

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. _____

SMARTWOOL CORPORATION,
a Colorado corporation,

Plaintiff,

v.

NATURA WORLD, INC.,
a corporation of Canada,

Defendant.

COMPLAINT

Plaintiff Smartwool Corporation (“Smartwool”), by its undersigned attorneys, in support of its Complaint against Defendant Natura World, Inc. (“Defendant”), alleges and states as follows:

NATURE OF THE CASE

1. This is an action for trademark infringement, false advertising, and unfair competition under federal, state, and common law.
2. Smartwool brings this action against Defendant seeking relief from Defendant’s use of the confusingly similar trademark SMART WOOL in connection with its goods.

THE PARTIES

1. Plaintiff Smartwool is a Colorado corporation with its principal place of business at 3495 Airport Circle, Steamboat Springs, Colorado 80437.

2. On information and belief, Defendant is a corporation of Canada with its principal place of business at 181 Pinebush Road, Cambridge, Ontario, NIR 7H8 Canada.

3. On information and belief, Defendant's SMART WOOL-branded products are sold throughout the United States, including in Colorado.

JURISDICTION AND VENUE

4. This action arises and is brought under the Lanham Act, 15 U.S.C. § 1051, *et seq.*, and the laws of the State of Colorado.

5. Subject matter jurisdiction exists under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338, 1367(a).

6. Personal jurisdiction is proper because Defendant has infringed Smartwool's SMARTWOOL mark in this district and has caused harm to Smartwool in this district. In addition, Defendant has continuous and systematic contacts with the district, because its products are sold through retail outlets in this district and because Defendant promotes its SMART WOOL products to residents of this district through its Internet website located at <http://www.naturaworld.com>.

7. Venue is proper in the United States District Court for the District of Colorado pursuant to 28 U.S.C. § 1391(b)(2) because the acts of trademark

infringement occurred in this district, and Defendant's conduct has harmed Smartwool in this district.

GENERAL ALLEGATIONS

Smartwool and its Products

8. Headquartered in Steamboat Springs, Colorado, Smartwool has been continuously selling socks and other apparel items under the SMARTWOOL mark since at least as early as 1995.

9. During this time, Smartwool has invested significant time and resources in promoting the SMARTWOOL name and mark in the United States.

10. As a result of Smartwool's promotional efforts and the high quality nature of its apparel, the SMARTWOOL brand has become one of the premier brands in the outdoor apparel category, and Smartwool has established valuable goodwill and common law rights in the SMARTWOOL mark.

11. In addition to socks and outdoor apparel for adults, Smartwool sells infant and children's clothing and accessories under the SMARTWOOL mark.

12. The popularity and recognition of the SMARTWOOL brand has grown significantly over the years since the company's founding, and today, SMARTWOOL-branded apparel is sold in more than approximately 5,200 retail stores throughout the United States.

13. Smartwool owns several U.S. trademark registrations for the SMARTWOOL mark, including the following:

MARK	GOODS	REG. NO.	REG. DATE
SMARTWOOL	Socks made in whole or significant part of wool for casual and active sports	2,188,918	9/15/1998
SMARTWOOL	Clothing, namely, undergarments, thermal underwear, leggings, headwear, ski hats, caps, gloves, turtleneck sweaters, sweaters, scarves, neck gaiters, athletic uniforms, bicycling pants, athletic pants, athletic shorts, jogging suits, sweat suits, pants and shirts made in whole or significant part of wool	2,314,850	2/1/2000
SMARTWOOL (Stylized) 	Wool socks for casual and active sports use	1,973,016	5/7/1996

14. Copies of the Certificates of Registration for each of these marks are attached at *Exhibit A*.

15. The foregoing registrations are valid, subsisting, and incontestable, and therefore constitute conclusive evidence of the validity of the marks and registrations, and of Smartwool's ownership of and exclusive right to use the SMARTWOOL mark in connection with the goods set forth in the registrations. The registrations also provide constructive notice of Smartwool's ownership of the SMARTWOOL mark.

Defendant's Wrongful Acts

16. Defendant Natura World, Inc. produces and sells bedding products.

17. Well after Smartwool's first use and federal registration of its SMARTWOOL mark, Defendant adopted an essentially identical mark, SMART WOOL.

18. Defendant uses the SMART WOOL mark in connection with the promotion and sale of bedding products in the U.S.

Injury to Smartwool

19. Defendant's actions are likely to cause confusion, mistake, or deception as to the source or origin of the SMART WOOL-branded bedding it sells, and are likely to falsely suggest a sponsorship, connection, association, or license arrangement with Smartwool, thereby injuring Smartwool and the public.

20. Defendant's use of the SMART WOOL mark in connection with its bedding products has irreparably injured and, if permitted to continue, will irreparably injure Smartwool, and its goodwill in its SMARTWOOL mark.

21. Smartwool has no adequate remedy at law.

FIRST CLAIM FOR RELIEF
Infringement of a Registered Trademark Under
Section 32 of the Lanham Act
15 U.S.C. § 1114(1)(a)

22. Smartwool incorporates by reference the preceding allegations of this Complaint.

23. Defendant's actions described above are likely to cause confusion, mistake, or deception as to the source, origin, sponsorship, or approval of Defendant's products.

24. Defendant's actions therefore constitute infringement of Smartwool's federally registered marks referenced above in violation of Section 32 of the Lanham Act, 15 U.S.C. §1114.

25. Upon information and belief, Defendant's acts of infringement have been willful and deliberate.

26. As a direct and proximate result of Defendant's actions as alleged above, Smartwool has been damaged and will continue to be damaged.

SECOND CLAIM FOR RELIEF
False Designation of Origin Under
Section 43 of the Lanham Act
15 U.S.C. § 1125(a)(1)(A)

27. Smartwool incorporates by reference the preceding allegations of this Complaint.

28. Defendant's actions described above are likely to cause confusion, mistake, or deception as to the origin, sponsorship, or approval of Defendant's products sold under the SMART WOOL mark.

29. Defendant's use of the SMART WOOL mark in commercial advertising or promotion misrepresents the nature, characteristics, or qualities of Defendant's products.

30. Defendant's actions therefore constitute false designation of origin and false advertising in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A)-(B).

31. Upon information and belief, Defendant's acts of false designation of origin and false advertising have been willful and deliberate.

32. As a direct and proximate result of Defendant's actions alleged above, Smartwool has been and continues to be damaged.

THIRD CLAIM FOR RELIEF
Violation of Colorado Consumer Protection Act
Colo. Rev. Stat. § 6-1-101, *et seq.*

33. Smartwool incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

34. In the course of its business, Defendant is passing off its bedding products as produced by, affiliated with, sponsored by, or licensed by Smartwool.

35. Defendant's use of the SMART WOOL mark falsely represents the source, sponsorship, and/or approval of its products.

36. Defendant's deceptive trade practices have had and will continue to have a significant negative impact on the public as actual and potential consumers of Smartwool's products.

37. Defendant's actions described above constitute deceptive trade practices in violation of the Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-105(1)(a), (b), and (e).

38. Upon information and belief, Defendant's acts have been willful and deliberate.

39. As a direct and proximate result of Defendant's actions described above, Smartwool has been damaged and will continue to be damaged.

FOURTH CLAIM FOR RELIEF
Common Law Unfair Competition

40. Smartwool incorporates by reference the preceding allegations of this Complaint.

41. Defendant's actions described above constitute unfair competition in violation of the common law of the State of Colorado.

42. Upon information and belief, Defendant's acts of unfair competition have been willful and deliberate.

43. As a direct and proximate result of Defendant's actions described above, Smartwool has been damaged and will continue to be damaged.

JURY DEMAND

Smartwool demands a trial by jury on all issues raised in this Complaint.

PRAYER FOR RELIEF

FOR THESE REASONS, Smartwool prays that this Court enter judgment in its favor on each and every claim for relief set forth above and award it relief including, but not limited to, the following:

A. An injunction permanently enjoining Defendant, its agents, servants, employees, privies, representatives, successors, assigns, attorneys, and all other persons in active concert or participation with it from:

1. Using the mark SMART WOOL in any manner or form, alone or with other terms, including the term NATURA, on or in connection with the promotion, sale, advertisement, merchandising, display, or sponsorship of any bedding products, and from otherwise competing unfairly with Smartwool; and

2. Performing any other acts that are likely to lead the public to believe that products sold or offered for sale by Defendant are in any manner licensed, sponsored, approved, or authorized by Smartwool.

B. An Order that Defendant deliver up for destruction or destroy all advertising articles, accessories, labels, tags, signs, pamphlets, promotional materials, brochures, and other items in its possession or control, depicting the SMART WOOL mark standing alone or in connection with other terms, including NATURA.

C. An Order, pursuant to 15 U.S.C. § 1119, that the United States Patent and Trademark Office refuse registration to Defendant's Application Serial No. 78/271,757 to register the mark NATURA SMART WOOL.

D. An Order requiring Defendant to pay Smartwool's attorney's fees in this action pursuant to 15 U.S.C. § 1117(a), Colo. Rev. Stat. § 6-1-113, and other applicable laws; and

E. For such other and further relief as this Court deems just and equitable.

Dated: April 11, 2008

s/ Andrea Anderson

Andrea Anderson (Atty. Reg. #36516)
Annie C. Haselfeld (Atty. Reg. #39097)
HOLLAND & HART LLP
1800 Broadway, Suite 300
Boulder, Colorado 80302
Telephone: 303-473-2700
Facsimile: 303-473-2720

**ATTORNEYS FOR PLAINTIFF
SMARTWOOL CORPORATION**

Plaintiff's Address:

3495 Airport Circle
Steamboat Springs, Colorado 80437

EXHIBIT A

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

Reg. No. 2,188,918

United States Patent and Trademark Office

Registered Sep. 15, 1998

**TRADEMARK
PRINCIPAL REGISTER**

SMARTWOOL

**DUKE DESIGNS, INC. (COLORADO CORPORATION)
207 PARK AVENUE
STEAMBOAT SPRINGS, CO 80477**

**FIRST USE 1-27-1994; IN COMMERCE
1-27-1994.**

**OWNER OF U.S. REG. NOS. 1,905,709 AND
1,973,016.**

FOR: SOCKS MADE IN WHOLE OR SIGNIFICANT PART OF WOOL FOR CASUAL AND ACTIVE SPORTS, IN CLASS 25 (U.S. CLS. 22 AND 39).

SER. NO. 75-238,370, FILED 2-7-1997.

RAUL CORDOVA, EXAMINING ATTORNEY

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

Reg. No. 2,314,850

United States Patent and Trademark Office

Registered Feb. 1, 2000

**TRADEMARK
PRINCIPAL REGISTER**

SMARTWOOL

DUKE DESIGNS, INC. (COLORADO CORPORATION)
207 PARK AVENUE
STEAMBOAT SPRINGS, CO 80477

FOR: CLOTHING, NAMELY, UNDERGARMENTS, THERMAL UNDERWEAR, LEGGINGS, HEADWEAR, SKI HATS, CAPS, GLOVES, TURTLENECK SWEATERS, SWEATERS, SCARVES, NECK GAITERS, ATHLETIC UNIFORMS, BICYCLING PANTS, ATHLETIC PANTS, ATHLETIC SHORTS, JOGGING SUITS,

SWEAT SUITS, PANTS AND SHIRTS MADE IN WHOLE OR SIGNIFICANT PART OF WOOL, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 1-27-1994; IN COMMERCE 9-15-1999.

OWNER OF U.S. REG. NOS. 1,905,709 AND 1,973,016.

SN 75-238,369, FILED 2-7-1997.

RAUL CORDOVA, EXAMINING ATTORNEY

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

United States Patent and Trademark Office

Reg. No. 1,973,016

Registered May 7, 1996

**TRADEMARK
PRINCIPAL REGISTER**

smartwool

DUKE DESIGNS, INC. (COLORADO CORPORATION)
207 PARK AVENUE
P.O. BOX 771143
STEAMBOAT SPRINGS, CO 80477

FOR: WOOL SOCKS FOR CASUAL AND ACTIVE SPORTS USE, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 1-18-1995; IN COMMERCE 1-18-1995.

OWNER OF U.S. REG. NO. 1,905,709.

SER. NO. 74-689,028, FILED 6-15-1995.

RAUL CORDOVA, EXAMINING ATTORNEY