

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION



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ABI ATTACHMENTS, INC.,

Plaintiff,

v.

KISER ARENA SPECIALISTS, INC.,
ROBERT D. KISER, Individually and as
Trustee of THE KISER FAMILY TRUST,
and JAMES KISER,

Defendants.

Case No. 1:21-CV-890

COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

Plaintiff ABI Attachments, Inc. (“ABI”) for its Complaint against Defendants Kiser Arena Specialists, Inc. (“KAS”), Robert D. Kiser (“Bob”), The Kiser Family Trust (“the Trust”), and James Kiser (“Jim”), states as follows:

Parties, Jurisdiction, and Venue

1. ABI is an Indiana corporation with its principal place of business in Mishawka, Indiana.
2. KAS is a Texas corporation with its principal place of business in Gainesville, Texas.
3. Bob is an individual and a resident of Texas.
4. The Trust is a trust formed under Texas law and administered in Texas.
5. Jim is an individual and a resident of Texas.

6. Bob, Jim, and the Trust make up all the shareholders of KAS. Bob is the trustee of the Trust, and Bob and Jim are the principal officers of KAS. In this Complaint, KAS, Bob, Jim, and the Trust are sometimes collectively referred to as “the Kiser Parties.”

7. This action arises under the trademark laws of the United States and related state law claims, including but not limited to the Lanham Act, Indiana common law, breach of contract, and the Indiana Trade Secrets Act.

8. This Court has jurisdiction over the subject matter of this case under 15 U.S.C. § 1121, 28 U.S.C. §§ 1331 and 1338(b), as well as supplemental jurisdiction under 28 U.S.C. § 1367.

9. This Court also has jurisdiction over the subject matter of this case under 28 U.S.C. § 1332 because there is complete diversity of citizenship between Plaintiff and Defendants and the amount in controversy exceeds \$75,000.

10. This Court has personal jurisdiction over the Defendants, and venue is proper in this district, because the Kiser Parties consented to this Court’s jurisdiction and venue under Section 20 of the *Product Lines Purchase Agreement* discussed more fully below.

11. The Court also has jurisdiction over the Defendants because the Kiser Parties have caused harm in the State of Indiana, because some of the conduct complained of in this Complaint occurred in the State of Indiana, and because, upon information and belief, the Kiser Parties do business in the State of Indiana.

General Allegations

12. On or about September 30, 2016, ABI entered into a *Product Lines Purchase Agreement* with the Kiser Parties. A true and accurate copy of this agreement is attached as **EXHIBIT 1**.

13. Under the *Product Lines Purchase Agreement*, ABI acquired various assets and intellectual property defined more fully in the agreement, including the trademark consisting of and incorporating the term DRAGMASTER® (“the Mark”), and also including the “Product Lines together with all specifications, shop drawings, blueprints, records and intellectual property rights relating to the Product Lines.”

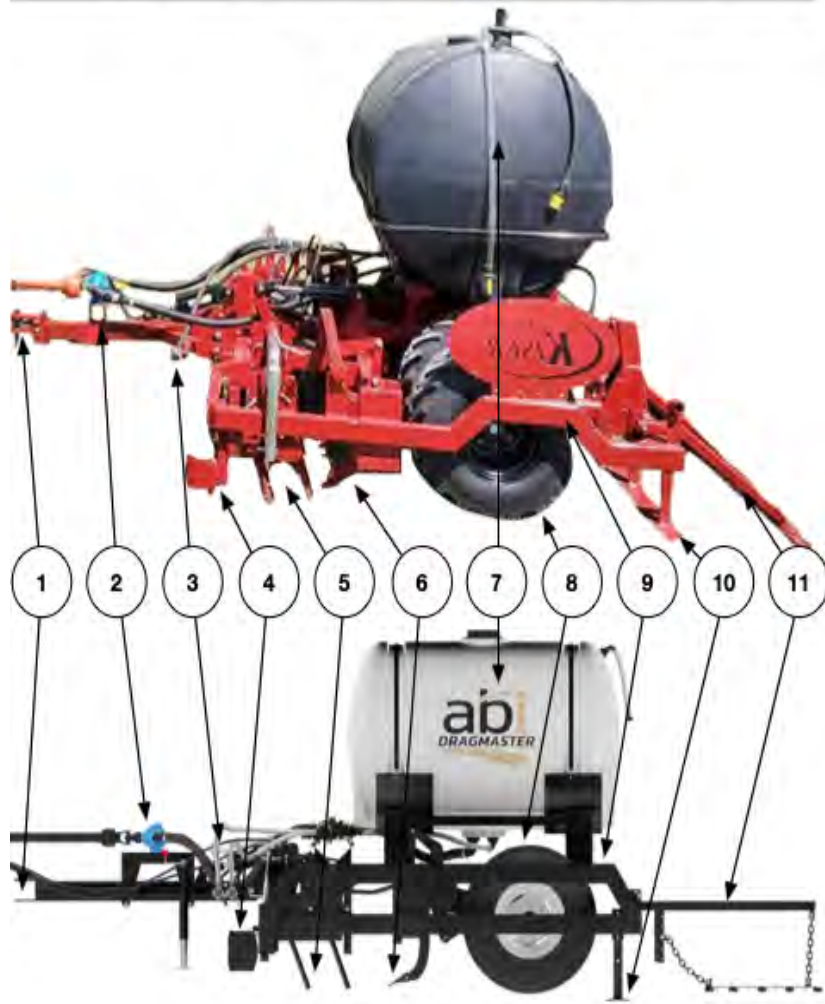
14. The “Product Lines” are defined in the *Product Lines Purchase Agreement* to include, among other things, the Kiser DragMaster and Kiser Edge.

15. Although the Kiser Parties retained rights to the name “Kiser,” all other intellectual property rights associated with the Product Lines belong to ABI. These products are now produced by ABI and not by any of the Kiser Parties.

16. But the Kiser Parties have utilized the “specifications, shop drawings, blueprints, records and intellectual property rights relating to the Product Lines” they sold to ABI to design, manufacture, and market knockoff products.

17. For example, the Kiser 1000 Series is substantially similar to the ABI DragMaster in at least 11 respects, as illustrated below:

Kiser 1000 Series Compared To ABI DragMaster

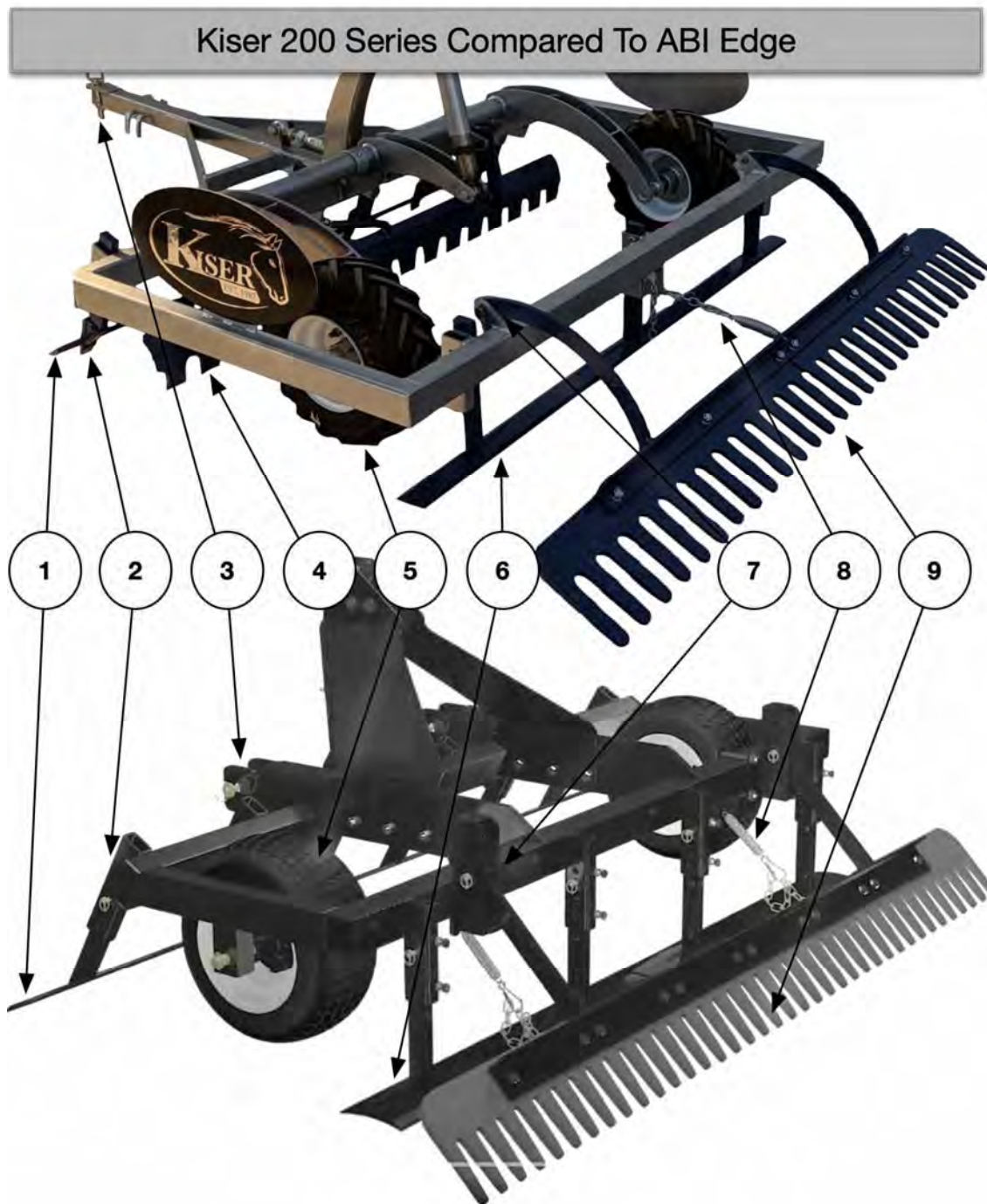


18. In marketing materials, KAS refers to its products as “redesigned,” indicating the Kiser Parties based it on ABI’s intellectual property rather than developing the product from scratch.

19. In other marketing materials, KAS has promoted its parts sales business by promoting “replacement parts for new and old drags both” and specifically targeting those who own “an older Kiser Drag.”

20. All intellectual property relating to anything constituting an “older Kiser Drag” was sold to ABI under the *Product Lines Purchase Agreement*.

21. As with the DragMaster, the Kiser 200 Series is substantially similar to the ABI Edge, as illustrated below:



22. Upon information and belief, the Kiser Parties may be developing other knockoff products using intellectual property that belongs to ABI.

23. The decision by the Kiser Parties to give their products a generic number rather than a distinctive name is calculated to trade on ABI's goodwill and unfairly use the Mark in promoting KAS products as a "redesigns" of ABI products.

24. In fact, KAS has even used the same background music in some of its promotional videos that ABI uses in some of its promotional videos. *Compare* <https://youtu.be/CWPjo2Ogzbc> (KAS) *with* <https://youtu.be/9lY2X2UvoL4> (ABI).

25. The Mark is the subject of United States Trademark Registration No. 4,044,235 for use in connection with equipment used for grooming and maintaining equestrian arenas, namely, arena drags.

26. ABI has attained significant goodwill among customers in the United States and around the world. The Mark and the goodwill of the business associated with it are of inestimable value to ABI.

27. ABI displays the Mark on its products, product literature, and advertising materials in order to assure customers that they are buying genuine ABI products and services, which customers have come to recognize as representative of ABI's superior quality, service, and reliability.

28. Through its advertisements and other communications, the Kiser Parties are deceptively and unfairly trading on ABI's Mark.

29. For example, representatives of KAS have referred to certain KAS products as a redesign of or a replacement for the ABI DragMaster.

30. ABI has not licensed the use of the Mark to any of the Kiser Parties.

31. The Kiser Parties know of ABI's rights to the Mark, and they are willfully using the Mark to advertise, distribute, and sell competing products that have no affiliation with ABI.

32. This unauthorized use of the Mark and the associated false and misleading advertising, which are used in interstate commerce, are likely to cause, and have caused, confusion that Defendants' products are somehow endorsed by or affiliated with ABI.

33. The conduct of the Kiser Parties has caused and is causing irreparable damage to ABI's reputation and the goodwill associated with both the Mark and the other intellectual property acquired under the *Product Lines Purchase Agreement*.

34. Defendants' conduct is willful.

35. ABI has no adequate remedy at law.

Count I – Breach of Contract

36. ABI reasserts the allegations of Paragraphs 1- 34.

37. In breach of its obligations under the *Product Lines Purchase Agreement*, the Kiser Parties have misappropriated intellectual property they sold to ABI and no longer own, using it to design and promote knockoff products.

38. In further breach, the Kiser Parties have sabotaged the goodwill they sold to ABI by attempting to trade on the "DragMaster" name and to target owners of "older Kiser Drags."

39. ABI has complied with all its obligations under the *Product Lines Purchase Agreement*.

40. ABI has incurred damages caused by the Kiser Parties' breaches of contract that are expected to exceed \$75,000.

41. In fact, money damages will not adequately remedy ABI for these breaches because the harm caused by the Kiser Parties is irreparable.

42. Under Section 10(a) of the *Product Lines Purchase Agreement*, ABI is also entitled to recover from the Kiser Parties all of ABI's legal fees and other expenses incurred as a result of the Kiser Parties' breach of contract.

Count II – Misappropriation of Trade Secrets

43. ABI reasserts the allegations of Count I.

44. The Kiser Parties have misappropriated, by improper means, ABI's proprietary information, including but not limited to the "specifications, shop drawings, blueprints, records and intellectual property rights relating to the Product Lines."

45. The "specifications, shop drawings, blueprints, records and intellectual property rights relating to the Product Lines" qualify as trade secrets.

46. The Kiser Parties' misappropriation of trade secrets entitles ABI to recover lost profits, punitive and treble damages, costs and attorneys' fees, and injunctive relief.

Count III – Lanham Act Violations

47. ABI reasserts the allegations of Counts I and II.

48. Defendants' willful, intentional, unlawful and unauthorized use in commerce of the Mark constitutes a violation of 15 U.S.C. § 1114(1).

49. ABI is entitled to recover actual and treble damages, an accounting for Defendants' profits, attorneys' fees, and the costs of this litigation according to 15 U.S.C. § 1117, as well as injunctive relief under 15 U.S.C. § 1116.

Count IV – False Designation / False Advertising

50. ABI reasserts the allegations of Counts I through III.

51. Defendants' intentional, unlawful, and unauthorized use in commerce of the Mark, and Defendants' false advertising, as described above, is likely to cause confusion, mistake or deception as to origin, sponsorship, or approval of Defendants' products and therefore constitutes false designation of origin and false advertising in violation of 15 U.S.C. § 1125(a).

52. ABI is entitled to recover actual and treble damages, Defendants' profits, ABI's attorneys' fees, and the cost of this litigation—all according to 15 U.S.C. § 1117, as well as injunctive relief according to 15 U.S.C. § 1116.

Count V – Unfair Competition

53. ABI reasserts the allegations of Counts I through IV.

54. By engaging in the conduct described above, Defendants have knowingly engaged in the unlawful passing off of their products as being ABI products or otherwise affiliated with ABI—all in violation of the common law of unfair competition in the State of Indiana.

55. Defendants have also engaged in willful misappropriation of trade secrets for the sole purpose of causing economic harm to ABI—also in violation of Indiana's commons law of unfair competition.

56. ABI is entitled to recover actual and punitive damages for Defendants' unfair competition.

Count VI – Common Law Trademark Misappropriation

57. ABI reasserts the allegations of Counts I through V.

58. The conduct of Defendants described above violates and infringes ABI's common law rights in the Mark in violation of the common law of the State of Indiana.

59. ABI is entitled to recover actual and punitive damages for Defendants' infringement.

Count VII – Unjust Enrichment

60. ABI reasserts the allegations of Counts I through VI.

61. Under the *Product Lines Purchase Agreement* and its ancillary agreements, ABI has paid the Kiser Parties more than \$1.6 million.

62. These payments have conferred a benefit on the Kiser Parties.

63. Due to the Kiser Parties' actions, ABI has not received an adequate benefit in return, unjustly enriching the Kiser Parties at ABI's expense.

Prayer for Relief

THEREFORE, ABI respectfully requests the Court to enter judgment in its favor and against the Defendants as follows:

- (a) Preliminarily and permanently enjoining Defendants and all others in active concert with them from using the Mark in any manner without ABI's authorization.
- (b) Preliminarily and permanently enjoining Defendants and all others in active concert with them from any other act likely to cause confusion as to the sponsorship, affiliation, or endorsement of Defendants or their products by or with ABI.

- (c) Preliminarily and permanently enjoining Defendants and all others in active concert with them from making or selling knockoff products derived from ABI's intellectual property.
- (d) Directing Defendants and all others acting in concert with them to account and pay over to ABI all revenues realized by them from their use of the Mark or other tortious or unlawful conduct.
- (e) Directing Defendants to pay to ABI all actual damages suffered due to Defendants' actions.
- (f) Directing Defendants to pay treble and punitive damages, so as to deter Defendants and others similarly situated from like conduct in the future.
- (g) Awarding ABI the costs of this action, including its reasonable attorneys' fees incurred.
- (h) And granting all other appropriate relief.

Jury Demand

ABI respectfully demands trial by jury on all issues so triable.

Respectfully submitted,

/s/ Michael J. Hays

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