

## Sears, Supplier Hit With \$6M Verdict In Wrench Rip-Off Suit

By **Matthew Bultman**

*Law360, New York (May 16, 2017, 5:10 PM EDT)* -- An Illinois federal jury awarded a small Chicago-area business almost \$6 million after finding Sears Holdings Corp. and Apex Tool Group LLC infringed two patents for a hybrid pliers-wrench tool, in what the business owner called a “David vs. Goliath case.”

Following an eight-day trial, jurors on Thursday decided LoggerHead Tools LLC’s patents were not invalid and were infringed by Sears and Apex, a tool supplier. LoggerHead was awarded \$5.97 million in damages. The following day, the jury returned a verdict finding the infringement was willful.

LoggerHead said it will ask the court to triple the jury’s damages based on the willfulness finding.

“Two corporate giants, Sears and Apex Tool Group, worked together to steal something that was not theirs,” company founder Dan Brown Sr. said in a statement, adding that “justice was served; this is a big win for LoggerHead Tools and a big win for small inventors and small business.”

In a statement of its own Tuesday, Sears noted that prior to trial it was awarded summary judgment on several other claims brought by LoggerHead, including ones for trademark infringement, fraud and false advertising.

“Although we’re disappointed in the jury’s finding on the patent claims, Sears is being defended and indemnified by Apex on those claims,” Sears said.

A spokeswoman for Apex said the company will likely file an appeal.

Brown, an associate professor at Northwestern University’s engineering school, founded LoggerHead in 2005 and launched the first Bionic Wrench, a cross between an adjustable wrench and a pair of pliers, according to court documents.

By all accounts, the tool was a hit. Through mid-2012, Palos Park-based LoggerHead had made approximately \$20 million in gross sales of the wrench. It filed a lawsuit in the Northern District of Illinois after a customer alerted the company to a “knock-off” in a Sears store.

In the complaint, LoggerHead said it had supplied Sears with Bionic Wrenches on various occasions. There were talks about a new supply agreement, but LoggerHead said Sears had partnered with Apex and was secretly having its own Craftsman-brand wrench made in China.

The wrench debuted in September 2012 and was a “virtual copy” of LoggerHead’s, the complaint said.

“Sears used all of Brown Sr.’s years of engineering and marketing investments; and without any investment in engineering or marketing simply went to China, used its cheap labor and introduced the Craftsman Bionic Wrench to replace LoggerHead’s Bionic Wrench,” the complaint said.

In a series of rulings last September, the late U.S. District Judge John W. Darrah dismissed a number of LoggerHead’s claims, including those for trademark infringement. Ultimately, just the patent infringement claims were left for trial, which started May 3.

In addition to enhanced damages, LoggerHead said it planned to ask the court for attorneys’ fees and a permanent injunction barring future sales of infringing products.

The patents at issue are U.S. Patent Numbers 6,889,579 and 7,992,470.

LoggerHead is represented by Paul J. Skiermont, Sarah Spires, Sadaf Abdullah, Steven Hartsell, Shellie Stephens and Steve Udick of Skiermont Derby LLP, and Jason L. Peltz, Asha L.I. Spencer, Philip S. Beck and Robert B. Tannenbaum of Bartlit Beck Herman Palenchar & Scott LLP.

Sears is represented by George C. Lombardi, James M. Hilmert, David W. Creasey and Joanna F. Cornwell of Winston & Strawn LLP. Apex is represented by Marcus E. Sernel, Eric D. Hayes, Ian J. Block and Gregory S. Arovas of Kirkland & Ellis LLP.

The case is LoggerHead Tools LLC v. Sears Holding Corp. et al., case number 1:12-cv-09033, in the U.S. District Court for the Northern District of Illinois.

--Editing by Mark Lebetkin.