

JUDGE FORREST

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SULZER MIXPAC USA, INC. and  
SULZER MIXPAC AG,

Plaintiffs,

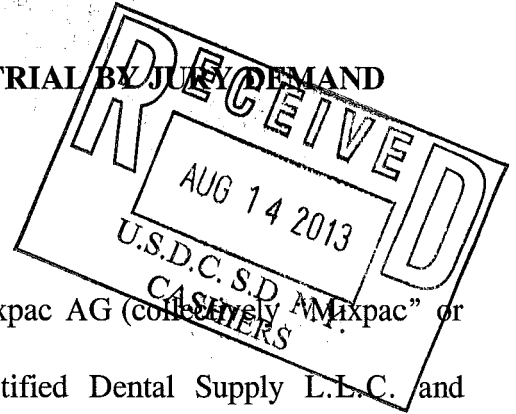
-against-

CERTIFIED DENTAL SUPPLY L.L.C.  
and MEHMET SAN, an individual,

Defendants.  
-----X

13 CIV 5682  
COMPLAINT

TRIAL BY JURY DEMAND



Plaintiffs Sulzer Mixpac USA, Inc. and Sulzer Mixpac AG (collectively "Plaintiffs" or "Plaintiffs") for their complaint against defendants Certified Dental Supply L.L.C. and Mehmet San ("Defendant" or "Defendants") seeking damages, injunctive relief, and other relief for trademark counterfeiting and patent infringement, allege as follows:

**PARTIES**

1. Plaintiff Sulzer Mixpac USA, Inc. is a New Hampshire corporation with its principal place of business at 8 Willow Street, Salem, New Hampshire 03079.
2. Plaintiff Sulzer Mixpac AG is a Swiss corporation with its principal place of business at Ruetistrasse 7, CH-9469 Haag, Switzerland.
3. Defendant Certified Dental Supply L.L.C. is a New Jersey limited liability company, having a registered address of 301 Hazel Street, Clifton, NJ 07011, and a business address of 43 River Road, Nutley, New Jersey 07110.
4. Defendant Mehmet San is an individual with a business address of 43 River Road, Nutley, New Jersey 07110, and is the managing member and owner of or has a

controlling interest in Defendant Certified Dental Supply and has actively participated in or controlled the infringing activity accused herein.

### **JURISDICTION AND VENUE**

5. This court has jurisdiction over Mixpac's patent infringement claims under 28 U.S.C. §§ 1331 and 1338(a). This court has jurisdiction over Mixpac's trademark counterfeiting and trademark infringement claims under 28 U.S.C. §§ 1331 and 1338(a) and 15 U.S.C. § 1121.

6. This court has personal jurisdiction over Defendants because they have transacted and are transacting business in this district, and have sold, offered for sale, distributed, or advertised products that infringe Mixpac's registered trademarks in this judicial district. Defendants also have made, used, imported, sold, or offered for sale in the United States, including within this judicial district, a product which infringes Mixpac's United States Patent No. 5,609,271 ("the '271 Patent"), United States Patent No. 5,918,772 ("the '772 Patent"), and United States Patent No. 6,186,363 ("the '363 Patent"), and Mixpac's trademarks, specifically U.S. Trademark Registration No. 3,762,232 (yellow), Reg. No. 3,762,233 (teal/green), Reg. No. 3,976,379 (blue), Reg. No. 3,976,380 (pink), Reg. No. 3,976,381 (purple), Reg. No. 3,976,382 (brown) and Reg. No. 4,051,261 (no color). Defendants have substantial and continuous contacts with New York and or have committed acts of infringement in New York, including the Southern District of New York, sufficient to confer personal jurisdiction upon them.

7. Venue properly lies in this court under 28 U.S.C. §§ 1391(b) and (c) and 1400(b) because Defendants are subject to personal jurisdiction and have committed acts of trademark infringement and patent infringement in this district. Defendants' offering and

selling their products in New York gives rise to proper venue as a substantial part of their infringing acts have occurred in this district.

## **BACKGROUND**

### *The MIXPAC three part mixing system*

8. Mixpac is the exclusive manufacturer in Switzerland of a patented three-part system for mixing two-part adhesives for dental applications. The system consists of 1) a dispenser like a caulking gun, 2) a cartridge containing a two part chemical such as an epoxy having a catalyst and a resin, and 3) a mixing tip that mixes the chemicals before they are applied for making, for example, an impression or mold for teeth.

### *The Mixing Tips' Registered Colored Dome and Dome Mark*

9. Mixpac has since at least as early as 1997 used a distinctive dome shape and color design Mark for its mixing tips. (hereinafter "Colored Dome Mark"). An image of the



10. Colored Dome Mark and line of colored mixing tips appears below.

11. Mixpac's Colored Dome Mark includes the line of mixing tips with five pleasing "candy-like" colors of yellow, teal, blue, pink, purple and brown ("Candy Colors"). The Colored Dome Mark also includes the Dome shape apart from the color ("Dome Mark").

12. The Colored Dome Mark, Dome Mark and Candy Colors are non-functional. They are not essential to the product's purpose, and they are not dictated by concern for cost efficiency. This is evidenced by other companies in the industry that use different designs and colors, or no colors, for their dental products, none of which include the design features of the Colored Dome Mark.

13. The Colored Dome Mark is distinctive and identifies a single source. Additionally, over the last fifteen years the Colored Dome Mark has acquired secondary meaning as the relevant public has come to associate the Colored Dome Mark with a single source - Mixpac. Mixpac informs the dental trade to "look for" the Colored Dome Mark and informs that the Dome and Candy Colors are trademarks. Purchasers choose mixing tips based on the Colored Dome Mark, Dome Mark and Candy Colors.

***The Colored Dome and Dome Mark U.S. Trademark Registrations***

14. Mixpac was awarded six U.S. Trademark Registrations for the look of the mixing tips, U.S. Trademark Registration No. 3,762,232 (yellow), Reg. No. 3,762,233 (teal/green), Reg. No. 3,976,379 (blue), Reg. No. 3,976,380 (pink), Reg. No. 3,976,381 (purple), Reg. No. 3,976,382 (brown) ("the Colored Dome Trademark Registrations"), and Reg. No. 4,051,261 (shape only - no color) (the "Dome Trademark Registration"). Copies of the registration certificates are attached as **Exhibit A**. The Colored Dome Trademark Registrations and the Dome Trademark Registration are prima facie evidence of the validity of

the marks and registration of the marks, and Mixpac's exclusive right to use the marks in connection with mixing tips.

*Defendants' Counterfeit Mixing tips*

15. Defendants seek to capitalize on the success of the Mixpac mixing tips by copying the distinctive Colored Dome Mark, including the Candy Colors and the Dome Mark to intentionally confuse purchasers into believing the counterfeit products are manufactured or licensed by Mixpac. Attached as **Exhibit B** are images of Defendants' mixing tips.

16. Defendants' mixing tips are counterfeit as they are spurious and are identical with or substantially indistinguishable from Mixpac's Colored Dome Mark and Dome Mark as shown in the Colored Dome Trademark Registrations and the Dome Trademark Registration.

17. Defendants' copied mixing tips are of lesser quality and safety and reliability, and threaten Mixpac's reputation in its product, to the detriment of Mixpac and the public.

18. Defendants make, use, offer for sale or import, market, distribute, or sell products that infringe the Mixpac Colored Dome Mark.

*Defendants' use of false advertising*

19. Defendants are in commercial competition with Mixpac with respect to the sale of mixing tips to the dental trade.

20. Defendants have advertised, promoted and marketed their mixing tips throughout the United States in a variety of ways, including on eBay.com.

21. Defendants have as part of its overall marketing campaign falsely described or misrepresented or made misleading descriptions or representations about the nature, characteristics, and qualities of Defendants' mixing tips, and Mixpac's mixing tips.

22. In an attempt to persuade customers to purchase Defendants' mixing tips, Defendants have made false or misleading statements that Defendants' mixing tips are Mixpac® mixing tips, including using a photo of a genuine Mixpac® mixing tip that clearly shows the brand Mixpac® on the product.

23. Images from Defendants' advertisements are shown below, and attached to the Complaint as **Exhibit C**.



Since such images are used in the context of a head-to-head comparison, it is apparent that such statements were targeted at Mixpac and communicate to the dental trade that Defendants' mixing tips are made by Mixpac, and are genuine Mixpac mixing tips. The claim that Defendants' mixing tips are genuine Mixpac mixing tips is false or misleading and cannot be substantiated. Defendants used the Mixpac® mark to get sales, but delivered counterfeit mixing tips that did not have the Mixpac® mark and that were not made by Mixpac.

### ***Mixing Tips and Cartridge Patents***

24. Mixpac owns U.S. patents for the dispenser, cartridge, and mixing tips.

25. On March 11, 1997, the '271 Patent was duly and legally issued for an invention entitled "*Mixer and Multiple Component Dispensing Device Assembly and Method for the Aligned Connection of the Mixer to the Multiple Component Dispensing Device.*" The

'271 Patent is assigned to Sulzer Mixpac AG. A copy of the '271 Patent is attached as **Exhibit D**.

26. On July 6, 1999, the '772 Patent was duly and legally issued for an invention entitled "*Bayonet Fastening Device for the Attachment of an Accessory to a Multiple Component Cartridge or Dispensing Device.*" The '772 Patent is assigned to Sulzer Mixpac AG. A copy of the '772 patent is attached as **Exhibit E**.

27. On February 13, 2001, the '363 Patent was duly and legally issued for an invention entitled "*Bayonet Fastening Device For The Attachment Of An Accessory To A Multiple Component Cartridge Or Dispensing Device*". The '363 Patent is assigned to Sulzer Mixpac AG. A copy of the '363 Patent is attached as **Exhibit F**.

28. Defendants have offered for sale or delivered into this judicial district mixing tips that infringe the Colored Dome Mark, the Candy Colors, the Dome Mark and the '271, '772 and '363 Patents.

*This Court Has Entered Several Restraining Orders, Consent or Default Judgments, and a Preliminary Injunction Which Confirm the Validity and infringement of the Colored Dome Mark and the '772 and '363 and '271 Patents*

29. In *Sulzer Mixpac v. TPC Advanced Technologies, Inc.*, 08 Civ. 10364 (DC), this Court entered a Temporary Restraining Order against all Defendant against further infringement of the Colored Dome Mark on December 1, 2008, and the Court later entered six consent or default judgments which confirm the validity and infringement of the Colored Dome Mark and the '772 and '363 Patents. On November 30, 2009 in *Sulzer Mixpac v. Ritter GmbH, NSJ and Peng Waves*, 09 Civ. 9705 (DAB), the Court issued a TRO, followed by the issuance of a Preliminary Injunction on December 14, 2009, and later a default judgment

confirming the validity and infringement of Mixpac's Colored Dome Mark and the '772 and '363 Patents. In *Sulzer Mixpac USA v. Purelife Gloves, LLC*, 09 Civ. 10430 (DAB) and *Sulzer Mixpac USA v. Crown Dentalply et al.*, 10 Civ. 8911 (DAB), the court entered consent judgments further confirming the validity and infringement of the Colored Dome Mark and the '772 and '363 Patents on May 10, 2011 and April 21, 2011, respectively. On April 11, 2012 in *Sulzer Mixpac v. Seil Global Co. Ltd.*, 11 Civ. 4783 (DAB), this Court entered a Default Judgment and Permanent Injunction against the defendant confirming certain redesigned mixing tips infringe the '271 Patent. Further, in *Sulzer Mixpac USA v. Rainbow Specialty & Health Products (USA) et al.*, 12 Civ. 6970 (RJS), *Sulzer Mixpac USA v. UC Dental Products, Inc. DBA Happystone Dental Supply* 12 Civ. 7863 (LTS), and *Sulzer Mixpac USA v. Spident USA, Inc., Spident Co., Ltd et al.*, 12 Civ. 8563 (PAC), the court entered consent judgments confirming the validity and infringement of the Colored Dome Mark and the '772, '363 and '271 Patents on November 21, 2012, November 27, 2012 and January 23, 2013, respectively.

***Defendants have continued to sell Counterfeit Mixing Tips after notification of Mixpac's Rights***

30. On or about September 21, 2012, Mixpac notified Certified Dental Supply of Plaintiffs' trademark rights in the Colored Dome Mark, the Colored Dome Mark Registrations and in U.S. Utility Patent Nos. 5,918,772 and 6,186,363. A copy of Plaintiffs' September 21, 2012 letter to Certified Dental Supply located at 43 River Road, Nutley, New Jersey 07110, and the Certified Mail Receipt are attached as **Exhibit G**.

31. Plaintiffs' September 21, 2012 letter demanded that Defendants stop offering for sale, selling, distributing or advertising Counterfeit Mixing Tips, yet Defendants have continued to infringe and to willfully infringe.



## COUNT I

### TRADEMARK COUNTERFEITING UNDER 15 U.S.C. §1114

32. Mixpac realleges and incorporates herein by reference the allegations in paragraphs 1 through 31 of its complaint.

33. Defendants have advertised, offered for sale, distributed or sold mixing tips which are spurious and which are identical with, or are substantially indistinguishable from Mixpac's yellow, or teal/green, or purple or blue mixing tips as shown in the Colored Dome Trademark Registrations U.S. Trademark Registration No. 3,762,232 (yellow), Reg. No. 3,762,233 (teal/green), Reg. No. 3,976,379 (blue), Reg. No. 3,976,381 (purple), or the Dome Mark Registration, Reg. No. 4,051,261 (no color).

34. Defendants' conduct is likely to cause confusion, to cause mistake, and to deceive as to Defendants' affiliation, connection, association, or sponsorship with Mixpac.

35. Defendants' infringement is willful and with notice of Mixpac's trademark registrations.

36. Mixpac has no adequate remedy at law. Defendants' conduct has caused and, if not enjoined, will continue to cause irreparable damage to Mixpac. As a result of Defendants' wrongful conduct, Mixpac is entitled to injunctive relief, Defendants' profits, statutory damages, damages, and attorney's fees and costs.

## COUNT II

### INFRINGEMENT OF THE REGISTERED COLORED DOME AND DOME TRADEMARKS BY DEFENDANT UNDER 15 U.S.C. §§ 1125(a) and 1114

37. Mixpac realleges and incorporates herein by reference the allegations in paragraphs 1 through 36 of its complaint.

38. Defendants adopted their trade dress for its Original Design mixing tips with knowledge of the Colored Dome Mark and Dome Marks.

39. Defendants have misleadingly used, and continue to use, a confusingly similar trade dress to the Colored Dome Mark and Dome Mark as shown in the Colored Dome Trademark Registrations and Dome Mark Registration, which is likely to cause confusion, to cause mistake, and to deceive as to Defendants' affiliation, connection, association, or sponsorship with Mixpac.

40. Defendants' acts are calculated to deceive, or are likely to deceive, the public, which recognizes and associates the Colored Dome Mark and the Dome Mark with Mixpac. Moreover, Defendants' conduct is likely to cause confusion, to cause mistake, or to deceive the public as to the source of Defendants' products, or as to a possible affiliation, connection with or sponsorship by Mixpac.

41. Defendants' conduct has caused Mixpac to suffer and, unless enjoined by the court, will cause Mixpac to continue to suffer damage to its operation, reputation, and goodwill and will suffer the loss of sales and profits that Mixpac would have made but for Defendants' acts. Defendants have been, and will continue to be, unjustly enriched by its unlawful acts.

42. Defendants' infringement is willful and with notice of Mixpac's trademark registrations.

43. Mixpac has no adequate remedy at law. Defendants' conduct has caused and, if not enjoined, will continue to cause irreparable damage to Mixpac. As a result of Defendants' wrongful conduct, Mixpac is entitled to injunctive relief, Defendants' profits, damages, and attorney's fees and costs.

### COUNT III

#### FALSE ADVERTISING UNDER 15 U.S.C. § 1125(a)

44. Mixpac realleges and incorporates by reference the allegations in paragraphs 1 through 43 of its complaint.

45. In connection with Defendants' mixing tips and in commercial advertising or promotion, Defendants have used in commerce false or misleading descriptions of fact and false or misleading representations of fact that misrepresent the nature, characteristics, or qualities of (a) Defendants' mixing tips and (b) Mixpac's mixing tips, all in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) (1) (B).

46. Defendants' false or misleading advertising and promotion of Defendants' mixing tips have caused and, unless enjoined, will continue to cause: (a) confusion, deception, and mistake among the dental trade whose purchasing decisions are likely to be affected by Defendants' false and misleading claims of product equivalency; (b) Mixpac to suffer loss of goodwill, sales, and profits; (c) Defendants to unfairly enjoy sales and profits to which they are not entitled; and (d) irreparable harm to Mixpac.

47. In the case of Defendants' misleading descriptions or representations of fact, customers have been or will be misled by such statements.

48. By its conduct in violation of the Lanham Act, Defendants have unfairly competed with Mixpac and continues to compete unfairly with Mixpac.

49. Defendants have willfully and deliberately violated Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), warranting an award of treble damages and attorney's fees under 15 U.S.C. § 1117(a) as this is an exceptional case.

50. Defendants' has willfully committed acts of false advertising with knowledge and with notice of Mixpac's trademark rights.

51. Mixpac has no adequate remedy at law for Defendants' continuing acts of false advertising.

#### **COUNT IV**

##### **FALSE DESIGNATION OF ORIGIN UNDER 15 U.S.C. § 1125(a)**

52. Mixpac realleges and incorporates herein by reference the allegations in paragraphs 1 through 51 of its complaint.

53. Defendants' mixing tips use the Colored Dome Mark in such a way as to unfairly compete in the marketplace by drawing a false association between Defendants' products and Mixpac.

54. Defendants have made false designations of origin and false or misleading descriptions or representations of fact in commercial advertising or promotion which misrepresent the nature, characteristics, qualities, sponsorship, or association with another person's goods, services, or commercial activities in violation of 15 U.S.C. § 1125(a).

55. Defendants have violated and, upon information and belief, intend to continue to willfully, knowingly, and intentionally violate 15 U.S.C. § 1125(a) by their unlawful acts in a manner that is likely to cause confusion, mistake or deceive as to the nature, characteristics, or qualities of their goods, services, or commercial activities.

56. Defendants' conduct has caused Mixpac to suffer irreparable harm and, unless enjoined by the Court, will cause Mixpac to continue to suffer damage to its operation, reputation, and goodwill, and will suffer the loss of sales and profits that Mixpac would have

made but for Defendants' acts. Defendants have been, and will continue to be, unjustly enriched by their unlawful acts.

57. Defendants' have willfully made false designations of origin with knowledge and with notice of Mixpac's trademark rights.

58. Mixpac has no adequate remedy at law. Defendants' conduct has caused and, if not enjoined, will continue to cause irreparable damage to Mixpac. As a result of Defendants' wrongful conduct, Mixpac is entitled to injunctive relief, Defendants' profits, damages, and attorney's fees and costs.

## **COUNT V**

### **VIOLATION OF N.Y. GEN. BUS. LAW § 349**

59. Mixpac realleges and incorporates herein by reference the allegations in paragraphs 1 through 58 of its complaint.

60. Defendants' acts, including the unauthorized manufacture and distribution of its mixing tips, constitute a violation of General Business Law § 349 because they are likely to cause confusion or mistake, or deceive consumers into thinking that Defendants' and Mixpac's products emanate from the same source. The public has an interest in being able to correctly identify the source of the Mixpac products.

61. Defendants' conduct has caused harm to the public because their products compromise the health or safety of consumers of dental products or services.

62. Defendants willfully engaged in one or more deceptive trade practices.

63. Mixpac has no adequate remedy at law. Defendants' conduct has caused and, if not enjoined, will continue to endanger consumers of dental products or services and cause

irreparable damage to Mixpac. As a result of Defendants' wrongful conduct, Mixpac is entitled to injunctive relief, Defendants' profits, damages and attorney's fees and costs.

## **COUNT VI**

### **VIOLATION OF N.Y. GEN. BUS. LAW § 350**

64. Mixpac realleges and incorporates herein by reference the allegations in paragraphs 1 through 63 of its complaint.

65. Defendants' acts violate General Business Law § 350 because, by offering copies of Mixpac's products, they falsely represent to consumers and professionals that their products are somehow associated or affiliated with, sponsored, or endorsed by Mixpac.

66. Defendants' acts and misrepresentations are likely to cause confusion, mistake, or deception as to the source of their products and services.

67. Should such misrepresentations continue, it will produce an irreparable injury to Mixpac because it allows Defendants to trade off Mixpac's goodwill and unfairly and improperly market their goods through misleading statements.

68. Defendants' conduct has caused harm to the public because their products compromise the health or safety of consumers of dental services.

69. Defendants have willfully made false representations with knowledge and with notice of Mixpac's trademark rights.

70. Defendants' acts have caused, and continue to cause, irreparable harm to Mixpac. Unless this court enjoins Defendants from continuing its unauthorized acts, Mixpac will continue to suffer irreparable harm. As a result of Defendants' wrongful conduct, Mixpac is entitled to injunctive relief, Defendants' profits, damages, and attorney's fees and costs.

## COUNT VII

### VIOLATION OF N.Y. GEN. BUS. LAW § 360-1

71. Mixpac realleges and incorporates herein by reference the allegations in paragraphs 1 through 70 of its complaint.

72. Defendants' conduct is likely to cause injury to Mixpac's reputation and dilute the distinctive quality of its trademarks.

73. Mixpac's Colored Dome Mark is highly distinctive and has become well known and widely respected in the dental industry.

74. Mixpac's products are safe and meet Mixpac's standards for quality and cleanliness.

75. Mixpac's mixing tips have been properly tested to fit and work effectively with Mixpac's complementary dispensing systems.

76. Defendants' products may not be safe and do not meet Mixpac's standards for quality and cleanliness.

77. Defendants' use of Mixpac's Colored Dome Mark on its identical (in appearance), yet substandard, products is likely to cause consumers to believe that Defendants' products emanate from the same source as Mixpac's.

78. Defendants' unlawful manufacture and distribution of products bearing Mixpac's distinctive trademarks are likely to tarnish Mixpac's image and blur the distinctive quality of its marks.

79. Defendants' actions threaten to undermine and damage the goodwill and reputation associated with Mixpac's trademark in the eyes of the dental trade industry and general consuming public.

80. Defendants have willfully made false statements with knowledge and with notice of Mixpac's trademark rights.

81. Defendants' acts have caused, and continue to cause, irreparable harm to Mixpac. Unless this Court enjoins Defendants from continuing its unauthorized acts, Mixpac will continue to suffer irreparable harm. As a result of Defendants' wrongful conduct, Mixpac is entitled to injunctive relief, Defendants' profits, damages, and attorney's fees and costs.

### **COUNT VIII**

#### **COMMON LAW TRADEMARK INFRINGEMENT**

82. Mixpac realleges and incorporates herein by reference the allegations in paragraphs 1 through 81 of its complaint.

83. Defendants adopted the look of their mixing tips with knowledge of the Colored Dome Mark.

84. Defendants have misleadingly used, and continue to use, a confusingly similar trade dress to the Colored Dome Mark that is likely to cause confusion, to cause mistake, and to deceive as to Defendants' affiliation, connection, association or sponsorship with Mixpac.

85. Defendants' acts are calculated to deceive, or are likely to deceive, the public, which recognizes and associates the Colored Dome Mark with Mixpac. Moreover, Defendants' conduct is likely to cause confusion, to cause mistake, or to deceive the public as to the source of Defendants' products, or as to a possible affiliation, connection with, or sponsorship by Mixpac.

86. Defendants have willfully infringed with knowledge and with notice of Mixpac's trademark rights.



87. Defendants' acts have caused, and continue to cause, irreparable harm to Mixpac. Unless this court enjoins Defendants from continuing its unauthorized acts, Mixpac will continue to suffer irreparable harm. As a result of Defendants' wrongful conduct, Mixpac is entitled to injunctive relief, Defendants' profits, damages, and attorney's fees and costs.

## **COUNT IX**

### **COMMON LAW UNFAIR COMPETITION**

88. Mixpac realleges and incorporates by reference the allegations in paragraphs 1 through 87 of its complaint.

89. Defendants' acts and uses constitute unfair competition under common law.

90. Defendants adopted their trade dress in bad faith as they knowingly, willfully, and intentionally copied the shape and colors of Mixpac's product to trade off Mixpac's labor, expenditures, and good will.

91. Defendants' mixing tips utilize the Colored Dome Mark in such a way as to unfairly compete in the marketplace by drawing a false association between Defendants' products and Mixpac.

92. Defendants have made false designations of origin and false or misleading descriptions or representations of fact in commercial advertising or promotion which misrepresent the nature, characteristics, or qualities of another person's goods, services or commercial activities.

93. Defendants' conduct has caused Mixpac to suffer irreparable harm and, unless enjoined by the court, will cause Mixpac to continue to suffer damage to its operation, reputation, and goodwill and will suffer the loss of sales and profits that Mixpac would have

made but for Defendants' acts. Defendants have been, and will continue to be, unjustly enriched by their unlawful acts.

94. Mixpac has no adequate remedy at law. Defendants' conduct has caused and, if not enjoined, will continue to cause irreparable damage to Mixpac. As a result of Defendants' wrongful conduct, Mixpac is entitled to injunctive relief, Defendants' profits, damages, and attorney's fees and costs.

### **COUNT X**

#### **PATENT INFRINGEMENT OF U.S. PATENT NO. 5,609,271 UNDER 35 U.S.C. § 281**

95. Mixpac realleges and incorporates herein by reference the allegations in paragraphs 1 through 94 of its complaint.

96. By using, importing, selling, or offering to sell infringing mixing tips, Defendants have infringed one or more claims of the '271 Patent directly, contributorily, or through inducement. Defendants have engaged in the foregoing conduct with respect to the patented invention in the United States without authority from Mixpac during the term of the '271 Patent.

97. Defendants will not stop using, selling, and/or offering for sale the products at issue to avoid infringing the '271 Patent.

98. Defendants' conduct has caused Mixpac to suffer and, unless enjoined by the court, will cause Plaintiffs to continue to suffer damage to their operation, reputation, and goodwill.

99. Mixpac has no adequate remedy at law. Defendants' conduct has caused and, if not enjoined, will continue to cause irreparable damage to Mixpac. As a result of Defendants'

wrongful conduct, Mixpac is entitled to a temporary restraining order, injunctive relief, and damages.

## COUNT XI

### **PATENT INFRINGEMENT OF U.S. PATENT NO. 5,918,772 UNDER 35 U.S.C. § 281**

100. Plaintiff realleges and incorporates herein by reference the allegations in paragraphs 1 through 99 of its complaint.

101. By using, importing, selling, or offering to sell infringing mixing tips, Defendants have infringed one or more claims of the '772 Patent directly, contributorily, or through inducement. Defendants have engaged in the foregoing conduct with respect to the patented invention in the United States without authority from Mixpac during the term of the '772 Patent.

102. Defendants will not stop using, selling, and/or offering for sale the products at issue to avoid infringing the '772 Patent.

103. Defendants' infringement has been deliberate, willful, and wanton, and with full knowledge of the '772 Patent.

104. Defendants' conduct has caused Mixpac to suffer and, unless enjoined by the court, will cause Mixpac to continue to suffer damage to their operation, reputation, and goodwill.

105. Mixpac has no adequate remedy at law. Defendants' conduct has caused and, if not enjoined, will continue to cause irreparable damage to Mixpac. As a result of Defendants' wrongful conduct, Mixpac is entitled to a temporary restraining order, injunctive relief, and damages.

## **COUNT XII**

### **PATENT INFRINGEMENT OF U.S. PATENT NO. 6,186,363 UNDER 35 U.S.C. § 281**

106. Mixpac realleges and incorporates by reference the allegations in paragraphs 1 through 105 of its complaint.

107. By using, selling, or offering to sell infringing mixing tips incorporating Mixpac's design features, Defendants have infringed one or more claims of the '363 Patent directly, contributorily, or through inducement. Defendants have engaged in the foregoing conduct with respect to the patented invention in the United States without authority from Mixpac and during the term of the '363 Patent.

108. Defendants will not stop using, selling, or offering for sale the products at issue to avoid infringing the '363 Patent.

109. Defendants' infringement has been deliberate, willful, and wanton, and with full knowledge of the '363 Patent.

110. Defendants' conduct has caused Mixpac to suffer and, unless enjoined by the court, will cause Mixpac to continue to suffer damage to its operation, reputation, and goodwill.

111. Mixpac has no adequate remedy at law. Defendants' conduct has caused and, if not enjoined, will continue to cause irreparable damage to Mixpac. As a result of Defendants' wrongful conduct, Mixpac is entitled to a temporary restraining order, injunctive relief, and damages.


### **RELIEF REQUESTED**

Wherefore, Mixpac requests that the court enter a judgment in Mixpac's favor and against defendant and provide Mixpac the following relief:

- A. Order, adjudge, and decree that Defendants have infringed the Mixpac Colored Dome Mark and Dome Mark under 15 U.S.C. §§ 1114 and 1125(a);
- B. Order, adjudge, and decree that Defendants have infringed U.S. Trademark Registration No. 3,762,232 (yellow), Reg. No. 3,762,233 (teal/green), Reg. No. 3,976,379 (blue), Reg. No. 3,976,381 (purple), and Reg. No. 4,051,261 (no color).
- C. Order, adjudge, and decree that Defendants willfully and knowingly infringed the Mixpac Colored Dome Mark and Dome Mark;
- D. Issue a preliminary and permanent injunctive relief prohibiting Defendants and their respective parents, subsidiaries, principals, officers, agents, affiliates, servants, attorneys, employees, and all others in privity with it from using any trade dress which is likely to be confused with the Colored Dome Mark and Dome Mark;
- E. Order Defendants to identify and recall from customers and destroy all infringing materials, including but not limited to all packaging and advertising incorporating the infringing trade dress or any other trade dress confusingly similar to the Colored Dome Mark and Dome Mark;
- F. Award Mixpac damages for trademark infringement including prejudgment interest and costs against Defendants under 15 U.S.C. § 1117;
- G. Award Mixpac three times its damages to compensate Mixpac under 15 U.S.C. § 1117;
- H. Award Mixpac its reasonable attorney's fees under 15 U.S.C. § 1117;

- I. Award Mixpac statutory damages for trademark counterfeiting pursuant to 15 U.S.C. § 1117;
- J. Award Mixpac damages, treble damages and attorney's fees for False Advertising under 15 U.S.C. § 1125(a);
- K. Order, adjudge, and decree that Defendants have infringed the '271, '772 and '363 Patents under 35 U.S.C. § 281;
- L. Order, adjudge, and decree that Defendants willfully and knowingly infringed the '772 and '363 Patents;
- M. Order, adjudge, and decree that Defendants' infringement of the '271, '772 and '363 Patents is exceptional under 35 U.S.C. § 285;
- N. Issue temporary, preliminary, and permanent injunctive relief prohibiting Defendants and their respective parents, subsidiaries, principals, members, officers, agents, affiliates, servants, attorneys, employees, and all others in privity with them from infringing the '271, '772 and '363 Patents;
- O. Award Mixpac damages for patent infringement including prejudgment interest and costs against Defendants under 35 U.S.C. § 284;
- P. Award Mixpac three times its damages to compensate Plaintiff under 35 U.S.C. § 284;
- Q. Award Mixpac its reasonable attorney's fees under 35 U.S.C. § 285; and
- R. Award such other and further relief as the court may deem just.

Dated: New York, New York  
August 13, 2013



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