

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

DAIMLERCHRYSLER CORPORATION
800 Chrysler Drive
Auburn Hills, Michigan 48326,

Plaintiff,

v.

GENERAL MOTORS CORPORATION
300 Renaissance Center
Detroit, Michigan 48265

and

AM GENERAL CORPORATION
105 North Niles Avenue
South Bend, Indiana 46617,

Defendants.

FILED
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NORTHERN DISTRICT OF OHIO
TOLEDO
3:01 CV 7069

Civil Action No.

JUDGE JAMES G. CAFFE

COMPLAINT

Plaintiff DaimlerChrysler Corporation ("DaimlerChrysler"), by its attorneys,
Connelly, Jackson & Collier LLP and Debevoise & Plimpton, for its complaint against
defendants General Motors Corporation ("GM") and AM General Corporation ("AM
General"), alleges as follows:

NATURE OF THE ACTION

1. This is an action for trademark infringement and dilution, unfair competition, deceptive trade practices, breach of contract and cancellation of trademark registration, arising under the Federal Trademark Act of 1946, 15 U.S.C. §§ 1051 et seq. (“Lanham Act”), state trademark and unfair competition statutes, and common law.

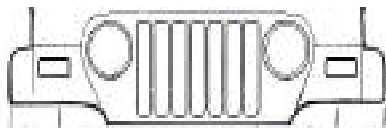
2. For over half a century, Jeep[®] vehicles have been manufactured in Toledo and have featured on their front end, or “face,” a grille design (the “Grille Design”) that creates the visual impression that the slots have been stamped or punched through a sheet of metal. Originally, that is exactly how the Grille Design was made for Jeep[®] World War II vehicles. Today, the Grille Design, although manufactured differently and out of different materials, still is intended to, and does, create the same impression. The marketplace overwhelmingly reflects that the Grille Design links each Jeep[®] vehicle back to its World War II heritage. The Grille Design instantly communicates a host of positive attributes, including authenticity and ruggedness, for the vehicles bearing the Jeep[®] brand.

3. DaimlerChrysler and its predecessors have sold tens of millions of Jeep[®] vehicles and, along with the DaimlerChrysler Jeep[®] Dealer Advertising Association, have spent over a billion dollars on advertising and other promotional materials that prominently display the Grille Design. As a result, the Grille Design now serves as a unique identifier of the Jeep[®] brand and a powerful symbol representing the originality, ruggedness and “go anywhere, do anything” attitude of Jeep[®] sport utility vehicles.

4. Today, DaimlerChrysler sells three models of Jeep[®] sports utility

vehicles -- the Wrangler[®], Cherokee and Grand Cherokee -- and has announced the introduction of a fourth model, the “Liberty.” All four of these models are instantly recognizable as Jeep[®] vehicles because of the way they incorporate the Grille Design, as depicted below:

Wrangler



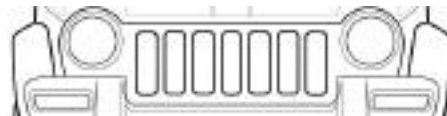
Cherokee



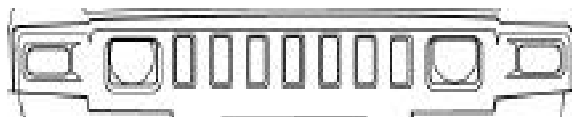
Grand Cherokee



Liberty



5. Notwithstanding the fame and distinctiveness of the Jeep[®] Grille Design, GM and AM General have jointly developed, and are preparing to manufacture and offer for sale to mainstream consumers, a brand new line of sport utility vehicle that bears a confusingly similar grille design, as depicted below:



The new vehicle, known as the H2, will compete directly with Jeep[®] vehicles.

Defendants specifically are targeting potential Jeep[®] vehicle customers, who are interested in rugged, “go anywhere, do anything” vehicles. Moreover, defendants have announced that they will introduce in subsequent years even smaller and less expensive

models of the vehicle, called the H3 and H4, to establish an entire family of consumer-oriented SUVs to compete against the entire line of Jeep[®] vehicles. If defendants are allowed to mimic the Grille Design, their conduct is certain to mislead and deceive consumers, and will dilute the distinctive quality of the famous Grille Design.

JURISDICTION AND VENUE

6. This Court has original jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1332(a) and 1338. This Court has supplemental jurisdiction over DaimlerChrysler's related state and common law claims pursuant to 28 U.S.C. §§ 1338 and 1367 and the principles of pendent jurisdiction.

7. This Court has personal jurisdiction over both AM General and GM pursuant to Ohio Rev. Code Ann. § 2307.382(A) because they have transacted business within this State, have contracted to supply goods or services within this State, have engaged in acts or omissions or caused consequences to occur within this State resulting in tortious injury within this State, and have otherwise made or established contacts with this State sufficient to permit the exercise of personal jurisdiction.

8. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) and (c) because a substantial part of the events or omissions giving rise to DaimlerChrysler's claims have occurred and will continue to occur in this district and because defendants are subject to personal jurisdiction in this district.

PARTIES

9. Plaintiff DaimlerChrysler Corporation is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in

Auburn Hills, Michigan. It is the successor corporation to earlier entities including Chrysler Corporation, American Motors Corporation, and Jeep Corporation (together “DaimlerChrysler”).

10. On information and belief, Defendant General Motors Corporation is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Detroit, Michigan.

11. On information and belief, Defendant AM General Corporation is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in South Bend, Indiana.

JEEP[®] VEHICLES AND THE GRILLE DESIGN

12. DaimlerChrysler, one of the world’s leading manufacturers of automotive vehicles, parts and accessories, owns the Jeep[®] brand of sport utility vehicles. Over fifty years ago, DaimlerChrysler’s predecessor sold to consumers the first civilian Jeep[®] vehicle, the CJ-2A, a modified version of the vehicle that the United States military had used extensively during World War II. Since then, DaimlerChrysler and its predecessors have sold to consumers numerous Jeep[®] models, including the currently-offered Wrangler[®], Cherokee and Grand Cherokee. With few exceptions (such as the Jeep[®] Gladiator), all of these Jeep[®] models prominently have featured a version of the Grille Design on their face. (Representative examples of the Jeep[®] Grille Design, as used through the years, are shown in the pictures attached as Exhibit 1.) In the past fifty years, tens of millions of Jeep[®] vehicles bearing the Grille Design have been sold. DaimlerChrysler also has developed and displayed concept vehicles incorporating the

Grille Design, including most recently the “Willys” that was shown at the 2001 North American International Auto Show in Detroit. *See* Exhibit 2.

13. The three models of Jeep[®] vehicle that DaimlerChrysler currently offers all incorporate the Grille Design, as depicted in paragraph 4, above. *See* Exhibit 3.

14. In 1999 alone, DaimlerChrysler sold over 550,000 of these three Jeep[®] vehicles. Since 1992, DaimlerChrysler has sold over three million of these Jeep[®] vehicles, all prominently featuring the Grille Design.

15. In January 2001, at the North American International Auto Show in Detroit, DaimlerChrysler introduced its newest Jeep[®] vehicle, the Liberty. Like its predecessors, the Liberty incorporates the Grille Design on its face, as depicted in paragraph 4, above. *See* Exhibit 4. DaimlerChrysler plans to begin production of the Liberty, which will replace the Cherokee, in mid-2001 and will commence sales to consumers shortly thereafter.

16. DaimlerChrysler owns three federal trademark registrations for the Grille Design. On September 22, 1981, DaimlerChrysler received from the United States Patent and Trademark Office (the “Trademark Office”) Trademark Registration No. 1,170,088 for “land vehicles.” Affidavits have been filed and accepted pursuant to Sections 8 and 15 of the federal Lanham Act, 15 U.S.C. §§ 1058 and 1065, rendering this registration “incontestable.” A copy of the Certificate of Registration is attached as Exhibit 5.

17. On March 24, 1987, DaimlerChrysler received Trademark Registration No. 1,433,760 for “utility land vehicles.” Affidavits have been filed and accepted

pursuant to Sections 8 and 15 of the federal Lanham Act, rendering this registration “incontestable.” A copy of the Certificate of Registration is attached as Exhibit 6.

18. On June 2, 1998, DaimlerChrysler received Trademark Registration No. 2,161,779 for “sport utility vehicles.” A copy of the Certificate of Registration is attached as Exhibit 7. At the appropriate time (in 2003), DaimlerChrysler intends to file the affidavit required to obtain “incontestable” status for this registration as well.

19. DaimlerChrysler and its predecessors, together with the DaimlerChrysler Jeep[®] Dealer Advertising Association, have spent well in excess of a billion dollars on Jeep[®] vehicle advertising and other promotional materials that prominently display the Grille Design. *See, e.g.*, Exhibit 8. As a result of this extensive advertising campaign and the sale of millions of Jeep[®] vehicles, which serve as rolling billboards for the brand, the Grille Design has become instantly recognizable by consumers as symbolizing the Jeep[®] brand.

DEFENDANTS’ USE OF THE GRILLE DESIGN ON THE H2

20. In December 1999, GM entered into an agreement with AM General to jointly develop and manufacture a brand new line of vehicle, known as the H2, for sale to retail consumers in the mainstream sport utility vehicle market. The H2 bears a grille design that is virtually identical to the Jeep[®] Grille Design and will compete directly with Jeep[®] vehicles, including those bearing the grille designs depicted in Exhibit 3 (and in paragraph 4, above). In fact, defendants specifically are targeting potential Jeep[®] vehicle customers, who are interested in rugged, “go anywhere, do anything” vehicles. Moreover, defendants have announced that they will introduce in subsequent years even

smaller and less expensive models of the H2, called the H3 and H4, to establish an entire family of consumer-oriented SUVs to compete against the entire line of Jeep[®] vehicles. On information and belief, defendants intend to use the same H2 grille design on those smaller, less expensive vehicles.

21. Days after the agreement between GM and AM General was publicly announced, DaimlerChrysler put GM on express notice that GM had no right to use the Jeep[®] Grille Design on this new, mass-market, consumer-oriented H2 vehicle. Nevertheless, in January 2000, at the 2000 North American International Auto Show in Detroit, GM and AM General introduced a concept vehicle for the H2 that featured a confusingly similar and diluting grille design (*see* ¶ 4, above, and Exhibit 9).

22. Throughout 2000, and into 2001, executives of DaimlerChrysler and GM have extensively discussed ways to avoid a dispute over the use of the Grille Design in the H2. Nevertheless, GM has refused to abandon its use of the Grille Design and, on February 9, 2001, definitively told DaimlerChrysler that it would not agree to change the grille design of the H2.

23. The obvious similarity between the Jeep[®] and H2 grille designs will inevitably confuse consumers about the source of the H2. Indeed, in a recent survey, significant numbers of sports utility vehicle owners were confused about the source of the H2. When shown two pictures of the H2 concept car, taken from defendants' <www.hummer.com> website, about one-fifth of respondents who own other sports utility vehicles, and more than a third of owners of Jeep[®] sports utility vehicles (a core market GM is likely to target for the H2), were confused about whether the H2 was a

Jeep[®] or some other vehicle manufactured by DaimlerChrysler. In the vast majority of cases, respondents specifically mentioned the vehicle's grille or the front end as the reason for their confusion:

- ✦ “The bars on the grille, the six bars, that’s a Jeep trademark.”
- ✦ “The grille looks like the Jeep front.”
- ✦ “It looks like a Jeep from the front grille.”
- ✦ “Primarily the grille at the front of the vehicle looks like a Jeep Cherokee.”
- ✦ “It’s prototype has resemblance to a Jeep [because of] the front grille.”
- ✦ “The front grille looks like the front end of those Jeeps.”
- ✦ “The grille’s contour looks like the Grand Cherokee.”
- ✦ “The vertical openings on the grille that run from side to side looks like the Jeeps I see today.”
- ✦ “It looks, the grille looks like a Jeep.”
- ✦ “The grille in front is similar to Jeep.”
- ✦ “It looks like it has the Jeep grille.”
- ✦ “It definitely has a Jeep grille.”

24. Even more striking are the survey’s results concerning dilution (that is, the likelihood that the H2 grille will dilute or blur the distinctiveness of the Jeep[®] Grille Design). More than half of the respondents who own other sport utility vehicles, and nearly two-thirds of respondents who own Jeep[®] vehicles, associate the H2 with Jeep[®] vehicles. Again, the vast majority of those who do so specifically cite the grille as the reason for that association:

- ✦ “The slots in the front, that’s a Jeep style, something they’ve been trying to stick with for a long time.”
- ✦ “The grille reminds me of the Jeep.”
- ✦ “The front grille reminds me of a Jeep.”
- ✦ “The grille work resembles Jeep.”
- ✦ “The front grille looks like a Jeep.”
- ✦ “Well, the Jeep grille has the front slots that this has. Mine has 7 slots and this has 7 slots.”
- ✦ Jeep Cherokee “because of the picture of the front of it, the grille and the spacing of the grille between the head lights.”
- ✦ “Reminds me of Jeep Grand Cherokee. The grille with the vehicle slots in the grille. Maybe the square look of the headlight, like the headlights are integrated into the grille. In the picture, looking straight ahead, the headlights and the grille remind me of the Jeep.”
- ✦ “I have a Jeep Cherokee, the grille looks exactly the same.”
- ✦ “Jeep.” “The front grille. It has the slotted, the up and down slots. Kind of reminds me of the CJ, the Wrangler.”
- ✦ “The grille reminds me of a Grand Cherokee.”
- ✦ “The front grille looks somewhat like a Jeep Grand Cherokee.”
- ✦ “The grille looks like a Jeep.”
- ✦ “The picture of the front of it, the grille actually makes it look like a Jeep Wrangler.”
- ✦ “Well, we own a Jeep Cherokee and like I said, they have a very distinctive grille style with vertical lines and it just reminds me of that.”

These responses, and the very high levels of association with Jeep[®] vehicles, are powerful proof that the introduction of the H2 will dilute the distinctiveness of the Jeep[®]

Grille Design and will confuse significant numbers of consumers as to whether the H2 is affiliated with DaimlerChrysler and its Jeep[®] vehicles.

25. Despite DaimlerChrysler's repeated warnings to GM and defendants' actual knowledge that DaimlerChrysler has used the Grille Design on Jeep[®] vehicles for over fifty years, GM and AM General have refused to make sufficient modifications to the H2 grille. Instead, defendants are willfully ignoring DaimlerChrysler's exclusive rights in the Grille Design and maliciously seek to trade on the Grille Design's goodwill and communicative power, which, if not stopped, will cause significant consumer confusion and erode the Grille Design's singularity and value.

THE HUM-VEE AND THE HUMMER

26. In the course of its negotiations with DaimlerChrysler, GM has claimed that it has the right to use the Grille Design on the H2 by virtue of AM General's prior use of the grille on two earlier, but extremely different, vehicles – the Hum-vee and the Hummer – and AM General's assignment of those rights to GM. *See* Exhibit 10 (pages 7-8). AM General, however, does not have any rights to use the Grille Design on a vehicle like the H2, and thus has no such rights to assign to GM. Rather, AM General has only a limited license to use the Grille Design on its military Hum-vee, and that limited license is not transferable to GM.

27. In March 1983, the United States military awarded AM General, then a wholly-owned subsidiary of American Motors Corporation ("American Motors") (a DaimlerChrysler predecessor), a contract to manufacture a High Mobility Multi-Purpose Wheeled Vehicle ("HMMWV" or "Hum-vee"). At the time, American Motors also

owned the Jeep[®] brand. The face of the Hum-vee featured a grille design that was derived from the Jeep[®] Grille Design.

28. Shortly thereafter, in July 1983, American Motors placed AM General, whose principal asset was the Hum-vee contract, on the market. One of the potential purchasers of AM General was GM. Ultimately, however, AM General was sold to LTV Corporation (“LTV”) pursuant to a stock purchase agreement.

29. Although it sold AM General to LTV, American Motors retained ownership of the Jeep[®] brand and related intellectual property rights. American Motors did, however, grant AM General a license to use certain proprietary rights in connection with the Hum-vee. The license covered those rights, such as the Grille Design, that were owned by American Motors but that AM General would need to use to pursue its then-existing business (which consisted almost solely of sales to government entities, particularly the military), or contemplated business or reasonable extensions thereof (such as the manufacture of the Hum-vee for the military, and, later, for foreign governments). This license did not give AM General any rights to use the Grille Design or any other proprietary rights of American Motors on consumer vehicles (because no such vehicles were part of AM General’s existing or contemplated business, or reasonable extensions thereof). Moreover, the license prohibited AM General from assigning its limited licensed rights to any other party, except as part of a complete sale of the AM General business.

30. Under this license, AM General went on to produce the Hum-vee vehicle for the U.S. military and, thereafter, for foreign governments. Although the Hum-vee

was quite profitable, LTV's other businesses were not and, in 1986, LTV filed for bankruptcy. As part of LTV's reorganization, some of AM General's assets, including the Hum-vee and Hummer business, were sold in 1992 to The Renco Group, Inc., which thereafter formed a new company, also called AM General Corporation. The newly-formed AM General currently runs the Hum-vee and Hummer business and naturally remains bound by the license and stock purchase agreements from which its rights are derived.

31. In 1992, AM General began to sell, to a few non-governmental customers, a slightly-modified version of the Hum-vee, called the Hummer. The Hummer shared almost all of the same design features as the military Hum-vee (*see* Exhibit 11), except for the removal of the vehicle's gun mounts. *See* Exhibit 12. Indeed, AM General's most recent Annual Report on Form 10K filed with the Securities and Exchange Commission ("10K Report") boasts that the Hummer is "functionally equivalent to the A2 Series military HUMVEE." *See* Exhibit 10 (page 5). Since 1992, AM General has sold fewer than 8,700 Hummers, averaging fewer than 1,000 vehicles per year. This compares with the more than 3 million Jeep[®] vehicles that DaimlerChrysler has sold during the same time period. The Hummer costs between \$65,000 and \$100,000, and its enormous size and military-oriented features render it entirely impractical for everyday consumer use. Rather, the Hummer has been sold as a specialized, niche vehicle to an entirely different customer base than Jeep[®] vehicles. As AM General stated in its 10K Report:

The commercial market consists of individuals,
government agencies and industrial users located in the

US and overseas which require or desire the HUMMER's enhanced off-highway mobility, durability and payload capacity. Targeted customers include businesses engaged in the mining, electric utility, fire and rescue, oil and gas exploration, and heavy construction industries. Additionally, other customers include non-DoD [Department of Defense] government agencies such as Federal Emergency Management, in addition to state and local fire, police and park service departments.

See Exhibit 10 (page 5). In the same 10K Report, AM General reemphasized the niche market the Hummer occupies, stating that “the business prospects for the HUMMER are limited with respect to demand, price and profitability.” *See Exhibit 10 (page 7).*

32. In this and other federal filings, AM General has repeatedly acknowledged and represented that the Hummer and Jeep[®] vehicles are targeted to distinct market segments. For example, in 1995, AM General attempted to register as a trademark the grille design used on the Hummer. The Trademark Office, however, twice refused registration precisely because of the likelihood of confusion with the Jeep[®] Grille Design (*see Exhibit 13*). In its Response to the Trademark Office's refusals, AM General represented that there was no likelihood of confusion because the Hummer and Jeep[®] vehicles were sold to different markets, with the Hummer being sold primarily to the military and foreign governments. AM General further represented that there were substantial differences between the vehicles “in drive trains, suspensions, geared hubs versus conventional wheels, and price differentials.” *See Exhibit 14.* The Trademark Office approved AM General's application only after being convinced by these representations that the Hummer and Jeep[®] vehicles were, and would be, sold in distinct markets.

33. As part of its effort to overcome the Trademark Office's refusals and to ensure that DaimlerChrysler would not block AM General's trademark application, AM General sent DaimlerChrysler a proposed Consent to Registration that expanded on AM General's representations to the Trademark Office. In it, AM General acknowledged that the Hummer was primarily a military vehicle with only limited sales to civilians, and that even the civilian version was sold in a distinct market from Jeep[®] vehicles. *See* Exhibit 15. Ultimately, the request for a consent was rendered moot when, as noted above, the Trademark Office approved AM General's application for publication. Based in part on the representations both in the consent and in AM General's response to the Trademark Office, DaimlerChrysler, then successor-in-interest to American Motors, did not oppose AM General's use and registration of the Grille Design on the Hummer.

34. In contrast to the Hummer, which truly was in a class by itself, the H2 (and later the H3 and H4) will compete directly with Jeep[®] vehicles. Rather than having military functionality (such as geared hubs in place of conventional wheels), the H2 is a mainstream sport utility vehicle meant for the mainstream consumer market. Indeed, AM General itself has characterized the H2 as a "new generation vehicle" (*see* Exhibit 10, page 7). It is substantially smaller and more practical than the Hummer and, on information and belief, will sell for \$45,000, far less than a Hummer. The planned H3 and H4 vehicles will be even smaller and cheaper. Unlike the niche-market Hummer, defendants specifically have designed the H2, as they state on the <www.hummer.com> web site, to "cast a wider net over the sea of consumers" and "for a multitude of people and not just a chosen few."

FIRST CAUSE OF ACTION

(Infringement of Registered Trademarks Under Section 32 of the Federal Lanham Act –15 U.S.C. §§ 1114)

35. Plaintiff repeats and incorporates by reference the allegations in paragraphs 1-34.

36. Defendants' use of a grille design that is virtually identical to the Jeep[®] Grille Design, as described above and as depicted in three federal trademark registrations, is likely to cause confusion and mistake and to deceive potential consumers and the public as to the source, origin or sponsorship of the H2 and other mainstream sport utility vehicles.

37. Defendants' unauthorized use of the Grille Design has caused and, unless restrained, will continue to cause great and irreparable injury to DaimlerChrysler, the Jeep[®] brand and the Grille Design, and to the business and goodwill represented thereby, in an amount that cannot be presently ascertained, leaving DaimlerChrysler with no adequate remedy at law. Plaintiff therefore is entitled to injunctive relief under 15 U.S.C. § 1114.

38. Defendants' actions demonstrate a willful intent to trade on the reputation and goodwill associated with DaimlerChrysler's Grille Design, including the federally-registered versions, thereby entitling DaimlerChrysler to recover defendants' profits, treble damages, costs, and reasonable attorneys' fees under 15 U.S.C. §§ 1114, 1116 and 1117.

SECOND CAUSE OF ACTION

(False Designation of Origin Under Section 43(a) of the Federal Lanham Act –
15 U.S.C. § 1125(a))

39. Plaintiff repeats and incorporates by reference the allegations in paragraphs 1-38.

40. Defendants' use of a grille design that is virtually identical to the Jeep® Grille Design, as described above, is a false designation of origin and is likely to cause confusion and mistake and to deceive potential consumers and the public as to the source, origin or sponsorship of the H2 and other mainstream sport utility vehicles.

41. Defendants' unauthorized use of the Grille Design has caused and, unless restrained, will continue to cause great and irreparable injury to DaimlerChrysler, the Jeep® brand and the Grille Design, and to the business and goodwill represented thereby, in an amount that cannot be presently ascertained, leaving DaimlerChrysler with no adequate remedy at law. Plaintiff therefore is entitled to injunctive relief under 15 U.S.C. § 1125(a).

42. Defendants' actions demonstrate a willful intent to trade on the reputation and goodwill associated with the Grille Design, thereby entitling DaimlerChrysler to recover defendants' profits, treble damages, costs, and reasonable attorneys' fees pursuant to 15 U.S.C. §§ 1125(a), 1116 and 1117.

THIRD CAUSE OF ACTION

(Trademark Dilution under the Federal Trademark Dilution Act –
15 U.S.C. § 1125(c))

43. Plaintiff repeats and incorporates by reference the allegations in paragraphs 1-42.

44. The Grille Design is a famous and distinctive trademark used in commerce by DaimlerChrysler. Among other things: (a) the Grille Design has acquired a high degree of distinctiveness; (b) the Grille Design has been used on tens of millions of Jeep[®] vehicles throughout the United States since 1945; (c) DaimlerChrysler and its predecessors, along with the DaimlerChrysler Jeep[®] Dealer Advertising Association, have spent more than a billion dollars on nationwide Jeep[®] vehicle advertising and other promotional materials that prominently display the Grille Design; (d) the Grille Design has an extremely high degree of recognition among consumers of sport utility vehicles; and (e) the Grille Design is the subject of three federal trademark registrations, two of which are incontestable.

45. Defendants' unauthorized use of a grille design that is virtually identical to the Jeep[®] Grille Design, as described above, dilutes and detracts from the distinctiveness of the Grille Design by eroding the public's exclusive identification of this famous mark with the Jeep[®] brand and DaimlerChrysler, resulting in damage to DaimlerChrysler and the substantial business and goodwill symbolized by the Grille Design, in violation of the Federal Trademark Dilution Act, 15 U.S.C. § 1125(c).

46. Defendants' acts of trademark dilution have caused and, unless restrained, will continue to cause great and irreparable injury to DaimlerChrysler, the Jeep[®] brand and the Grille Design, and to the business and goodwill represented thereby, in an amount that cannot be presently ascertained, leaving DaimlerChrysler with no adequate remedy at law. Plaintiff therefore is entitled to injunctive relief under 15 U.S.C. § 1125(c).

47. Defendants' conduct has been undertaken with a willful intent to trade on the reputation and heritage of the Jeep[®] brand and to cause dilution of the famous Grille Design, thereby entitling DaimlerChrysler to damages and the other remedies available under 15 U.S.C. §§ 1117 and 1125(c)(2).

FOURTH CAUSE OF ACTION

(Partial Cancellation of a Federal Trademark Registration Under
Section 37 of the Federal Lanham Act – 15 U.S.C. § 1119)

48. Plaintiff repeats and incorporates by reference the allegations in paragraphs 1-47.

49. The Hummer grille design depicted in Registration No. 1,959,544 (*see* Exhibit 16) is virtually identical to DaimlerChrysler's distinctive Jeep[®] Grille Design and, when used in connection with a mainstream sport utility vehicle such as the H2, is likely to cause confusion and mistake and to deceive potential consumers and the public as to the source, origin or sponsorship of the vehicle on which it is used. Given defendants' expanded use of the Hummer grille design to the mass-market H2, defendants are using the registered mark "so as to misrepresent the source of the goods or services on or in connection with which the mark is used." The registration is therefore subject to partial cancellation, under Sections 2(d), 14(3) and 37 of the Lanham Act, 15 U.S.C. §§ 1052(d), 1064(3) and 1119, by limiting the goods covered by the registration to "military trucks and functionally-equivalent consumer products, but not including mainstream sport utility vehicles."

50. The Hummer grille design depicted in Registration No. 1,959,544, when used in connection with mainstream sport utility vehicles such as the H2, dilutes

DaimlerChrysler's famous and distinctive Jeep® Grille Design by eroding the public's exclusive identification of this famous mark with the Jeep® brand and DaimlerChrysler. The registration is therefore subject to partial cancellation, under Sections 14, 37 and 43(c) of the federal Lanham Act, 15 U.S.C. §§ 1052(e), 1064 and 1125(c), by limiting the goods covered by the registration to "military trucks and functionally-equivalent consumer products, but not including mainstream sport utility vehicles."

51. Defendant's registration of the Hummer grille design for "trucks" has caused and, unless limited to "military trucks and functionally-equivalent consumer products, but not including mainstream sport utility vehicles," will continue to cause great and irreparable harm to DaimlerChrysler, the Jeep® brand and the Grille Design, and to the business and goodwill represented thereby. Accordingly, Trademark Registration No. 1,959,544 should be partially cancelled by this Court under Section 37 of the Lanham Act, 15 U.S.C. § 1119.

FIFTH CAUSE OF ACTION

(State Statutory and Common Law Trademark Infringement and Unfair Competition)

52. Plaintiff repeats and incorporates by reference the allegations in paragraphs 1-51.

53. Defendants' use of a grille design that is virtually identical to the Grille Design, as described above, constitutes passing off, infringement and misappropriation, actionable under the statutory and/or common law of each of the fifty states as unfair competition.

54. Defendants' acts of unfair competition have caused and, unless restrained, will continue to cause great and irreparable injury to DaimlerChrysler, the

Jeep[®] brand and the Grille Design, and to the business and goodwill represented thereby, in an amount that cannot be presently ascertained. DaimlerChrysler is therefore entitled to injunctive and monetary relief.

SIXTH CAUSE OF ACTION

(State Statutory and Common Law Trademark Dilution)

55. Plaintiff repeats and incorporates by reference the allegations contained in paragraphs 1-54.

56. The Grille Design is a famous and distinctive trademark that uniquely identifies the Jeep[®] brand. Defendants' unauthorized use of a grille design that is virtually identical to the Grille Design, as described above, is likely to dilute and detract from the distinctiveness of the Grille Design by eroding its singular association with DaimlerChrysler and the Jeep[®] brand.

57. Defendants have caused and, unless restrained, will continue to cause irreparable injury to DaimlerChrysler, and to the business and goodwill of the Grille Design, in violation of the common law of Ohio and the several states and the antidilution statutes of the several states. DaimlerChrysler is therefore entitled to injunctive relief and to damages.

SEVENTH CAUSE OF ACTION

(Deceptive Acts and Practices Under Several State Statutes)

58. Plaintiff repeats and incorporates by reference the allegations in paragraphs 1-57.

59. Defendants' use of a grille design that is virtually identical to the Jeep[®] Grille Design is likely to confuse the public and cause substantial injury to the public

and DaimlerChrysler. By these actions, defendants have engaged and are continuing to engage in unfair and deceptive acts or practices in violation of the unfair and deceptive trade practices statutes of Ohio, Ohio Rev. Code Ann. §§ 1345.01 to .13, 4165.01 to 4165.04 (West 1995) and of the several states. DaimlerChrysler is therefore entitled to injunctive relief and to recover damages, costs and reasonable attorneys' fees.

EIGHTH CAUSE OF ACTION
(Breach of Contract Against AM General)

60. Plaintiff repeats and incorporates by reference the allegations in paragraphs 1-59.

61. The license agreement executed by American Motors, LTV and AM General is a valid contract that prohibits AM General from assigning or transferring its license to use the Grille Design "without the prior written consent of [American Motors] except to a successor in interest by merger, consolidation or sale of assets, or to an assignee to whom is also assigned substantially all of that portion of the assignor's assets to which the Proprietary Rights pertain." AM General materially has breached the license agreement by purportedly assigning this license to GM without seeking the consent of DaimlerChrysler (American Motors' successor-in-interest). In fact, DaimlerChrysler promptly put GM on notice of its objections to GM's use of the Grille Design in connection with the H2 vehicle.

62. Additionally, the license agreement does not grant AM General the right to use, or license a third party to use, the Grille Design in connection with a mass-market, consumer-oriented sport utility vehicle. AM General's use of the Grille Design,

and its assignment to GM of the right to use the Grille Design, in connection with the H2 vehicle therefore is an independent material breach of the license agreement.

63. AM General's material breaches of the license agreement have caused and, unless restrained, will continue to cause great and irreparable injury to DaimlerChrysler, the Jeep[®] brand and Grille Design, and to the business and goodwill represented thereby, in an amount that cannot be presently ascertained. DaimlerChrysler is therefore entitled to injunctive and monetary relief.

PRAYER FOR RELIEF

WHEREFORE, DaimlerChrysler prays that:

1. Defendants and all agents, officers, employees, representatives, successors, assigns, attorneys, and all other persons acting for, with, by, through, or under authority from defendants, or in concert or participation with defendants, and each of them, be enjoined preliminarily, and then permanently, from:

a. using the Grille Design or any other copy, reproduction, or colorable imitation or simulation of the Grille Design on or in connection with defendants' goods and services, except for the Hum-vee sold to the military and foreign governments and the Hummer previously sold by AM General in the limited markets described in AM General's SEC filing (*see* Exhibit 10) (together, the "Niche Hummer Vehicles");

b. using any trademark, service mark, name, logo, design or source designation of any kind on or in connection with defendants' goods and services,

except for the Niche Hummer Vehicles, that is a copy, reproduction, colorable imitation, or simulation of, or confusingly similar to, or in any way similar to, the trademarks, service marks, names, or logos of DaimlerChrysler, including but not limited to the Jeep[®] Grille Design;

c. using any trademark, service mark, name, logo, design or source designation of any kind on or in connection with defendant's goods and services, except for the Niche Hummer Vehicles, that is likely to cause confusion, mistake, deception, or public misunderstanding that such goods or services are produced or provided by DaimlerChrysler, or are sponsored or authorized by or in any way connected or related to DaimlerChrysler;

d. using any trademark, service mark, name, logo, design or source designation of any kind on or in connection with defendants' goods and services, except for the Niche Hummer Vehicles, that dilutes or is likely to dilute the distinctiveness of the trademarks, service marks, names, or logos of DaimlerChrysler by eroding their exclusive identification with DaimlerChrysler or tarnishing their positive associations; and

e. passing off, palming off, or assisting in passing off or palming off, defendants' goods and services, except for the Niche Hummer Vehicles, as those of DaimlerChrysler, or otherwise continuing any and all acts of unfair competition as alleged in this Complaint;

2. Defendants be ordered to recall all products, except for the Niche Hummer Vehicles, bearing the Grille Design or any confusingly similar imitations

thereof, or any other confusingly similar mark, which have been shipped by defendants or under their authority, to any customer including, but not limited to, any wholesaler, distributor, retailer, consignor, or marketer, and also to deliver to each such customer a copy of this Court's order as it relates to said injunctive relief against defendants;

3. Defendants be compelled to account to DaimlerChrysler for any and all profits derived by defendants and for all damages caused to DaimlerChrysler by the acts forming the basis of this Complaint;

4. Based on defendants' intentional use of marks known to infringe, DaimlerChrysler's damages award be trebled and the award of defendants' profits be enhanced as provided for by 15 U.S.C. § 1117(a);

5. Defendants be required to pay to DaimlerChrysler the costs of this action and its reasonable attorneys' fees pursuant to 15 U.S.C. § 1117(a) and state law;

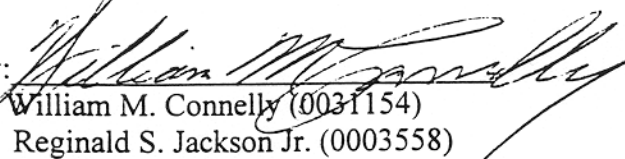
6. Based on defendants' willful and deliberate infringement and dilution of DaimlerChrysler's marks, and to deter such conduct, DaimlerChrysler be awarded punitive damages;

7. Federal Trademark Registration No. 1,959,544 be partially cancelled by limiting the goods covered by the registration to "military trucks and functionally-equivalent consumer products, but not including mainstream sport utility vehicles;" and

8. DaimlerChrysler have such other and further relief as the Court may deem just.

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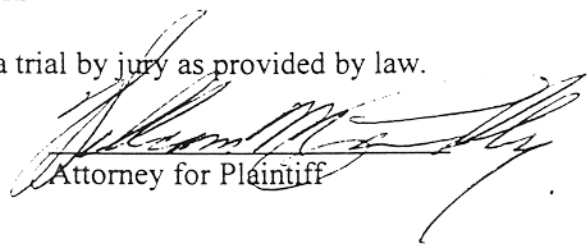
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JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury as provided by law.


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