4 conformable, solid, tubular polymeric material that does not contribute significantly
5 to the stiffness and strength of the barrel portion of the bat.

6 97) On information and belief, persons of ordinary skill in the art of composite
7 bats in 2003 would conclude that the addition of the thin separation barrier within
8 the barrel portion of the double wall composite bat results in a bat having a stiffness
9 reduced as compared to single wall bat of comparable thickness, and that the
10 release layer, by itself, changes the stiffness of the bat.

11 98) Claim 1 cannot be construed to cover a unitary constructed triple-wall barrel
12 in view of the amendments made to the claim during the prosecution of the
13 application.

14 99) No claim can be literally embodied by a bat barrel having an intermediate
15 non-structural sheet between the inner and outer layers in view of the First
16 Amendment adding “sheet” and the After Final Amendment/RCE Amendment
17 deleting “sheet” and inserting “solid, tubular material” and/or the construction of
18 the prior art ULTRA bat.

19 100) In view of the final amendment dated May 27, 2005, claim 1 cannot be
20 construed to literally cover an intermediate layer that is anything other than both
21 non-adherent to the material of both the internal and external cylindrical structural
22 layers and a thin conformable, solid, tubular polymeric material.

23 101) In view of the amendments to the claims made in response to the multiple
24 rejections, coupled with the statements of the Applicants, the clear deletion of the
25 “sheet” limitation that the Applicants proposed in the first amendment, to recite
26 “tubular member” in all of the claims is a clear file wrapper estoppel precluding the
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1 claim from being construed to literally cover a bat that uses a sheet of non-bonding
2 material between adjacent layers of composite material.

3 102) Based upon the specification, the prior art rejections, all of the claim
4 amendments as well as the Remarks provided by the applicants, the claim 1
5 limitation: “a barrel wall thickness formed by internal and external cylindrical
6 structural layers of material separated by a separate nonstructural layer forming a
7 separation barrier” is “the width of the barrel wall is formed by an internal
8 cylindrical structure and an external cylindrical structure separated only by a non-
9 structural layer.”

10 103) Based upon the specification, the prior art rejections, all of the claim
11 amendments as well as the Remarks provided by the applicants, the proper
12 construction of the claim 1 limitation: “solid, tubular polymeric material” is
13 construed as: “a solid hollow tube of polymeric material that is not formed from a
14 sheet.”

15 104) Based upon the specification, the prior art rejections, all of the claim
16 amendments as well as the Remarks provided by the applicants, the claim 18
17 limitation: “solid, tubular material” is construed as: “a solid hollow tube of material
18 that is not formed from a sheet.”

19 Easton’s assertion of the ‘826 Patent and products that embody the ‘826 Patent

20 105) Prior to the filing of the California Complaint and the ITC Complaint, Easton
21 threatened to sue Monsta for the alleged infringement of the ‘826 Patent in March
22 of 2021. A copy of Easton’s letter was submitted by Easton with the California
23 Complaint.

24 106) Monsta, through counsel, responded in letters dated April 6 and April 22,
25 2021. Copies of Monsta’s letters were submitted by Easton with the California
26 Complaint.

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1 107) In Monsta’s April 22, 2021 letter, Monsta explained the construction of the
2 claims of the ‘826 Patent in view of the file history.

3 108) In Monsta’s April 22, 2021 letter, and based on a discussion of the
4 construction of the claims of the ‘826 Patent, Monsta explained why none of its
5 bats infringe the claims of the ‘826 Patent.

6 109) The ‘826 Patent’s claims generally address a bat for baseball or softball,
7 formed from a composite inner barrel and a composite outer barrel with the inner
8 and outer barrels separated by a release layer that is unbonded to at least one of the
9 inner and outer barrels and formed from a solid, tubular polymeric material.

10 110) Monsta’s April 22, 2021 letter also advised Easton that the bats which Easton
11 marked with the ‘826 Patent number did not embody the claim limitations.

12 111) Easton responded in a letter dated May 4, 2021 indicating, *inter alia*, that any
13 products previously marked with the ‘826 Patent by CE Composites were not
14 Easton products and thus no claim for false marking could be asserted as against
15 Easton as a false marking claim “required intent to deceive”. A copy of Easton’s
16 letter was submitted by Easton with the California Complaint.

17 112) On information and belief, as of March of 2021 when Easton first notified
18 Monsta concerning the ‘826 Patent, Easton’s website, www.easton.com, identified
19 nine bat models from 2017 as using the ‘826 Patent.

20 113) A print of the www/Easton/com website made using the Wayback Machine
21 web archive that lists the Easton patents and associated bat models from February
22 of 2021 is attached as Exh. C.

23 114) On information and belief, as of March of 2021 when Easton first notified
24 Monsta concerning the ‘826 Patent, Easton’s website, www.easton.com, did not
25 identify any Easton bats from 2018 to 2021 as using the ‘826 Patent.

26 115) Between March of 2021 and September of 2021, when Easton filed the
27 complaint for patent infringement in the Central District of California (the
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1 California Complaint) and the Complaint for patent infringement at the ITC (the
2 ITC Action) as against Monsta Athletics, Easton’s patent marking website at
3 www.easton.com, was updated to identify about 150 Easton bat models as
4 embodying the ‘826 Patent.

5 116) A print of the www/Easton/com website made using the Wayback Machine
6 web archive that lists the Easton patents and associated bat models from July of
7 2021 is attached as Exh. D.

8 117) The California Complaint and the ITC Complaint both allege infringement of
9 Easton’s ‘826 Patent.

10 118) To satisfy the requirement of pleading a “domestic industry” to support an
11 ITC Complaint for patent infringement of the ‘826 Patent, Easton needed to
12 identify a substantial number of its products that utilize the ‘826 Patent.

13 119) After advising Monsta that any products previously marked with the ‘826
14 Patent by CE Composites were not Easton products and thus no claim for false
15 marking could be asserted as against Easton as a false marking claim “required
16 intent to deceive”, and before filing the ITC Complaint, Easton amended its patent
17 listing on its www.easton.com website to identify over 150 bat models from 2018
18 to 2021 as embodying the ‘826 Patent.

19 120) The 2017 bat models previously identified as embodying the ‘826 Patent
20 were removed from Easton’s website listing.

21 121) In support of the ITC Complaint, Easton submitted Exh. 17 to the ITC
22 Complaint listing over 160 EASTON® bat models from 2018 to 2021 as
23 embodying the ‘826 Patent.

24 122) On information and belief, the Rawlings website www.Rawlings.com
25 identifies over 100 EASTON® bat models as using the ‘826 Patent.

26 123) On information and belief, most if not all of the EASTON® bat models from
27 2018 to 2022 identified on the www.Easton.com and www.Rawlings.com websites
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1 as embodying the '826 Patent are formed with an outer composite sleeve and an
2 inner composite sleeve separated by a sheet of polymeric material wrapped around
3 the inner composite sleeve.

4 124) On information and belief, most if not all of the EASTON® bat models from
5 2018 to 2022, identified on the www.Easton.com and www.Rawlings.com websites
6 do not literally embody any claim of the '826 Patent.

7 125) On information and belief, Easton and Rawlings have falsely marked the
8 EASTON® bat models from 2018 to 2022, with intent to deceive the public, and to
9 deceive the ITC judge and Commission so as to maintain the ITC Complaint as
10 against Monsta and two other respondents in the ITC Complaint (Juno and Proton).

11 126) Based upon the file history leading to the '826 Patent, bats that use a sheet
12 of polymeric material between an inner and outer structural layer do not literally
13 embody the claims of the '826 Patent that require a solid, tubular polymeric
14 material between an inner and outer structural layer.

15 127) On information and belief Easton's bats include a sheet of polymeric material
16 as the separation barrier between an inner and outer structural layer, with some
17 models wrapping the bat once and others wrapping it three times.

18 128) Easton has no bats that use a solid, tubular material for the separation barrier.

19 129) Accordingly, none of the Easton bat models identified in the ITC action as
20 representative, and none of the bats on the Easton and Rawlings websites marked
21 with '826 Patent embody the '826 Patent, and they are all falsely marked.

22 130) On information and belief, Easton has sold over 10,000 and possibly 50,000
23 or more falsely marked bats at an average sale price of at least \$300.

24 **FIRST CLAIM**

25 **(35 U.S.C. § 292 FALSE MARKING OF THE '826 PATENT)**

26 131) Monsta repeats and incorporates by reference the allegations in Paragraphs 1
27 through 130 above as though fully set forth herein.

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1 132) This Claim is against Easton and Rawlings for false marking of bats with the
2 ‘826 Patent in violation of 35 U.S.C. § 292.

3 133) The two elements of a 35 U.S.C. § 292 false marking claim are: (1) marking
4 an unpatented article and (2) intent to deceive the public.

5 134) Intent to deceive is a state of mind arising when a party acts with sufficient
6 knowledge that what it is saying is not so and consequently that the recipient of its
7 saying will be misled into thinking that the statement is true.

8 135) A party asserting false marking must show by a preponderance of the
9 evidence that the accused party did not have a reasonable belief that the articles
10 were properly marked.

11 136) An assertion by a party that it did not intend to deceive, standing alone, is
12 worthless as proof of no intent to deceive where there is knowledge of falsehood.

13 137) Here, Easton is on record in its ITC filings that products that use the ‘826
14 Patent require the release layer between the inner and outer barrels.

15 138) Easton changed its patent list website found at [www.easton.com/easton-](http://www.easton.com/easton-support/patents)
16 [support/patents](http://www.easton.com/easton-support/patents) to identify over one hundred bat models as using the ‘826 Patent to
17 meet its Domestic Industry requirement so as to deceive the ITC, and thus the
18 public, concerning the use of the ‘826 Patent in the bat models listed on its website.

19 139) Rawlings changed its patent list website found at [www.rawlings.com/about-](http://www.rawlings.com/about-patents)
20 [patents](http://www.rawlings.com/about-patents) to identify over one hundred sixty bat models as using the ‘826 Patent so as
21 to deceive the ITC, and thus the public, concerning the use of the ‘826 Patent in the
22 bat models listed on its website.

23 140) Further, by asserting in its ITC final contentions that the bats using a sheet of
24 material wrapped around the bat satisfies the claims under the doctrine of
25 equivalents, which is not available to the patentee, Easton and Rawlings cannot
26 assert that they had a reasonable belief that the articles were properly marked.

27 **False Marking Damages**

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1 141) 35 U.S.C. § 292(a) provides for a fine of not more than \$500 for every
2 falsely-marked article.

3 142) The fine applies on a per article basis.

4 143) Courts have imposed a fine equal to the sale price of the falsely marked
5 product, up to \$500, multiplied by the number of units sold.

6 144) On information and belief, Easton's bats are sold at retail in a range of sale
7 prices, with an average of about \$300 per bat.

8 145) On information and belief, Easton and/or Rawlings has sold well over 10,000
9 and possibly 50,000 or more bats falsely marked with the '826 Patent number and
10 thus the false marking damages exceed \$3,000,000 and may exceed \$15,000,000.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Monsta prays for the following relief in connection with the
13 Answer against Easton and Rawlings:

14 i) That Easton's bats identified as embodying the '826 Patent do
15 not literally satisfy each and every claim limitation of the '826 Patent.

16 ii) That Easton and Rawlings have falsely marked bats as
17 embodying the '826 Patent;

18 iii) That judgment be entered in favor of Monsta and against Easton
19 and Rawlings on the claim of false marking;

20 iv) That Monsta be awarded damages in the amount of Easton's
21 sale price of each falsely marked bat up to \$500 per bat as against Easton and
22 Rawlings jointly and severally.

23 v) Such other and further relief in favor of Monsta as the Court
24 may deem just and proper.

25 Dated: May 26, 2023

By: /s/ David B. Abel
Attorney for Plaintiff
Monsta Athletics

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JURY DEMAND

Pursuant to Rule 38(a) and (b) of the Federal Rules of Civil Procedure,
Monsta hereby demands a trial by jury on all issues so triable.

Dated: May 26, 2023

By: /s/ David B. Abel
Attorney for Plaintiff
Monsta Athletics, LLC