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Sears ripped off local tool maker, jury rules

BY BRIGID SWEENEY

Chalk it up as a win for the little guy. Nearly five years after suing Sears Holdings for knocking off its wrench invention, a suburban Chicago father-and-son company has prevailed. A jury in U.S. District Court in Chicago has ruled that Sears and tool supplier Apex Tools willfully infringed on the patents of LoggerHead Tools, awarding it \$6 million in damages.

Dan Brown Sr. and his son, Dan Jr., run LoggerHead in Palos Park. The company's main product is the Bionic Wrench, which the elder Dan invented after watching his then-teenager struggle to loosen nuts on a lawnmower with pliers.

The creation, which adjusts like pliers but grips like a wrench, was an immediate hit when it debuted in 2005. The Bionic Wrench sold almost 10,000 units during the opening minutes of its QVC debut and flew off shelves at Sears and Ace Hardware. The product was honored by Chicago Innovation Awards in 2006. Its success did not go unnoticed.

In 2012, a LoggerHead customer approached Dan Sr. and mentioned that he'd seen a Bionic Wrench at Sears—but instead of the tool's trademark green packaging and accents, this one had a red-and-black motif affiliated with Sears' Craftsman brand. Was LoggerHead now making private-label wrenches for Craftsman, the customer wondered?

It was not.

The real Bionic Wrench, which is manufactured in Pennsylvania, costs \$24.99. The knockoff, called the MaxAxess—was made in China by Apex, based in Sparks, Md., and cost \$11.99 at Sears.

In addition to violating Dan Sr.'s patent, the MaxAxess also threatened LoggerHead's business model.

"We only sell patented products," his son explained in an interview yesterday. "Because they're patented, we think we can get a value-added price, which allows us to pay more to manufacture in the U.S." There was no way LoggerHead could stay in business by halving its price.

Of course, suing not one but two corporate behemoths is a daunting task for a small business. Sears, despite its well-publicized decline, booked \$22.1 billion in sales in 2016. Apex, one of the largest power tool manufacturers in the world, was purchased by Bain Capital in 2013 for an estimated \$1.6 billion. Sears was represented by Kirkland & Ellis, the nation's second-largest law firm; Apex was represented by Winston & Strawn.

LoggerHead, which has sold about 2 million wrenches since 2005, isn't quite in that stratosphere. "We knew we had strong intellectual property, but we also knew this was going to be a David vs. Goliath battle and that getting to a jury trial would be difficult," Dan Jr. said.

The Browns found an attorney, Paul Skiermont of Dallas-based Skiermont Derby, willing to take the case on an alternative fee basis.

"There are a lot of smaller inventors and entrepreneurs who have their patents violated but aren't able to afford their day in court and therefore lose by default," Dan Jr. said. "Big companies assume they can take something that's not theirs without being held accountable."

Despite Skiermont's flexibility, the Browns still spent a lot on five years of litigation costs, according to Dan Jr. In the end, though, he



LoggerHead Tools' Bionic Wrench, below, and the MaxAxess.

said both he and his father are thrilled with the result.

"My mother . . . always told me that if you believe in something deeply, you must stand up strongly for it and never, ever give up," Dan Sr. said in a statement. "I think she would be proud of us today and how we defended our dignity, our rights, and the rights of other small inventors everywhere, and how we protected our American-made business model."

Sears noted that the court previously dismissed Loggerhead's fraud claims and that the retailer was defended and indemnified by Apex on the patent claim. Nonetheless, the company said in a statement that it was "disappointed in the jury's finding."

There's a chance LoggerHead might win more money beyond the initial \$6 million. After the eight-day patent infringement trial ended on May 11, the Browns won a one-day "willful infringement" trial a day later. As a result, U.S. District Court Judge Rebecca Pallmeyer may decide to as much as triple the damages due, which would increase the amount owed to roughly \$18 million.