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20
21
22 **UNITED STATES DISTRICT COURT**
23 **WESTERN DISTRICT OF WASHINGTON**

24 BADEN SPORTS, INC.,

25 Plaintiff,

Case No.

26 v.

**COMPLAINT FOR PATENT
INFRINGEMENT,
MISAPPROPRIATION OF TRADE
SECRET, AND COMMON LAW
UNFAIR COMPETITION**

WILSON SPORTING GOODS CO.,

Defendants.

JURY TRIAL DEMANDED

On information and belief, plaintiff Baden Sports, Inc. (“Baden”) hereby alleges as follows:

I. PARTIES, JURISDICTION, AND VENUE

1. Baden is a Washington state corporation, with its principal place of business in Federal Way, Washington. Baden is in the business of selling and supplying sporting goods to the public.

1 2. Wilson Sporting Goods Co. (“Wilson”) is a Delaware corporation with its principal
2 place of business at 8700 West Bryn Mawr Avenue, Chicago, Illinois 60631. Like Baden, Wilson is
3 in the business of selling and supplying sporting goods to the public, including within this judicial
4 district.

5 3. The basketball products and other inflatable ball products that are the subject of this
6 complaint are being offered for sale and sold in this judicial district by Wilson. These products are
7 being offered for sale and/or sold on behalf of Wilson by retailers engaged in trade and commerce in
8 this district, including Big 5 Sporting Goods (a national retailer) and The Sports Authority (a
9 national retailer). Both Big 5 and The Sports Authority have retail stores in this jurisdiction.
10

11 4. Wilson solicited confidential and proprietary technical information from a retired
12 Baden employee in the state of Washington, Mr. Ray Sharpe. The information solicited from Mr.
13 Sharpe involved the design details of a Baden machine that he built and replicated in the state of
14 Washington.

15 5. Mr. Sharpe resides at his home in Pierce County, Washington. The technical
16 information solicited by Wilson from Mr. Sharpe relates to certain state law claims that are the
17 subject of this complaint.
18

19 6. Wilson’s solicitation of technical information gives rise to claims of unfair trade
20 practices, and more specifically, misappropriation of trade secrets, engaged in by Wilson. Baden
21 seeks recovery of damages for the same pursuant to RCW 19.108 *et seq.*
22

23 7. This Court has subject matter jurisdiction under 28 U.S.C. § 1332 in that this is a
24 matter in which diversity of citizenship exists and the matter in controversy exceeds the sum of
25 \$75,000, exclusive of interest and costs.
26

1 inserted in the valve of every ball to inflate the ball to a pressure within a certain range. Improper
2 insertion of the needle can damage the valve, making the product defective for sale. From the
3 quality standpoint, it is desirable to inflate balls consistently so that each one has about the same
4 internal pressure.

5
6 16. At or about the time Mr. Schindler moved Baden to Federal Way, he decided to build
7 a ball inflation table for the purpose of automating the ball inflation process and improving speed,
8 quality, and overall production efficiency at what was then a new facility. There were and are no
9 known machines, devices or processes that could do what Baden wanted. There were and are no
10 known companies that sold machines of this type. There is no market for this type of machine
11 because there are only a handful of companies who need one. As a consequence, Mr. Schindler
12 decided that Baden would build a machine in-house.

13
14 17. Baden's Federal Way building has an in-house shop that was run by Mr. Sharpe. Mr.
15 Sharpe worked directly for Mr. Schindler for many years. He was a skilled handyman at Baden with
16 a wide range of "fix it" responsibilities, including maintenance responsibilities relating to Baden's
17 building. Mr. Schindler and Mr. Sharpe built Baden's ball inflation table at Baden.

18
19 18. The table has a custom built mechanism that automatically moves balls into the
20 correct position for needle insertion; it has custom built mechanical structure for inserting the needle
21 to the proper depth within each ball's valve; it has a complex air manifold system that inflates each
22 ball to the correct pressure; the needle is automatically withdrawn and the ball ejected from the table
23 after it is inflated to the correct pressure. All of these mechanical components were designed to
24 operate in coordinated fashion.

25 19. The cost of inflating and packaging inflatable balls is a production cost item that is
26

1 measurable. The inflation table reduced Baden's processing cost per ball. The overall cost savings
2 are significant to Baden's business because of the large numbers of balls (millions) processed each
3 year.

4 20. The inflation table has been one of a kind at Baden since it was initially built. Baden
5 debugged and solved the mechanical or operational problems attributable to the development of the
6 table's design. Baden has not disclosed the design to the public. It has been used in an area inside
7 Baden's building where access is limited.

8 21. Because of the complexity of the design, the table cannot be copied or reverse
9 engineered without gaining possession of one or having access to someone with the knowledge and
10 skills to build one. Baden has not allowed any person or party to gain access to or possess the
11 machine who was not involved in production activities on behalf of Baden.

12 22. Mr. Sharpe repaired and maintained the table and was responsible for its operation for
13 about seventeen years after it was built. Mr. Schindler passed away approximately 10 years ago,
14 leaving Mr. Sharpe as the only person in the world having the knowledge and skills to replicate the
15 table without actually having one in-hand.

16 23. Approximately 5 years ago, Baden opened a second U.S. facility in Louisville,
17 Kentucky where Baden also inflates balls. Mr. Sharpe replicated the inflation table for use there –
18 the Louisville operations are similar to Baden's Federal Way operation.

19 24. Mr. Sharpe retired from Baden in 2009 after 22 years of employment. Baden
20 thereafter continued to consult with him from time to time concerning Baden maintenance issues.
21 When he retired, he executed an acknowledgement about Baden's proprietary information.

22 25. Mr. Bill Dixon is an employee of Wilson or Wilson's parent company, Amer Sports.
23
24
25
26

1 Mr. Dixon was asked to review manufacturing bottlenecks for Wilson.

2 26. Mr. Dixon was involved in internal decision-making at Wilson that resulted in Wilson
3 recognizing the need to have an automated ball inflation mechanism to improve the flow of Wilson's
4 ball processing operations.

5 27. Mr. Dixon was recently involved in contacts with a Baden packaging supplier,
6 Allpak. Allpak was aware that Baden possessed a machine for automating the inflation of balls.
7 During the course of these contacts, Wilson solicited Allpak to assist Wilson with acquiring Baden's
8 ball inflation technology. Allpak declined but, during the course of these contacts, Mr. Dixon and/or
9 Wilson learned from an ex-Baden employee working at Allpak that Mr. Sharpe was the person who
10 knew how to build Baden's inflation table.
11

12 28. Unable to independently develop its own technology, Wilson knew or should have
13 known that the design and operation of Baden's inflation table was proprietary to Baden. However,
14 Wilson proceeded to contact Mr. Sharpe at his home in Pierce County, at which time Wilson learned
15 about Mr. Sharpe's experience with Baden's inflation table.
16

17 29. Mr. Sharpe is believed to lack business experience. Because of his lack of
18 experience, and unknown to Baden, Wilson was able to entice Mr. Sharpe with consulting fees and
19 caused him to disclose to Wilson proprietary information about the operation and design of Baden's
20 inflation table.
21

22 30. At Wilson's expense, in or about February of this year, Wilson flew Mr. Sharpe to a
23 Wilson facility in Tennessee, at which time Wilson proceeded to acquire information about the
24 design details of Baden's table and its benefits to Baden.

25 31. Wilson did not contact Baden requesting permission to hire Mr. Sharpe as a
26 consultant.

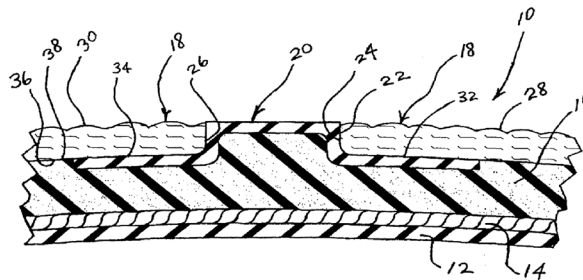
1 32. Wilson brought Mr. Sharpe to Tennessee without Baden’s permission or knowledge.

2 33. Also, in the mid-90’s, Baden developed a new game-quality basketball that is
3 “cushioned” or “padded.” The basketball is padded by manufacturing it with a cellular sponge layer
4 that underlies the basketball’s exterior skin panels and seams.

5 34. On May 12, 1995, Baden filed a patent application in the United States Patent Office
6 (“USPTO”) on certain features of its padded basketball design considered to be unique by Baden.
7 Among other things, Baden’s design created basketball seams having a “soft” feel. The USPTO
8 subsequently granted Baden a patent on June 10, 1997: U.S. Patent No. 5,636,835 (“the ‘835
9 patent”).
10

11 35. The ‘835 patent is valid and enforceable. Baden owns the patent and has
12 continuously made basketballs covered by the patent since the mid-90’s. The Baden inflation table
13 is used to inflate patented game quality basketballs that are to be sold by major retailers.
14

15 36. Set forth below is a copy of a Figure taken from the ‘835 patent that schematically
16 illustrates an example of the seam and cellular sponge layer construction of Baden’s patented design:
17



18 Fig. 3
19
20
21

22 37. Arrow 20 above points to the top of a basketball seam that is formed from a thin strip
23 of rubber (shown in cross-section). Arrow 16 points to the cellular sponge layer below the seam and
24 panels.
25
26

1 38. The design of the Baden basketball (seam strip over the sponge layer) is amenable to
2 mass production because the sponge layer (“cushion”) is created in the mold with the seam on top.

3 39. Baden described the design as “Cushion Control Technology” or “CCT” to describe
4 to its customers that it was selling a “soft” feel basketball.

5 40. Wilson is now advertising for sale a “soft” feel basketball that Wilson describes as
6 “Cushion Core Technology.”
7

8 41. As reflected below, Wilson’s “Cushion Core Technology” calls for a basketball that
9 is “cushioned” or “padded” by manufacturing it with a cellular sponge layer that underlies the
10 basketball’s exterior skin panels and seams.

11 FIRST CLAIM FOR RELIEF – INFRINGEMENT OF ‘835 PATENT

12 42. Baden realleges and incorporates the allegations in all previous paragraphs set forth
13 above, as if fully set forth herein.

14 43. Wilson misappropriated Baden’s patented basketball design and is selling basketballs
15 purported to have “Cushion Core Technology: Patented Cushion Core Technology combines low-
16 density sponge rubber and ultra-durable butyl rubber producing a basketball with exceptional feel.”
17

18 44. Wilson’s “Cushion Core Technology” copies basketball technology originally
19 developed and patented by Baden. The seam and cellular sponge construction of the invention
20 claimed in Baden’s ‘835 patent are believed to be used in several basketball products currently sold
21 by Wilson, including: Wilson’s NCAA Solution Game Ball, Wilson’s Evolution Game Ball, Jet
22 Competition, NCAA Competition, NCAA Game Ball, NCAA Replica, NCAA Wave Game Ball,
23 NCAA Wave Microfiber and Wave Game Ball. An example of Wilson’s NCAA WTB0700 game
24 ball is shown below:
25
26

Wilson Basketball : WTB0700 - NCAA Game Ball

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45. Wilson is presently making, using, selling or offering to sell basketballs in the United States, including within this judicial district, that infringe upon one or more claims of Baden's '835 patent in violation of 35 U.S.C. § 271. Wilson is also actively inducing infringement of the '835 patent by retailers, sports associations, high schools, and universities. Wilson's violation of Baden's patent rights is intentional and willful.

46. Under the applicable patent laws of the United States, in order to obtain a judgment of patent infringement, Baden needs to establish by a preponderance of the evidence that Wilson is making, using, selling or offering to sell basketballs that are covered by at least one patent claim of the '835 patent. Wilson is infringing at least claim 3 of the '835 patent.

1 47. As an example of infringement, claim 3 of the '835 patent reads on and covers
2 Wilson's Solution Game Ball and other Wilson "Cushion Core Technology" basketballs, as follows:

Claim 3 – '835 Patent	Is corresponding component present in Wilson Solution Basketball?
3. A ball carcass for a padded inflatable ball, comprising:	Yes – the Solution Basketball is a padded inflatable ball
an inner carcass portion defining the shape of a ball,	Yes – the Solution Basketball has an inner carcass portion defining the shape of the ball
a cellular sponge layer surrounding the inner carcass portion,	Yes – the Solution Basketball has a cellular sponge layer surrounding the inner carcass portion
a plurality of raised seams defined by strips of a seam material, wherein the strips of seam material are bonded directly to the cellular sponge layer and the sponge layer underlies the strips of seam material,	Yes – the Solution Basketball has a plurality of raised seams defined by strips of a seam material, wherein the strips of seam material are bonded directly to the cellular sponge layer and the sponge layer underlies the strips of seam material
the seam material strips being arranged relative to the sponge layer so that areas of the sponge layer are exposed between the seam material strips,	Yes – the Solution has seam material strips being arranged relative to the sponge layer so that areas of the sponge layer are exposed between the seam material strips
and wherein the inner carcass portion, the cellular sponge layer and raised seams together define the ball carcass.	Yes – the Solution Basketball has an inner carcass portion, cellular sponge layer and raised seams that together define the ball carcass.

18
19 SECOND CLAIM FOR RELIEF – MISAPPROPRIATION OF TRADE SECRET

20 48. Baden realleges and incorporates the allegations in all previous paragraphs set forth
21 above, as if fully set forth herein.

22 49. Baden's inflation table creates significant economic value for Baden in that it reduces
23 Baden's per unit cost in inflating and packaging inflatable balls at Baden's two facilities in Federal
24 Way, Washington, and Louisville, Kentucky.

1 50. Baden's inflation table is not generally known to or readily ascertainable by other
2 persons because Baden limits physical access to the table and has not otherwise published the details
3 of the table in a way that would enable others to build it.

4 51. Those with access to the table knew or should have known that it was built by Mr.
5 Schindler and Mr. Sharpe as a confidential and proprietary machine not available to competitors or
6 others.

7 52. The table has independent economic value to Baden because it enables Baden to
8 reduce its costs relative to competitors who lack the machine and are unable to build it. Wilson
9 obtains economic value by acquiring the design and using a machine that can do for Wilson what it
10 has been doing exclusively for Baden for years.

11 53. While it should have known beforehand, Wilson's solicitation of Baden's supplier,
12 Allpak, gave Wilson reason to know that it was using improper means to acquire Baden's inflation
13 table design by proceeding to contact Mr. Sharpe.

14 54. Wilson did not contact Baden or inform Baden that it intended to solicit Mr. Sharpe to
15 build an inflation table for Wilson.

16 55. Wilson did not seek Baden's express consent to use Baden's inflation table design.

17 56. Wilson had no facts or information causing Wilson to believe that Baden gave Wilson
18 implied consent to use Baden's inflation table design.

19 57. Wilson has violated the Washington State Trade Secrets Act, RCW 19.108 *et seq.*, by
20 using improper means to misappropriate a confidential and proprietary design developed and owned
21 by a Washington company that is used in the states of Washington and Kentucky.

1 THIRD CLAIM FOR RELIEF - COMMON LAW UNFAIR COMPETITION

2 58. Baden realleges and incorporates the allegations in all previous paragraphs set forth
3 above, as if fully set forth herein.

4 59. Under the common law, Baden has the right to be free from all acts of unfair
5 competition relating to Wilson's unfair business dealings, including but not limited to actual or
6 attempted enticement of Baden vendors and former or retired employees of Baden for the purpose of
7 acquiring Baden's ball inflation technology.
8

9 60. Baden has been damaged by Wilson's actions and Baden is entitled to an injunction
10 barring further contacts with Baden vendors or employees for the purpose or acquiring Baden's ball
11 inflation technology or misuse of advertising slogans and damages in an amount to be determined at
12 trial.
13

14 PRAYER FOR RELIEF

15 WHEREFORE, Baden requests the following relief:

16 a. That the court find that Wilson and those acting in concert with Wilson have violated
17 35 U.S.C. § 271 and Baden's patent rights by infringing the '835 patent;

18 b. That Wilson and those acting in concert with Wilson be permanently enjoined from
19 infringing the '835 patent, pursuant to 35 U.S.C. § 283, including but not limited to an injunction
20 barring:
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22 (1) the importation of infringing basketballs into the United States;

23 (2) all advertising of infringing basketballs in any way that is accessible to

24 United States customers or the consuming public in the United States;

25 c. That Wilson and those acting in concert with Wilson be ordered to pay to Baden
26

1 damages adequate to compensate Baden, pursuant to 35 U.S.C. § 284, in an amount to be proven at
2 trial, but in any event no less than a reasonable royalty for all infringing basketballs imported into
3 the U.S., or sold in the U.S., or imported and exported through the use of American ports, or
4 transported through the U.S. in any way;

5 d. That Wilson and those acting in concert with Wilson be ordered to pay Baden
6 applicable costs, prejudgment and post judgment interest on all damages proven by Baden at trial,
7 pursuant to 35 U.S.C. § 284;

8 e. That Wilson and those acting in concert with Wilson be found to have engaged in
9 willful acts of infringement and required to pay Baden an increased damages award of three (3)
10 times the amount proven by Baden at trial, pursuant to 35 U.S.C. § 284;

11 f. That Wilson and those acting in concert with Wilson be found to have engaged in
12 willful acts of infringement and required to pay Baden's attorney's fees pursuant to 35 U.S.C.
13 § § 284 and 285;

14 g. That the court find that Wilson and those acting in concert with Wilson have violated
15 the Washington State Trade Secrets Act, RCW 19.108 *et seq.* by misappropriating Baden's inflation
16 table design;

17 h. That Baden be entitled to injunctive and royalty remedies for misappropriation of
18 trade secret pursuant to RCW 19.108.020 in excess of \$75,000;

19 i. That Baden be entitled to damages for misappropriation of trade secret and
20 disgorgement of financial benefit and exemplary damages pursuant to RCW 19.108.030 in excess of
21 \$75,000;

22 j. That Baden be entitled to an award of attorney's fees for misappropriation of trade
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1 secret pursuant to RCW 19.108.040;

2 k. That Baden be entitled to an injunction prohibiting Wilson from contacting Baden
3 vendors or Baden employees or former employees for the purpose of acquiring Baden's ball inflation
4 technology and an award of damages for violations of Baden's common law rights;

5 l. That Baden be entitled to any additional damages or relief that may not be
6 specifically stated above but are nevertheless permitted for violation of the statutes and laws pleaded
7 herein;

8 m. That Baden be entitled to such further relief as the Court deems just and proper.

9
10 DEMAND FOR JURY TRIAL

11 Baden requests a trial by jury for all issues in this action.

12 DATED this 8th day of April, 2011.

13 /s/ Bruce A. Kaser

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