

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

COLEMAN LAW FIRM

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National Public Seating Corporation

NATIONAL PUBLIC SEATING
CORP., a New Jersey
corporation,

Plaintiff,

- vs. -

SUPPER CHAIR ENTERPRISE CO.,
LTD., a/k/a Double Promise
InterNational Ltd.,

Defendant.

CIVIL ACTION NO. _____

COMPLAINT

INTRODUCTION

Plaintiff National Public Seating Corporation ("National"), by its undersigned attorneys, by and for its complaint against the defendant Supper Chair Enterprise Co., Ltd., also known as Double Promise International Ltd., states as follows:

National brings this action to recover the losses it has incurred in connection with its purchase of folding several chairs, manufactured by defendant, exclusively for National. These losses exceed 75 thousand dollars and, if not enjoined, defendant's actions threaten irreparable harm to National.

JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to 28 U.S.C.A. § 1332, based on the diversity of citizenship between plaintiff and Defendant, and the fact that this claim seeks to recover an amount in excess of \$75,000, exclusive of interests and costs, and consistent with the express agreement of the parties.

2. Venue is properly laid in this judicial district pursuant to 28 U.S.C.A. § 1391(a), in that Defendant has availed himself to the jurisdiction of a New Jersey District Court because it has contracted with a New Jersey corporation to do business in the state of New Jersey.

PARTIES

3. Plaintiff National is a corporation formed under New Jersey law. Its principal place of business is in Mahwah, New Jersey.

4. National is the nation's premier manufacturer and supplier of institutional and commercial folding chairs, accessories and related products. National is dedicated to manufacturing and distributing the highest quality product at competitive pricing. National maintains significant inventory at strategically located warehouses nationwide, for quick, easy, and inexpensive shipping.

5. National specializes in seating products for the educational, religious, hospitality, government, commercial and

other institutional markets. National's furniture is produced of only the highest quality grade materials and craftsmanship. Central to its business plan is the maintenance of deep stock available to customers at aggressively competitive prices.

6. Defendant is a corporation with its principal place of business in Taiwan, Republic of China. Upon information and belief, Defendant is not incorporated in the United States and is not registered to conduct business in any state of the United States.

7. Defendant has conducted business in New Jersey.

8. Defendant manufactures furniture on behalf of suppliers for commercial use.

FACTS APPLICABLE TO ALL COUNTS

9. In 1998, National sought to enhance its market position through the development and production of a line of specially designed chairs that were of a quality superior to any other available in the market.

10. National had designed a folding chair that was a unique product because it consisted of a specific, proprietary combination of features that had not been replicated in the market by its competitors (the "National Chair").

11. Because of National's expenditure of capital, man-hours, experience, trial and error, and other developmental and research and development resources, the manufacturing process by which the National Chair was produced was unique and proprietary

to National.

12. As National did not make the chairs it sold, it sought a manufacturer to produce its folding chairs.

13. Defendant represented to National that defendant had experience in the manufacture and production of folding chairs.

14. In early 1998, National's representatives visited Taiwan to inspect defendant's facilities.

15. Starting in or about March 1998, National and defendant entered into several months' of discussions and meetings regarding the manufacture of the National Chair.

16. In January 1999, after extensive negotiations and modifications, National and defendant executed an agreement (the "Agreement") whereby defendant agreed to manufacture the National Chair for National. A copy of the Agreement is attached as Exhibit A and is incorporated by reference into this Complaint.

17. The terms of the Agreement provided that all of National's proprietary technology regarding the National Chair, including the samples provided by National, would remain the exclusive property of National.

18. The Agreement also forbade defendant from duplicating or releasing to third parties the technology regarding the folding chairs without written authorization from National.

19. Further, defendant obligated itself under the Agreement not to manufacture or sell the National Chair without National's written approval.

20. Significantly, defendant was forbidden from exhibiting,

advertising or showing the National Chair in trade shows or for other advertising purposes.

21. Defendant committed itself in the Agreement to be liable to National for all direct and indirect damage and loss arising from its breach of the Agreement.

22. A critical component of the Agreement was defendant's agreement to manufacture the National Chair in accordance with the exact technological and design specifications that National provided.

23. The features of the National Chair that rendered them unique included, among other things, the style of the backs of the chairs, the number of hinges connecting the parts of the chairs, the types of glides to be used on the chairs, and the design and location of chair labels for the folding chairs and, most importantly, the proprietary technology, developed by National, employed to produce the National Chair

24. Pursuant to ¶ 5 of the Agreement, National contemplated the purchase of approximately 67,500 pieces of the National Chair, consisting of four different variations of the National Chair: a value-line steel chair, a heavy-duty steel chair, a steel chair with vinyl seats and backs, and a steel chair with upholstered seats and backs. The vinyl and upholstered chairs consisted of backs and seats made with 1-inch foam cushions.

25. Paragraph 5 of the Agreement established a critical condition precedent to the consummation of any such purchase by National: Prior to the full production of initial orders,

defendant was to supply a pre-production sample of each model chair for National's final approval. The parties explicitly agreed that these samples would serve as the basis of final inspections for National to determine whether future orders would be produced.

26. From the beginning of the manufacturing relationship, however, defendant's manufacturing of the folding chairs was beset with mistakes, as set forth below.

27. While visiting National's New Jersey facilities in January 1999, defendant's representative had brought with him preproduction samples of the National Chair. Upon cursory inspection, however, it was immediately obvious that the upholstery and vinyl components of the folding chairs did not meet National's specifications.

28. National discussed the quality shortfall with defendant several times directly and through National's Chinese-speaking representative, Mr. David Zhou. Each time, National stressed that it expected defendant to produce a better quality product than that which defendant was accustomed to making.

29. In May, 1999, defendant again conveyed defective samples of upholstered the National Chair to National. Not only did the chairs not meet National's exact specifications, but they were notably different from the samples for the same model that defendant representatives had showed National a few months before. That same month, a National representative, at National's expense, flew to Taiwan to visit defendant's

facilities to help resolve these problems.

30. Despite National's efforts, its investment of time and its expenditure of capital, defendant continued to produce defective merchandise. For example, in August, 1999, National learned for the first time that the quality of the steel used on the chairs did not conform to its specifications for producing superior quality chairs, a key part of its marketing strategy.

31. After being confronted with the steel-quality issue, defendant admitted - over seven months following its commitment to do so in the Agreement - that it had opted not to follow National's specifications set forth in the Agreement.

32. Defendant assured National that it would follow National's specifications so in the future.

33. National relied on defendant's assurances and continued to purchase its chairs from defendants.

34. As the business relationship progressed, National continued to discover defects in the subsequent chairs delivered by defendant to National's warehouses - merchandise which National needed to fulfill its own burgeoning sales.

35. For example, customers began to complain to National that the rivets connecting the seat of the National Chair to the frames of the chairs were constantly breaking.

36. As a result of the refunds, credits and other consideration given by National to its customers because of defective merchandise manufactured by defendant, as well as the damage to its reputation as a purveyor of very high quality

folding chairs, National suffered considerable losses.

37. National also discovered that the paint job on the National Chair was of poor quality.

38. In order to resolve these and other issues, defendant employed, at its own expense, a quality control manager who would issue a final inspection report.

39. By July 2001, National was beleaguered with the problem of defective chairs. Because of a mistake by defendant in the manufacturing of samples, defendant produced the wrong seat design for an order of chairs. This error was not detected until after the chairs were delivered to National's customers. As a result of these defects, National lost both customers and orders. Worse, National was forced to sell these chairs at a loss.

40. At one point, National had approved production of a set of plastic chairs designated as the 8500 series chairs. Towards the end of 2001, National notified defendant several times of defects found in various shipments of these chairs. For example, the backs of the chairs were cracked in one shipment received in September, 2001.

41. A month later, another shipment contained chairs whose glides were falling off. National sent defendant a sample of the correct glide for this variety of the National Chair.

42. By January 2002, National determined that it could not afford to continue accepting chairs defective chairs. National informed defendant that in the future it would debit defendant for the costs of the defective chairs and freight whenever it was

faced with a customer complaint about a quality issue.

43. In or about March 2002, National requested that defendant rush delivery of its future orders to compensate for the lost chairs that were returned to defendant because of found defects. In reliance on defendant's promise to do so, National provided defendant with approximately \$250,000 worth of additional orders. By May 2002, National notified defendant that the shipments had not been delivered. By June, 2002, defendant notified National of scheduled ship dates, and in contravention to the parties' agreement, the shipping dates were all delayed by months.

44. On or about May, 2002, National received defective upholstered chairs with backs that defendant manufactured defectively. Defendant shipped these chairs to National despite the fact that National's inspector had apprised defendant of the problem prior to their shipment.

45. At the end of that same month, National received a shipment of another set of chairs that was calculated to have a 43% defect rate.

46. In early June 2002, representatives from defendant visited National's facilities in New Jersey. During their visit, National showed the defendant representatives the defective chairs and discussed the quality control issues. Despite this, National continued to experience quality control issues.

47. For example, in July 2002, National informed defendant that Purchase Order #100114 was made on the condition that it

would be shipped by June 15, 2002. In fact, not only was that order not shipped on that date, but the order was divided into five shipments, some dating as late as August, two months later than originally promised.

48. With respect to the 8500 series chairs, National had unequivocally requested in its purchase order that a particular type of resin - Profax 7533 - be used to manufacture the chairs. Prior to production, defendant assured National that Profax 7533 resin would be used on the 8500 series chairs.

49. After receiving a shipment of defective chairs from the 8500 series, National had tests conducted to determine the type of resin used in the chairs. The tests concluded that a resin known as ST30U, and not Profax 7533, was used on the folding chairs.

50. The ST30U was a cheaper material than Profax 7533.

51. In August 2002, National advised defendant that the plastic injection molder in Taiwan should conduct trial runs before starting full production to ensure the compatibility of the resin used in manufacturing the chairs with other manufacturing elements, such as additives. Despite this, on or about September 2002, National received a shipment of 8500 series chairs that featured unattractive stress marks on the entire chairs. On September 19, 2002, after closely inspecting the order, National revoked its acceptance of these chairs.

52. Meanwhile, the problem of delayed shipments continued. By September 2002, National realized that its needs for the

chairs were greater than defendant could supply. Therefore, National concluded that it could not rely on defendant to produce a quality product, to specifications, and to deliver merchandise on time.

53. On September 20, 2002, National cancelled all orders between National and defendant.

54. On or about November, 2002, National, through its counsel informed defendant that it was further in breach of the Agreement because it had sold some of the folding chairs made to National's specifications to third parties without National's approval.

55. On information and belief, defendant has continued to make such sales.

56. Defendant's counsel has threatened National that, unless National pays defendant for the defective, late-delivered chairs, it will violate the Agreement and sell them on the open market.

57. Under the Agreement, National retained ownership of all molds used by defendant to manufacture the National Chair.

58. Defendant has refused, despite demand by National, to return National's molds to National's Taiwan representative.

FIRST CAUSE OF ACTION
(Breach of Contract - Materially Late Deliveries)

59. National repeats and realleges the foregoing allegations as if fully set forth herein.

60. Pursuant to ¶ 10 of the Agreement, defendant was

obligated to manufacture and ship orders within 30 to 60 days after the confirmed order.

61. As described above, defendant was consistently and unreasonably late in delivering the order for the 8500 series chairs.

62. Defendant breached the contract when it failed to deliver the 8500 series chairs within 30 to 60 days of National's final confirmation of the order, choosing instead to ship deliveries as much as three months later than the parties agreed.

63. As a result of defendant's delays and failure to deliver the chairs designated as the 8500 series in a timely fashion, National sustained large financial losses because it had been prevented the opportunity to sell to its customers quality chairs

64. Furthermore, National suffered consequential and other damages, including damages resulting from lost opportunity for National obtain a market advantage and to enhance its reputation as a manufacture of quality products.

**SECOND CAUSE OF ACTION
(Breach of Contract - Unauthorized Sale to Third Parties)**

65. National repeats and realleges the foregoing allegations as if fully set forth herein.

66. Pursuant to ¶ 2 of the Agreement, defendant had a contractual obligation to refrain from selling the folding chairs to third parties, unless it received written approval to do so from National.

67. Defendant breached the contract by selling the finished folding chairs to third party customers without first seeking written approval to do so from National.

68. As a direct and proximate result of defendant's breach of the contract, National has been harmed because it has lost some of the market advantage it had sought to gain by being the exclusive source of the National Chair, and has suffered financial loss.

69. As a direct and proximate result of defendant's breach of the contract, National has been harmed because the sale of defective versions of the National Chair has harmed the good will associated with the National Chair and with National overall.

**THIRD CAUSE OF ACTION
(Breach of Contract for Delivery of Nonconforming Goods)**

70. National repeats and realleges the foregoing allegations as if fully set forth herein.

71. As described above, at all times National reasonably expected that 8500 series chairs would be manufactured according to its exact specifications.

72. At the time of sale, defendant warranted to National that the 8500 series chairs would be produced according to National's specifications.

73. In reliance upon this warranty, National ordered folding chairs from defendant.

74. Throughout their relationship in 2001 and 2002, National discovered through different shipments that the goods

were not as warranted, in that the chairs were defective.

75. As a result of defendant's breach of warranty, National has been damaged in an amount to be determined at trial, but no less than \$175,000.

**FOURTH CAUSE OF ACTION
(Negligent Misrepresentation)**

76. National repeats and realleges the foregoing allegations as if fully set forth herein.

77. Defendant's representations to National with respect to the resins used in the manufacturing of the 8500 series chairs, as described above were false.

78. Defendant owed National a duty of due care not to be negligent in making these representations.

79. Defendant was negligent in making these representations.

80. Defendant intended that National act based upon its representations.

81. Defendant knew that National would probably rely upon these representations which, if false, would cause National loss.

82. National justifiably and reasonably forewent the opportunity to order from other manufacturers and made a large order of 8500 series chairs based upon the defendant's negligent representations that the Profax 7533 resin would be used to manufacture the remaining orders of the 8500 series chairs.

83. As a result of defendant's negligence in making the

representations, and negligence in failing to abide by National's design specifications, National has sustained substantial financial loss under the contract, as well as consequential and other damages.

**SIXTH CAUSE OF ACTION
(Breach of Fiduciary Duty)**

84. National repeats and realleges the foregoing allegations as if fully set forth herein.

85. National was justified, based on defendant's undertakings in the Agreement, in believing that defendant would not act in a manner adverse to National's interest with respect to the proprietary knowledge imparted to defendant in connection with the manufacture of the National Chair. By executing the Agreement, National showed trust and confidence in defendant.

86. Because of the relationship of trust and confidence existing between National and defendant, defendant had a fiduciary duty not to sell the folding chairs made to National's specifications without prior approval from National.

87. Defendant breached this duty by selling folding chairs to third-party customers without National's written approval.

88. As a direct and proximate result of defendant's breach, National has sustained substantial financial, as well as consequential and other damages.

**SEVENTH CAUSE OF ACTION
(Misappropriation of a Trade Secret)**

89. National repeats and realleges the foregoing allegations as if fully set forth herein.

90. The process used to manufacture the National Chair is a trade secret.

91. National sought to protect its trade secret by executing the Agreement provisions 1 through 4 of the Agreement.

92. Defendant was bound by the terms of the Agreement to refrain from divulging National's trade secret.

93. Defendant misappropriated use of the trade secret by selling the folding chairs manufactured to National's specifications to third party customers without prior written approval from National.

94. As a direct and proximate result of defendant's actions, National has sustained substantial financial, as well as consequential and other damages.

**EIGHTH CAUSE OF ACTION
(Conversion)**

95. National repeats and realleges the foregoing allegations as if fully set forth herein.

96. Defendant has refused to return National's proprietary molds for the National Chair to National.

97. Upon information and belief, the aforesaid molds are not being stored or maintained properly and are declining in value as a result of corrosion and other damage.

98. As a direct and proximate result of defendant's breach,

National has sustained substantial financial, as well as consequential and other damages.

**NINTH CAUSE OF ACTION
(Replevin)**

99. National repeats and realleges the foregoing allegations as if fully set forth herein.

100. In late 2002 and early 2003, National, through its counsel, made repeated written demands that defend return National's manufacturing molds for the National Chair.

101. Defendant has wrongfully refused to deliver said goods and chattels to National, and has wrongfully detained the same.

WHEREFORE, plaintiff National demands judgment against defendant awarding damages in an amount to be determined at trial, but no less than \$75,000, as well as a permanent injunction prohibiting defendant and all persons acting in concert with the defendant from doing business in any place in the National Chair, or trading in any other chairs manufactured in connection with the Agreement, utilizing National's proprietary trade secret in the manufacture of chairs, requiring the immediate return of National's molds for the National Chair, and awarding costs and expenses, including attorneys' fees, and such other relief as shall be determined to be just.

Ronald D. Coleman (RC-3875)

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Dated: February 1, 2009

CERTIFICATION PURSUANT TO LOCAL CIV. R. 11.2

I certify that, to the best of my knowledge, this matter is not the subject of any other action pending in any court or of any pending arbitration or administrative proceeding. Plaintiff is not currently aware of any other party who should be joined in this action.

Ronald D. Coleman (RC-3875)

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Dated: February 1, 2009