

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

FEDERAL CARTRIDGE COMPANY,
VISTA OUTDOOR OPERATIONS, LLC,
and BUSHNELL HOLDINGS, INC.,

Plaintiffs,

v

DaVINCI ARMS, LLC,

Defendants.

Civil Action No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs Bushnell Holdings, Inc., Vista Outdoor Operations, and Federal Cartridge Company, (collectively referred to as “Vista”) complain of Defendant DaVinci Arms, LLC, (“DaVinci”) as follows:

INTRODUCTION

1. Vista Outdoor Inc. and Savage Arms, LLC (“Vista”) brings this Complaint to address the wrongful acts of its prior consultant, DaVinci Arms LLC (“DaVinci”) and related entities from thieving its innovative designs and competitive information. Vista disclosed a proprietary design for a suppressor to DaVinci, as well as related competitive information, under the obligation of confidentiality and in the course of evaluating a developing product. Vista ultimately did not order product from DaVinci, and in retaliation DaVinci clandestinely used Vista’s design and information to file a design patent and to develop competing products utilizing Vista’s design. Then DaVinci threatened Vista with its pending design patent and demanded \$100,000. DaVinci’s

egregious and anticompetitive conduct necessitates the filing of this Complaint.

THE PARTIES

2. Federal Cartridge Company has a business address at 900 Ehlen Drive Anoka, MN 55303-7503. Federal Cartridge Company is a party to an agreement with DaVinci.

3. Bushnell, Inc. is a subsidiary of Vista Outdoor Operations, LLC and has a registered mailing address of 9200 Cody, Overland Park, KS 66214. Bushnell is marketing certain products related to the suit.

4. Vista Outdoor Operations, LLC and has a corporate headquarters at 262 North University Avenue Farmington, UT 84025. Vista is a party to certain agreements with DaVinci and has ownership of intellectual-property rights related to the suit.

5. DaVinci Arms, LLC has a principal place of business at 100 State Street, Building 123A Ludlow, MA 01056.

JURISDICTION AND VENUE

6. This Complaint is filed under 18 U.S.C. § 1836(2)(c) providing for Federal jurisdiction for the misappropriation of trade secrets.

7. This Complaint is filed under Sections 4 and 16 of the Clayton Act (15 U.S.C. §§ 15, 26, respectively) to recover damages caused by, and to secure injunctive relief against, the named defendant for violations of Section 2 of the Sherman Act (15 U.S.C. § 2), as alleged herein.

8. This Court has supplemental jurisdiction over the state-law claims asserted herein pursuant to 28 U.S.C. § 1367 in that those claims arise out of the same body of operative facts and occurrences. Moreover, the Court has original jurisdiction under 28 U.S.C. §§ 1331, 1337.

9. Defendant maintains an office and transacts business on a systematic and

continuous basis with this District and may be found here within the meaning of 15 U.S.C. § 15, 22 and 28 U.S.C. § 1391. Further, many of the unlawful acts alleged herein occurred within this District.

FACTUAL BACKGROUND

I. Vista Outdoor Developed an Innovative Design for a Firearm Suppressor

10. Vista is a leading global designer, manufacturer and marketer of outdoor sports and recreation consumer products. Vista's product offerings include sporting ammunition and firearms, outdoor products, outdoor sports optics, hydration systems, golf rangefinders, performance eyewear, action sports helmets and goggles, footwear and a variety of cycling accessories, stand up paddle boards and accessories. Vista serves a broad range of consumers, including outdoor enthusiasts, hunters and recreational shooters, professional athletes, as well as law enforcement and military professionals. Vista Outdoor's headquarters are in Farmington, Utah and the company employs nearly 6,600 skilled workers worldwide.

11. Federal Cartridge Company is one of Vista's wholly owned subsidiaries. Bushnell is another Vista Outdoor subsidiary offering manufacture of premium-quality tactical and sporting gear.

12. In 2015, Bob Meinert ("Mr. Meinert"), Senior Marketing Manager, Innovation at Vista Outdoor, developed a unique and proprietary ornamental hexagonal design for a suppressor.¹ Mr. Meinert conceived of the design to complement Vista's existing product offerings, which include interlocked hexagonal shapes on established buttstocks² already

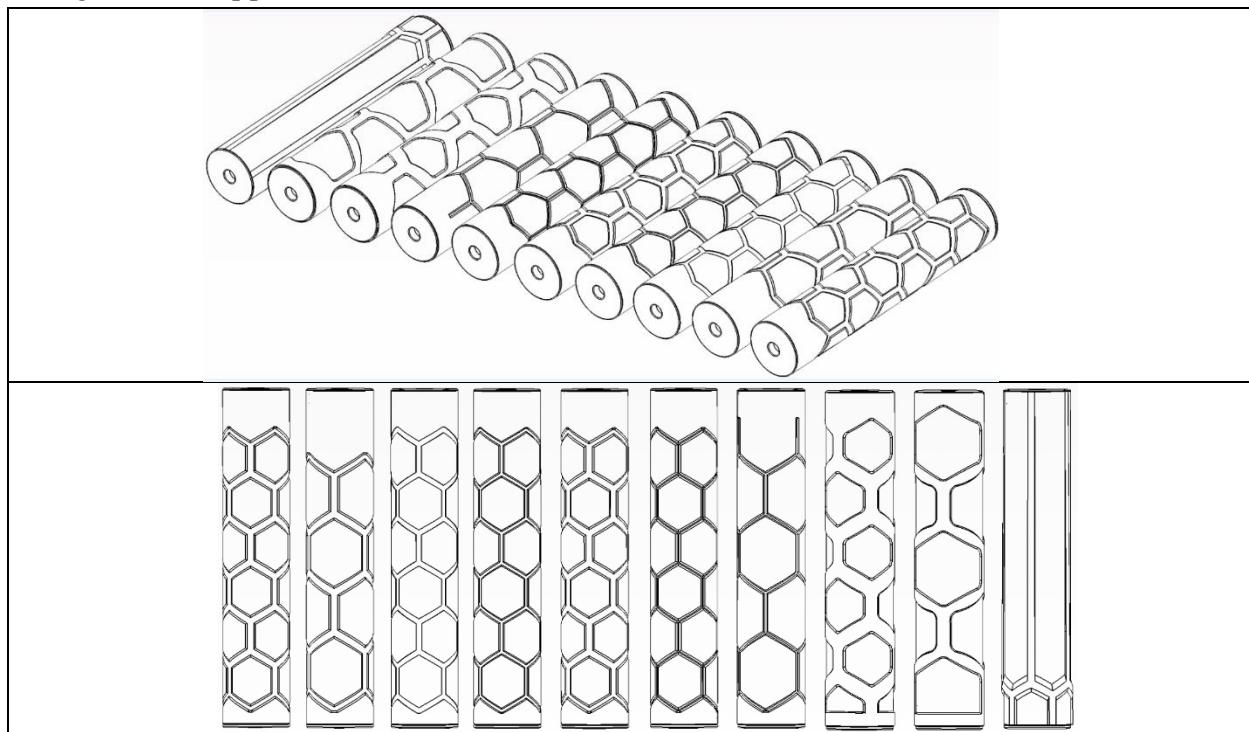
¹ A suppressor, sound suppressor, sound moderator, or silencer is a device attached to or part of the barrel of a firearm or air gun which reduces the amount of noise and visible muzzle flash generated by firing. Silencers are typically constructed of a metal cylinder with internal mechanisms to reduce the sound of firing by slowing the escaping propellant gas and can also slightly increase the speed of the bullet.

² A stock, also known as a shoulder stock, a buttstock, or simply a butt is a part of a rifle or other firearm, to which the barrel and firing mechanism are attached, that is held against one's shoulder when firing the gun.

marketed by Blackhawk! For example:



13. (exemplary Knoxx® Specops Stock Gen II) Mr. Meinert developed several potential designs for a suppressor:



II. Vista Outdoor Sought Vendors for its Suppressor Design and Disclosed its Competitive Information to DaVinci under an obligation of confidentiality.

14. Mr. Meinert's suppressor design was transmitted to Fred Sparks, an industrial design firm, to iterate the hex idea on a suppressor. Fred Sparks was bound by an NDA not to disclose Mr. Meinert's design. Fred Sparks rendered several of the potential designs. Vista determined to seek a manufacturer for its design, and approached DaVinci regarding consultation. DaVinci is a wholly-owned subsidiary of FloDesign, Inc.

15. A team of Vista employees, including product developers and marketing, went to meet with DaVinci in connection with their anticipated needs for a manufacturer on or around August 6, 2015. Vista reviewed DaVinci's suppressor designs by inspecting and testing the equipment. Vista was allowed to handle and discharge Vista's suppressors at the meeting. All of the suppressors that Vista was shown were entirely smooth on the exterior. None of them had an external hexagonal design or any other external tooling.

16. In connection with its consultation with DaVinci, Vista relied upon a NonDisclosure Agreement between itself and DaVinci (the "NDA"). The NDA relates to the exchange and disclosure of information and ideas regarding the design of a firearm suppressor (the "Program"). The NDA allowed parties to maintain confidentiality, ownership, and commercial rights in their respective Proprietary Information while sharing them with one another. Proprietary Information is defined as follows:

"Proprietary Information" shall mean information applicable to the Program which the Disclosing Party discloses to the Receiving Party: (1) in writing, provided the writing is stamped, labeled or clearly designated as "Confidential" or "Proprietary;" or (2) orally, provided the oral information is reduced to writing within thirty (30) days and designated in writing as "Proprietary" or "Confidential." However, without further designating such information in writing, the existence and nature of the Program, this Agreement and the Parties' relationship in connection with the Program shall be considered Proprietary Information.

17. NDA, § 1. Under the NDA, FloDesign and DaVinci are required to treat

Proprietary Information confidentially. Specifically, FloDesign and DaVinci agreed as follows:

For a period of three (3) years from the date the Proprietary Information is received, the Receiving Party shall: (a) handle and protect from disclosure Proprietary Information using the same degree of care it uses to handle its own proprietary information, but no less than reasonable care; (b) ***not duplicate or use Proprietary Information for any purpose other than internal purposes related to the Program***; (c) ***not disclose Proprietary Information*** to anyone except employees and affiliate employees having a "need to know" relating to the Program and who are bound by confidentiality obligations at least as stringent as those set forth herein; and (d) ***not make any commercial use of the Proprietary Information***. If requested by the Disclosing Party, the Receiving Party shall return, permanently delete, and/or destroy, as instructed by the Disclosing Party, all Proprietary Information and copies thereof, and if requested by the Disclosing Party, provide Disclosing Party a written certificate of destruction. The Receiving Party will immediately notify the Disclosing Party upon discovery of any disclosure, use or treatment of Proprietary Information inconsistent with the provisions of this Paragraph.

18. NDA, § 3 (emphasis added). A failure to adhere to these terms will cause irreparable harm to the Disclosing Party, and the person making an improper disclosure may be required to pay damages and attorney's fees. *Id.*, § 8. An action to enforce the NDA must be brought in the state of Massachusetts. *Id.*, § 8.

19. DaVinci is a start-up company without substantial resources. Because of this, it needed financial support in order to begin work on the project. Therefore, after executing the NDA, Vista also issued a PO to DaVinci through a subsidiary, Federal Cartridge Company. Vista paid DaVinci \$20,000 under the PO so that DaVinci would have the financial support it needed to begin work on the suppressor-design project. The \$20,000 in funds paid by Vista was used for the materials, design, machining and development of

prototype suppressor units covered by the PO. Vista made this up-front payment so that DaVinci could develop and produce the prototype units. Prototype units were actually produced by DaVinci under the PO, one of which had the hexagonal design. As described below, Vista used the prototype units in connection with design testing and market evaluation analyses by showing them to end users and dealers who were also bound by NDAs.

The PO protected Vista's intellectual property:

Intellectual Property: All ideas, information, data, documents, drawings, software, software documentation, designs, specifications, and processes produced by or for Seller, either alone or with others, in the course of or as a result of any work performed by or for Seller which is covered by the PO using funds paid for by Buyer under the PO shall be the exclusive property of Buyer and be delivered to Buyer promptly upon request. All inventions conceived, developed, or first produced by or for Seller, either alone or with others, in the course of or as a result of any work performed by or for Seller which is covered by the PO using funds paid for by Buyer under the PO, and any patents based on any such inventions (both domestic and foreign), shall be the exclusive property of Buyer. Seller shall promptly disclose all such inventions to Buyer in written detail, and execute all papers, cooperate with Buyer, and perform all acts necessary or appropriate in connection with the filing, prosecution, maintenance, or assignment of related patents or patent applications to Buyer. All works of authorship including but not limited to documents, drawings, software, software documentation, photographs, video tapes, sound recordings, and images, created by or for Seller, either alone or with others, in the course of or as a result of any work performed by or for Seller which is covered by the PO using funds paid for by Buyer under the PO, together with all copyrights subsisting therein, shall be the sole property of Buyer. To the extent permitted under United States copyright law, all such works shall be works made for hire, with the copyrights therein vesting in Buyer. The copyrights of all other such works, including all of the exclusive rights therein, shall

be promptly transferred and formally assigned free of charge to Buyer.

PO §12. The PO also required DaVinci to maintain all information in confidence:

Confidential or Proprietary Information: All information obtained by Seller from Buyer related to the performance, acceptance or existence of the PO shall be received in confidence and shall remain the property of Buyer ("Proprietary Information"). Seller shall: (a) protect such Proprietary Information from disclosure to third parties with the same degree of care it exercises in protecting its own proprietary information, which shall not be less than reasonable care, and (b) *use, copy and disclose such Proprietary Information only to the extent necessary for performance of the PO.*

PO §14 (emphasis added). The PO requires that any lawsuit arising from the relationship between the parties shall be located in Minnesota and governed by Minnesota law. *Id.*, § 21.

20. Upon information and belief, at the time that it executed these agreements, DaVinci did not intend to adhere to these terms. Instead, DaVinci intended to develop its own competing designs and products, to learn information from Vista that it would use to promote its own commercial interests, to file design patent applications on Vista's plans (or slight modifications thereof) and to use its wrongful acts to attempt to pressure Vista into paying it money that it was not entitled to. Alternatively and in addition, on information and belief, DaVinci intended to require a premium payment for its services because it planned to utilize its access to Vista's confidential business information as leverage against Vista. Upon information and belief, DaVinci only intended to adhere to the terms of its confidentiality obligations for so long as it felt that doing so would satisfy its commercial interests. DaVinci did not disclose any of these plans or intentions to Vista. DaVinci also did not tell Vista that it was or would develop competing products or competing

suppressor designs.

21. Vista relied upon DaVinci's commitment not to disclose or use the information that Vista shared with DaVinci in sharing confidential information with DaVinci. Absent DaVinci's representations and agreement not to use or disclose Vista's information, Vista would not have worked with or shared commercial information with DaVinci. Further, Vista relied on its understanding that DaVinci was not developing and would not develop suppressor designs that would compete with Vista's design, or utilize Vista's plans, designs, or information in developing such products.

22. Vista employees also had conversations with DaVinci regarding the confidential and proprietary nature of their communications and product-development efforts. Finally, the firearms industry is a very competitive marketplace with quickly-developing trends and innovation. Consumer demand creates a lot of business pressure to deliver inventive concepts to market quickly. These conditions make it necessary for manufacturers, product developers, and retailers to collaborate, but also make it necessary that companies with a business relationship treat one another's business plans and product development information confidentially. Because of these factors, confidentiality is an industry standard.

23. Having secured a confidential relationship with DaVinci, Vista disclosed several items of competitive information to DaVinci. First, Vista disclosed its suppressor design as rendered by Fred Sparks. The transmission of the rendering was marked "Project Edge Suppressor - Confidential **DO NOT DISTRIBUTE.**" The renderings from Fred Sparks are to the right of this text. Vista also secured consumer concept testing on the



hexagonal design that reflected consumers' favorable response to the design. The suppressor market is experiencing rapid growth, so the hexagonal suppressor design is believed to have substantial value. Vista sent its detailed market information, including information regarding consumers' preference for its hexagonal design, to DaVinci.

24. Vista otherwise substantially invested in its product. It also provided substantial financial resources and personnel to its product-development enterprise.

25. Vista otherwise substantially invested in its product. In addition to paying DaVinci \$20,000 under the PO, Vista initiated, led, and completed the upfront market research, consumer insights/discovery work, design development, consumer testing of external designs, and customer validation of the final external design for suppressors. The approximate values/break-out includes: \$1,000 for the NFA, \$5,800 for design work with Fred Sparks, \$7,700 for consumer testing with Socratic technologies, \$5,000 for Shot Show/Customer qualitative work/validation, \$14,000 for labor/time to Vista team members. It filed design patents on the suppressor design in April of 2016. It also provided substantial financial resources and personnel to its product-development enterprise.

III. DaVinci is Unable to Meet Cost Requirements, is Terminated, and Retaliates by Hijacking Vista's Commercial Information.

26. Ultimately, Vista determined not to use DaVinci as its manufacturer for the hexagonal suppressor because DaVinci was not able to meet expense requirements that would make the product commercially viable. Vista notified DaVinci of its determination on March 1, 2016. DaVinci responded almost immediately by taking Vista's suppressor design, which it knew from Vista's internal information to be extremely valuable, for itself.

A. DaVinci Files a Fraudulent Design Patent Application to Threaten Vista.

27. DaVinci secretly filed a design patent on Vista's suppressor design. On March 10, 2016, just 10 days following Vista's notification that it would be working with another

manufacturer on its suppressor design, DaVinci filed a design patent application on Vista's design. DaVinci did so without notifying Vista, without naming Vista as a co-inventor, and as far as Vista knows, without disclosing Vista's contractual relationship and confidential communications to DaVinci as relevant prior art.

28. After filing a design patent application on Vista's design, DaVinci wrote to Vista asking whether Vista was going to forfeit its deposit or complete a pending Purchase Order. Vista determined not to request product from DaVinci and, in May, announced its new product line. The day of the launch, DaVinci wrote again:

Hello Jarrett,
 Congrats on your launch of the suppressor line with
 Silencerco. The hex looks nice; *just like our patent pending
 design.*
 I left a voice msg on your office line. Give me a call so we can
 discuss.
 Thanks,
 Wayne Thresher

29. Vista returned the call. DaVinci stated that it filed a design patent on March 10 and demanded \$100,000. A few days later, DaVinci wrote to Vista stating that because it was the first to file a design patent application and there is a "first to file" rule in the United States, any discussion of the NDA was "moot." DaVinci also suggested that because it had suggested a change in the relief of the rendering from Fred Sparks, it "owned" the suppressor design. It threatened to sue Vista, stating "*In [the event that our patent was filed before yours was], if you will not change to your version of the hex and desire to use our version, we are entitled to compensation for potential lost sales, lost design effort, and effort to find a new visual discriminator.*"

30. DaVinci's position that it "owns" the hexagonal-based suppressor design is apparently based upon a change in the relief only to keep the "look" the same and cut down on machine time. (proposed design modification "is *a negative of the hex* to

maintain that look but cut down the machine time.”).) This is incorrect for at least two reasons. The “modification” is already captured by Mr. Meinert’s original conception. The second reason that DaVinci does not “own” the suppressor design is because it promised not to use Vista’s design for its own commercial interests. To the extent that DaVinci created a “negative of the hex to create that look” it was using Vista’s design. It promised to do so only to benefit the Project, which was to develop Vista’s suppressor, and not to do so for any other purpose, or to disclose such use, or to put it to a commercial use of its own. This suggestion falls within the work of the PO mentioned above because it is part of the manufacturing, tooling, and development efforts (such as expertise regarding tactics to cut down on machine time) that Vista hired DaVinci for and paid \$20,000 under the PO to obtain.

31. Despite these issues and the fact that DaVinci claimed ownership of Vista’s design and demanded \$100,000, Vista responded and asked to set up a call, asking for a good time. DaVinci responded by stating that “Best time is probably after you find out when your [design patent] filing was made. Otherwise we could just be wasting time. If you filed before us, I don't want you exercising people you don't need to be exercising.” Vista responded again, asking for a call and stating “After discussing this with our legal team, they have asked for documentation showing that you were working on the hex pattern prior to entering into a partnership with Vista. Would you please send that documentation, so that I could share it with them?” In response, DaVinci withdrew its settlement offer of \$100,000 and said that information regarding its own conception was irrelevant because it had filed for a patent before Vista did:

Certainly, your legal team knows the information requested is irrelevant. It is also obvious that your team is not interested in accepting any version of the extremely generous settlement offer that you and I have discussed.

Having reviewed this with our legal team and members of our Board, I am withdrawing any offer of settlement, effective immediately.

32. In summary, DaVinci has taken the position that because it filed for a design patent before Vista did, it owns the design Vista conceived, shared with it under an obligation of confidentiality, and paid to develop. DaVinci has also determined that it is “withdrawing any offer” to settle, leaving Vista with only the instant option to protect its innovations.

B. DaVinci Appears Poised to Launch a Competing Product Utilizing Vista’s Design.

33. Not only has DaVinci presented the suppressor design to the patent office as its own design, DaVinci has developed and disclosed hexagonal-design products that it appears poised to market and sell. On April 18 and thereafter, DaVinci posted its own products, complete with Vista’s suppressor design, on its Facebook page:



34. These images show suppressors with Vista’s proprietary and confidential hexagonal ornamental design. These public disclosures were made in violation of the NDA. These public disclosures also eviscerated Vista’s trade secret protection for the design of the suppressor.

COUNT I
Defend Trade Secrets Act

35. Vista incorporates all prior paragraphs as though fully set forth herein.

36. Vista owns several iterations of a hexagonally-themed suppressor design. At the time

of the misappropriation, these suppressor designs were trade secret. The designs were being evaluated for, and intended to be used for, interstate commerce. Vista intended to evaluate, develop, market, and sell utilizing products embodying its suppressor designs. It anticipates launching one such product in the near future.

37. Vista also owns and developed commercial information related to the market, sale, and consumer reception towards suppressors and different suppressor designs. This information is valuable to Vista because it informs its business strategy with regard to the sale of suppressors in interstate commerce.

38. The suppressor design was misappropriated by Defendants, including in the following ways: it was publicly disclosed by DaVinci on its Facebook page on April 18 and thereafter; DaVinci denied Vista's repeated assertions of its ownership of the design; DaVinci developed and appears poised to market and sell competing products embodying the design; DaVinci applied for a design patent that either embodies Vista's design, is a close derivative of the design, or is a design that DaVinci "used" Vista's trade secret in order to conceive of and develop; DaVinci evaluated and relied upon Vista's confidential market and consumer information to further its own business goals.

39. DaVinci used and disclosed Vista's trade secrets without express or implied consent from Vista. At the time that DaVinci used and disclosed Vista's trade secrets, they were confidential and not publicly available.

40. DaVinci acquired access to Vista's trade secrets under circumstances giving rise to a duty to maintain the secrecy of Vista's trade secret or limit the use of the trade secret. DaVinci had a confidential relationship with Vista; the information was disclosed in the context of a confidential business arrangement; DaVinci had a fiduciary duty to Vista with respect to Vista's commercial information, and DaVinci was contractually restrained from

disclosing or using Vista's information. On information and belief, DaVinci also failed to disclose, concealed, or affirmatively misrepresented its own commercial interest in suppressor designs.

41. Wherefore, Vista has been and will be damaged by the wrongful misappropriation of its intellectual property, and seeks equitable and monetary relief to protect it and make it whole; Vista further states that if this matter presents exceptional circumstances that render an injunction inequitable, it is entitled to a reasonable royalty. It is also entitled to damages for DaVinci's efforts to seek a design application, an injunction on DaVinci's competing products, return of its trade secret information from DaVinci, and all other equitable and monetary relief that is just.

COUNT II

Minnesota Uniform Trade Secret Act

42. Vista incorporates all prior paragraphs as though fully set forth herein.

43. Vista specifically restates and realleges each of the elements recited above regarding Count I as equally applicable to this claim.

44. Vista additionally claims that it placed substantial efforts into maintaining its product development and market assessment efforts confidentially; that it made substantial efforts and made expenditures in support of its product development and market assessment efforts.

45. Vista claims that through the acts herein, DaVinci has stolen, unlawfully taken, and used fraud and deception to obtain Vista's trade secrets.

46. Wherefore, Vista has been and will be damaged by the wrongful misappropriation of its intellectual property, and seeks equitable and monetary relief to protect it and make it whole. Vista is entitled to double the amount of damages at trial pursuant to MGLA Ch. 93, § 42.

COUNT III

Unjust Enrichment & *Quantum Meruit*/Constructive Trust

47. Vista incorporates all prior paragraphs as though fully set forth herein.
48. Vista conferred a benefit upon DaVinci by sharing its competitive information and product development information.
49. Vista also shared information with DaVinci that relayed and disclosed the competitive value of the information that it shared with DaVinci.
50. DaVinci appreciated the economic worth of this information and has inequitably taken and retained it for itself.
51. Because of its wrongful disclosure and use of Vista's confidential information and trade secrets, DaVinci will be unjustly enriched by any patent issuing to it claiming Vista's innovations. DaVinci is also unjustly enriched by the head start on the development of a competing product, by its access to Vista's confidential information, and as otherwise alleged herein.
52. Constructive trust is available to prevent unjust enrichment based on wrongful use of information confidentially given.
53. DaVinci has wrongfully used Vista's information confidentially given to it for its own commercial purposes, including at least by filing for a patent, by pursuing a business plan informed by Vista's information, and by developing competing products.
54. Wherefore, Vista is entitled to the transfer of the articles of DaVinci's unjust enrichment, including any patents that issue based upon its designs and other assets and value resulting from information wrongfully taken from Vista, as well as monetary and equitable relief from the court.

COUNT IV

Breach of Contract

55. Vista incorporates all prior paragraphs as though fully set forth herein.

56. Vista and DaVinci are parties to a binding, valid and enforceable contract. The contract required that DaVinci not use Vista's information for a use other than to develop Vista's suppressor, that Defendants not use Vista's information for another purpose, that DaVinci not disclose Vista's information, and acknowledged Vista's intellectual property rights.

57. At the time that DaVinci used and disclosed Vista's information, it was a breach and violation of the contract.

58. Vista has been damaged by DaVinci's breach of contract in an amount exceeding \$75,000 to be determined at trial, and is entitled to be made whole, and prays for equitable relief.

COUNT V

Declaratory Judgment – Patent/Patent Application Ownership

59. Vista incorporates all prior paragraphs as though fully set forth herein.

60. DaVinci has asserted that it filed a patent application that covers Vista's commercial design for a suppressor, and that as a result it is entitled to the payment of royalties and other relief. DaVinci has threatened to sue Vista for infringement if/when the patent issues.

61. Vista owns the design for its suppressors, as well as the intellectual property embodied in the contested suppressor design. Its employee, Mr. Meinert, conceived of the design and retained intellectual dominion over the project. The inventor is the owner of a patent. Mr. Meinert is subject to an obligation to assign his inventions to Vista, and/or to comply with Vista's application for a patent covering the contested design.

62. As a result, a real and justiciable controversy exists between the parties.

63. Wherefore, Vista is entitled to a declaration that it owns the design asserted in DaVinci's pending patent application.

COUNT VI

Declaratory Judgment – Inventorship

64. Vista incorporates all prior paragraphs as though fully set forth herein.

65. DaVinci has asserted that it invented a design that covers Vista's commercial design for a suppressor, and that as a result it is entitled to the filing of a design application, payment of royalties and other relief. DaVinci has threatened to sue Vista for infringement if/when the patent issues.

66. Vista's employee, Mr. Meinert, conceived of and invented the design and retained intellectual dominion over the project. All of DaVinci's input and any suggestions were made to Vista and subject to Mr. Meinert's review and decision making. Mr. Meinert selected designs for testing, evaluated the designs, and decided which one would be implemented. Because of these things, he is the inventor.

67. As a result, a real and justiciable controversy exists between the parties.

68. Wherefore, Vista is entitled to a declaration that it owns the design asserted in DaVinci's pending patent application.

COUNT VII

Declaratory Judgment/Patent Invalidity/ Attempted Monopolization

69. Vista incorporates all prior paragraphs as though fully set forth herein.

70. DaVinci has engaged in predatory and anticompetitive conduct. It has stolen Vista's competitive information and design. It has filed a patent application in reliance upon, based upon, derived from or otherwise reflecting that information. Upon information and belief, DaVinci's patent application operates to defraud the patent office because it is claiming Vista's invention and conception as its own; did not disclose its interactions and relationship with Vista; did not disclose Vista's documents, information, and conception as material and relevant prior art (and indeed, if it did do so, violated the NDA in making such submission); and did not name Vista as an inventor or joint inventor. As a result,

DaVinci is claiming to have a legal monopoly over Vista's design to which it is not entitled and which is fraudulent/fraudulently obtained.

71. DaVinci has threatened Vista with suit based upon its fraudulent design patent application. DaVinci's threats include, but are not limited to, an email from Wayne Thresher on May 19 stating that Vista's suppressor product design "looks nice; *just like our patent pending design.*" Again on May 23 Wayne Thresher threatened to assert the pending design patent against Vista, stating "'*In [the event that our patent was filed before yours was], if you will not change to your version of the hex and desire to use our version, we are entitled to compensation for potential lost sales, lost design effort, and effort to find a new visual discriminator.*'"

72. These threats were made knowing that DaVinci was engaged in efforts to obtain a patent for which it had no right, and for which it had made inadequate or false disclosures to the Patent Office.

73. These threats, as well as the filing for a design patent application, were made with the specific intent to utilize Vista's design and innovation to obtain substantial market power and create a monopoly over the design that is unlawful. They were made knowing of the consumer demand for Vista's design and its other marketplace advantages. The relevant market is the consumer/tactical marketplace for externally-tooled suppressors in the United States.

74. These threats and/or the actual assertion of the issued patent will stifle competition. In light of these threats, Vista has a reasonable apprehension that DaVinci will attempt to stifle the competition Vista offers to it and the products that Vista plans to offer to the marketplace using any patent that issues to DaVinci. Vista is entitled to a declaration that it owns the contested designs, and in the interim is being threatened with a lawsuit has the

tendency to dampen its own introduction of products to the marketplace.

75. Upon information and belief, DaVinci plans to utilize the patent to demand a price substantially above the market price for suppressors. Its product as disclosed to Vista does not meet standard cost requirements, but by excluding Vista and other competitors from the marketplace DaVinci plans to charge above standard market price for its suppressors because of the protection that the design patent offers. In fact, based upon Vista's review, the only way for DaVinci to turn a profit on its competing suppressor market will be if it charges above the market price consumers are accustomed to. Because the contested design is a clear winner with consumers based upon Vista's market testing, DaVinci will have a pricing advantage above other competitors.

76. If DaVinci is allowed to obtain and assert its unlawful patent, it will achieve monopoly power because the patent itself will grant it that power, will allow it to charge premium prices, and will allow DaVinci to enter the marketplace with its own suppressor products with reduced or absent competition. As such, DaVinci's efforts to obtain the design patent and assert it are specifically targeted toward removing Vista and other industry participants as competitors and achieving monopoly power itself.

77. In the event that DaVinci obtains and asserts its fraudulent design patent Vista is entitled to treble damages, actual damages, costs, fees, equitable relief and a declaration that DaVinci's assertion of the patent violates antitrust law.

COUNT VIII **Unfair Competition**

78. Vista incorporates all prior paragraphs as though fully set forth herein.

79. At the time that it committed its wrongful, tortious, and otherwise unfair acts alleged herein, DaVinci was located in the state of Massachusetts. One of Vista's subsidiaries, Savage Arms, who signed the NDA at issue is also located in the state of

Massachusetts.

80. Vista and DaVinci are both “business persons” within the meaning of the statute.

81. As otherwise alleged herein, in the course of Vista’s business dealings, it worked with and made disclosures to DaVinci. DaVinci wrongfully disclosed and utilized those disclosures for its own ends. Both parties were engaged in commercial activities in a business context. As otherwise alleged herein, the parties were engaged in a commercial transaction and DaVinci engaged in fraud and fraudulent inducement.

82. Upon information and belief, DaVinci engaged in fraudulent representations to the Patent Office that they knew or should have known would reduce Vista’s rightful use of the contested design. DaVinci is engaging in commercial extortion by threatening to assert the fraudulent patent against Vista.

83. DaVinci never intended to honor its obligations under the NDA. It enticed Vista to develop, research, and disclose material commercial information and designs to DaVinci. DaVinci breached the NDA in a deliberate attempt to obtain the benefits of the contract (Vista’s commercial information and trade secrets), and avoided fulfilling its obligations to not disclose or use that information.

84. DaVinci violated its contract with Vista. It also attempted and is attempting to wrongfully claim Vista’s information and design for itself, and to use that information and design for its own commercial purposes, including by creating a competing product.

85. Wherefore, Vista is entitled to injunctive and other equitable relief, monetary remedy for the harm that it has suffered as a result of DaVinci’s unfair competition, double or triple damages, attorneys fees, and costs.

COUNT IX
Conversion

86. Vista incorporates all prior paragraphs as though fully set forth herein.

87. DaVinci wrongfully acquired Vista's trade secrets and commercial information, including documents, by misrepresenting its intent to treat such information confidentially and not to use it for its own purposes. Further, upon information and belief DaVinci has wrongfully acquired a filing date before the Patent Office for a design patent application covering Vista's design. Vista has contested DaVinci's ownership and right to the design several times but DaVinci has refused to refrain from claiming a continued right to the contested design. DaVinci presently seeks to wrongfully obtain a property right to the contested design in the form of a patent, which is a transferrable document. DaVinci's pending design application is also a form of property that is merged in, or identified with, a document that is presently filed with the Patent Office.

88. With respect to the contested design, the idea for the hexagonal design is novel and was conceived of by Vista employees. The disclosure of the idea, as well as several iterations of the design, was made to DaVinci in confidence. DaVinci has adopted and made use of the design through its products and patent application. The idea is concrete and is reflected in prototype products and commercial plans.

89. If successful, DaVinci's strategy will deprive Vista of the right to use its intellectual property, as DaVinci's application may result in a patent that excludes Vista from its own design, and which may be cited as a prior art reference against Vista's own design patent applications.

90. With respect to Vista's other commercial information, DaVinci retains information and knowledge of Vista's competitive information which it continues to wrongfully employ on its own behalf.

91. Wherefore, Vista is entitled to the full value of what DaVinci has converted for its own use as actual damages for the loss, and/or the return of its property.

COUNT X
Fraudulent Inducement

92. Vista incorporates all prior paragraphs as though fully set forth herein.

93. DaVinci represented to Vista both orally and in writing that it would preserve Vista's information as confidential. DaVinci and Vista had oral discussions of the importance of NDAs and confidentiality, and DaVinci agreed to nondisclosure and not to use Vista's information as described herein.

94. Upon information and belief, DaVinci either did not intend to adhere to its agreement or intended to adhere to it only so long as it felt it suited its own commercial purposes. DaVinci did not tell Vista that it did not intend to refrain from disclosing or using Vista's commercial information.

95. Vista reasonably relied upon its expectation that DaVinci would comply with their agreements. Adhering to confidential and fair business dealing is standard in the industry.

96. Vista relied upon these representations to its own detriment. DaVinci stole commercial information and designs that have material value, and threatens to prevent Vista from using the information and designs that it developed itself at its own expense.

97. Vista has been damaged by DaVinci's fraud in an amount exceeding \$75,000 to be determined at trial, is entitled to be made whole, and prays for equitable relief.

COUNT XI
Intentional Nondisclosure/Fraudulent Concealment

98. Vista incorporates all prior paragraphs as though fully set forth herein.

99. In May, 2016, in oral discussions with Vista, Wayne Thresher of DaVinci represented to Vista that before the parties became parties to their agreements, DaVinci was already working on a hexagonal-patterned suppressor.

100. Vista believes this representation to be inaccurate. However, to the extent that DaVinci was in fact working on a hexagonal-patterned suppressor design, it did not

disclose this to Vista. DaVinci knew that Vista was working on a product that would include an external design to a suppressor. However, DaVinci only revealed that it had smooth suppressors, and did not state at any time that it was working on a design that would match Vista's other hexagonal patterns. Similarly, DaVinci did not disclose that it planned to develop or release a competing product at the time that Vista made disclosures of commercial and trade secret information to it, or at the time of the signature of the NDA or thereafter.

101. If DaVinci had disclosed that it had a design for a hexagonal-patterned suppressor and planned to develop and release a competing product designed very similarly to Vista's, Vista would have chosen another party to work on the design with. This is because to the extent that DaVinci had its own plans for a similarly designed suppressor, it would be detrimental to share consumer information and market information with a potential competitor. Vista relied upon DaVinci's nondisclosure of its pre-existing designs and commercial plans both in evaluating DaVinci as a vendor and consultant and in making disclosures of commercial and trade secret information to DaVinci.

102. Vista has been damaged by DaVinci's fraud in an amount exceeding \$75,000 to be determined at trial, is entitled to be made whole, and prays for equitable relief.

COUNT XIII

Tortious Interference with Economic Advantage

103. Vista incorporates all prior paragraphs as though fully set forth herein.

104. DaVinci has interfered with Vista's relationship with potential customers for suppressors by depriving, or attempting to deprive or threaten, Vista's information and designs intended to be utilized in selling suppressors an improved suppressor design.

105. DaVinci knew of Vista's relationship with potential customers for suppressors because Vista confidentially disclosed product information and design testing to DaVinci

that disclosed the advantages of the design.

106. Davinci's theft of Vista's trade secret and other commercial information deprived Vista of the advantage of that information and research because DaVinci took the opportunity created by the design and information for itself, and is attempting to exclude Vista from utilizing it through the application for a design patent.

107. Vista has been damaged by DaVinci's fraud in an amount exceeding \$75,000 to be determined at trial, is entitled to be made whole, and prays for equitable relief.

COUNT XIV

Good Faith and Fair Dealing

108. Vista incorporates all prior paragraphs as though fully set forth herein.

109. As otherwise described herein, DaVinci has deprived Vista of the benefit of its agreements, including its agreement not to use Vista's information at all or for a period of three years, and its commitment not to disclose Vista's information, and its ownership of intellectual property.

110. Vista has been damaged by DaVinci's fraud in an amount exceeding \$75,000 to be determined at trial, is entitled to be made whole, and prays for equitable relief.

JURY DEMAND

1. Vista demands trial by jury of all issues triable by a jury.

PRAYER FOR RELIEF

WHEREFORE, Vista prays for judgment as follows:

- a. A judgment in favor of Vista on all of its claims;
- b. A declaration that Vista owns the DaVinci patent application and Bob Meinert invented the hexagonal design for a suppressor;
- c. An award to Vista of its reasonable costs and expenses of litigation, including attorneys' fees and expert witness fees;

d. Granting to Vista all monetary or equitable relief to the fullest extent allowed under statutory or common law, including enhanced damages relevant to any of its claims, including actual or consequential losses, disgorgement, unjust enrichment, constructive trust, a reasonable royalty, exemplary or punitive damages, or otherwise;

e. Granting the requested injunction against DaVinci; and

f. Granting such other and further relief as the Court may deem just and proper.

Dated: June 20, 2016

Respectfully submitted,

s/ Larina A. Alton

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