

Gregory A. Petroff, Esq.
Reitler Kailas & Rosenblatt LLC
5 Vaughn Drive
Princeton, NJ 08540
609-514-1500
gpetroff@reitlerlaw.com

Attorneys for Plaintiff
Broadway Holdings I, LLC

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

_____)	Civil Action No. _____
BROADWAY HOLDINGS I, LLC)	
)	
Plaintiff,)	
)	
v.)	
)	
PRATT INDUSTRIES, INC. and PRATT)	<u>COMPLAINT</u>
INDUSTRIES (USA), INC.)	(Jury Trial Demanded)
)	
Defendants.)	
_____)	

Plaintiff Broadway Holdings I, LLC, for its Complaint against Defendants Pratt Industries, Inc. and Pratt Industries (USA), Inc., alleges as follows:

PARTIES

1. Broadway Holdings I, LLC (“Plaintiff”) is a New Jersey limited liability company with its principal place of business at 1 South Middlesex Avenue, Monroe Township, New Jersey 08831.

2. On information and belief, Pratt Industries, Inc. and Pratt Industries (USA), Inc. (collectively, “Pratt” or “Defendants”) are corporations organized under the laws of the State of Delaware, and are headquartered and have their principal place of business at 1800-C Sarasota

Parkway, Conyers, Georgia 30013. On information and belief, Pratt also has facilities in Dayton, New Jersey at 200 Dock Corner Road, Suite 270 and also in Totowa, New Jersey at 11 Commerce Way, Unit C.

NATURE OF THIS ACTION

3. This is an action for (i) patent infringement in violation of the United States patent laws, 35 U.S.C. § 101 *et seq.*, (ii) trade dress infringement in violation of the Lanham Act, 15 U.S.C. § 1051 *et seq.*, and (iii) violations of the statutory and common law of the State of New Jersey, including N.J.S.A. § 56:4-1 *et seq.*, arising out of and based on Pratt's ongoing promotion, distribution and sale of stretch wrap film dispenser products that infringe the Plaintiff's intellectual property rights.

4. By this action, Broadway Holdings I, LLC seeks to put a stop to Pratt's illegal conduct and obtain monetary damages and injunctive relief.

JURISDICTION, VENUE AND JOINDER

5. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1338 (patent and trademark laws), and 28 U.S.C. § 1367 (supplemental jurisdiction over the Plaintiff's state law claims).

6. This Court has personal jurisdiction over Pratt because Pratt has committed and continues to commit acts that give rise to the claims in this action, and places infringing products into the stream of commerce with the knowledge or understanding that such products are sold in the State of New Jersey. Further, on information and belief, Pratt maintains and operates facilities in the State of New Jersey, and thus is a resident of the State of New Jersey.

7. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), 1391(c) and/or 1400(b) because (i) Pratt conducts business and is subject to personal jurisdiction in this District

and (ii) Broadway Holdings I, LLC has its principal place of business and has suffered harm in this District.

8. Joinder is proper under Fed. R. Civ. P. 20(a)(2) and 35 U.S.C. § 299. The Plaintiff's claims of the Defendants' patent infringement and trade dress infringement alleged herein are asserted against the Defendants jointly, severally, or in the alternative with respect to or arising, at least in part, out of the same series of transactions or occurrences relating to the Defendants' manufacture, use, sale, offer for sale, and importation of the same accused products. On information and belief, the Defendants are part of the same corporate family of companies, and the infringement allegations arise at least in part from the Defendants' collective activities with respect to the Defendants' accused products. Questions of fact common to the Defendants will arise in the action, including, without limitation, questions relating to the structure and operation of the accused products and the Defendants' infringing acts.

FACTUAL BACKGROUND

The '490 Patent

9. On December 31, 2013, U.S. Pat. No. 8,616,490 (the "'490 patent'") was duly and legally issued by the United States Patent & Trademark Office. A true and correct copy of the '490 patent is attached as Exhibit A.

10. The '490 patent is valid and enforceable.

11. Broadway Holdings I, LLC is the lawful owner of the '490 patent, owns all right, title and interest to the '490 patent by virtue of assignment, and has the right to bring suit for infringement of the '490 patent.

12. As early as January 1, 2011, Pratt was made aware of Broadway's patent application, which was eventually published as United States Patent Application No. 12/930,846

(the “‘846 application”) and issued as the ‘490 patent, and, upon information and belief, had knowledge of the ‘846 application at the time of or after its publication.

Broadway’s Products and Trade Dress

13. Broadway Holdings I, LLC, through and/or by its affiliates (collectively, “Broadway”), sells and has sold, under the “Kleer-Guard” brand and other private labels, a stretch wrap film dispenser (the “Dispenser”) which is of a distinct look, shape, size, texture and material that constitute a valid and protectable trade dress owned by Broadway (collectively, the “Trade Dress”).

14. Broadway Holdings I, LLC is the lawful owner of the Trade Dress, owns all right and interest to the Trade Dress by virtue of assignment, and has the right to bring suit for infringement of the Trade Dress.

15. Since January 1, 2011, the Dispenser has always and consistently featured the same Trade Dress in which it now appears.

16. The Trade Dress consists of the total overall appearance of the Dispenser, including without limitation the following elements: (i) a stretch wrap film dispenser with a height of about $8^{3/4}$ inches that is largely comprised of a handle portion and a stretch wrap roll portion, (ii) a cylindrical-shaped handle made of a smooth plastic material with a height of about $3^{3/4}$ inches and having a collar that starts protruding outward at around $3^{3/8}$ inches from the top of the handle, (iii) where the circular top of the handle has a diameter of about $1^{1/2}$ inches and (iv) the circular base of the handle has a diameter of about $2^{3/4}$ inches, and (v) a stretch wrap roll with a height of about $4^{7/8}$ inches and a diameter of about 3 inches.

17. Photographs of the Dispenser, showing the Trade Dress, are attached as Exhibit B hereto and are reproduced here:



Exhibit B: Broadway's Dispensers showing the Trade Dress

18. The Trade Dress is distinctive, because it is unlike the appearance of numerous other competing stretch wrap film dispensers. Photographs of such competing designs are attached as Exhibit C hereto and are reproduced here:





Exhibit C: Competing stretch wrap film dispensers

19. Broadway developed and promoted the Trade Dress at considerable expense, making a significant investment in developing an overall look for its Dispenser that is distinctive and appealing to consumers.

20. To date, Broadway has sold more than 800,000 units of the Dispenser, and has aggressively promoted the Dispenser through various channels, including, without limitation, tradeshow, presentations, request for proposals, sales calls, catalogues, brochures, in-store displays and bulletins.

21. The Trade Dress has become widely known in the marketplace for stretch wrap film dispensers through Broadway's many years of extensive sales and promotion of the Dispenser.

22. The Trade Dress of Broadway's Dispenser assists Broadway in marketing its product, and Broadway features this appearance through various channels, including, without limitation, tradeshow, presentations, request for proposals, sales calls, catalogues, brochures, in-store displays and bulletins.

23. As a result of Broadway's efforts in developing and promoting the Trade Dress and the Dispenser, consumers readily identify the Dispenser as a product of high quality that originates from a single source with a reputation for quality.

24. As is common in the industry, Broadway has often supplied its Dispenser to third party vendors and allowed them to market the Dispenser under their own brand names.

Pratt's Infringing Products

25. Pratt was one of the third party vendors to whom Broadway had supplied the Dispenser under such "white label" agreements between January 1, 2011 and about May of 2013.

26. On May 1, 2012, Pratt informed Broadway that it was considering replacing Broadway's Dispenser with a stretch wrap film dispenser from another supplier. On or around that date, Pratt began making unauthorized copies of the Dispenser, including, without limitation, Pratt's High Performance Stretch Wrap and Small Stretch Wrap products, that exactly duplicate every aspect of the Trade Dress (the "Trade Dress Infringing Products").

27. A side-by-side photograph showing a Broadway-produced "white label" Dispenser and an unauthorized Pratt-produced Trade Dress Infringing Product are attached as Exhibit D hereto and is also reproduced here:



Exhibit D: A side-by-side comparison of a Broadway-produced "white label" Dispenser and an unauthorized Pratt-produced Trade Dress Infringing Product

28. The Trade Dress of Broadway's Dispenser is non-functional because the specific appearance of the Dispenser does not confer a significant, non-reputational advantage over alternative designs for stretch wrap film dispensers, such as those depicted in Exhibit C above.

29. In fact, the unauthorized Trade Dress Infringing Products produced by Pratt do not function properly, despite their identical overall appearance with Broadway's Dispenser, down to the mold-release marks on the inside of the dispenser handle.

30. This functional inadequacy of the Trade Dress Infringing Products will cause an irreparable loss of reputation and goodwill to Broadway because customers will falsely ascribe the poor quality of Pratt's Trade Dress Infringing Products to Broadway.

31. Pratt used Broadway's Trade Dress in association with the identical product, a stretch wrap film dispenser, and specifically targeted the same channels of trade and customer base with its stretch wrap film dispenser as does Broadway.

32. Broadway's Dispenser and Pratt's Trade Dress Infringing Products are low-cost, impulse-purchase items as to which consumers ordinarily do not engage in significant pre-purchase research or exercise any significant care.

33. Further, Broadway's Dispenser and Pratt's Trade Dress Infringing Products are not products whose use has significant economic or safety consequences.

34. Like Broadway's Dispenser, Pratt's Trade Dress Infringing Products are sold from open shelves in large retail stores to end-users who are not sophisticated, professional or highly-trained purchasers.

35. End-users do not ordinarily purchase Broadway's Dispenser or Pratt's Trade Dress Infringing Products by part number through a manufacturer's catalogue, or in reliance on the products' technical specifications, schematic diagrams, or specification sheets.

36. Upon information and belief, customers rely wholly or in part on the overall appearance of Broadway's Dispenser and the look-alike Trade Dress Infringing Products when making a decision as to which stretch wrap film dispenser to purchase.

37. Prior to introducing the Trade Dress Infringing Products, Pratt had marketed a stretch wrap film dispenser of its own making and also of a different design from the Dispenser, but had only sold Broadway's Dispenser under a white-label arrangement with Broadway.

38. Pratt's use of Broadway's Trade Dress was undertaken without the consent of Broadway.

FIRST CLAIM FOR RELIEF
(Infringement of the '490 Patent)

39. Broadway repeats and realleges the allegations contained in Paragraphs 1 through 38 above as if fully set forth herein.

40. Pratt has directly infringed, and continues to directly infringe, literally and/or under the doctrine of equivalents, one or more claims of the '490 patent in the United States by, without limitation, making, using, offering to sell, selling and/or importing products that are covered by inventions claimed in the '490 patent.

41. Such products include, but are not limited to, Pratt's High Performance Stretch Wrap and Small Stretch Wrap products and Pratt's other film dispenser products that are covered by inventions claimed in the '490 patent (the "Patent Infringing Products").

42. Pratt's customers, including retailers and end-users, directly infringe one or more claims of the '490 patent by using, offering to sell and/or selling in the United States, and/or importing into United States, the Patent Infringing Products.

43. Upon information and belief, Pratt has induced and continues to induce infringement of the '490 patent by supplying, advertising and/or providing instructions for the

Patent Infringing Products with the specific intent that its customers, including retailers and end-users, infringe the '490 patent despite its knowledge of the '846 application and the issuance of the '490 patent.

44. Upon information and belief, Pratt has also contributorily infringed and continues to contributorily infringe the '490 patent by, despite its knowledge of the '846 application and the issuance of the '490 patent, offering to sell and selling within the United States, or importing into the United States, the Patent Infringing Products or components that have no substantial noninfringing use to its customers, including retailers and end-users, knowing the same to be a material part of the invention especially made or adapted for use in an infringement of the '490 patent.

45. Upon information and belief, despite its knowledge of the '846 application and the issuance of the '490 patent, Pratt has continued and will continue making, using, offering to sell and/or selling in the United States, and/or importing into the United States, the Patent Infringing Products without authority or license from Broadway.

46. Pratt's such continued and deliberate infringement of the '490 patent establishes that Pratt is guilty of objective recklessness and disregard of an objectively high likelihood that its conduct infringes the '490 patent. As a result, Pratt has willfully infringed and continues to willfully infringe the '490 patent.

47. Broadway has incurred, and will continue to incur, damages as a result of Pratt's infringement of the '490 patent. Broadway has also incurred and continues to incur irreparable harm as a result of Pratt's infringement of the '490 patent.

SECOND CLAIM FOR RELIEF
(Trade Dress Infringement under Section 43(a) of the Lanham Act)

48. Broadway repeats and realleges the allegations contained in Paragraphs 1 through 47 above as if fully set forth herein.

49. Upon information and belief, Pratt has copied and continues to copy the distinctive Trade Dress of Broadway's Dispenser in order to create a likelihood of confusion between the Trade Dress Infringing Products and Broadway's technologically and functionally superior Dispenser.

50. Pratt's use of Broadway's Trade Dress, in an attempt to advertise or promote its own Trade Dress Infringing Products, misrepresents the nature, characteristics, and quality of Pratt's products, said misrepresentation creating the likelihood that the public would associate Pratt's Trade Dress Infringing Products with Broadway's Dispenser.

51. Upon information and belief, Pratt's use of Broadway's Trade Dress is and has been done in bad faith, knowingly and willfully and with the intent to confuse the relevant purchasing public.

52. Upon information and belief, Pratt has taken no steps to prevent deception or confusion of the relevant purchasing public with respect to its marketing of the Trade Dress Infringing Products.

53. Pratt's use of Broadway's Trade Dress constitutes a false, deceptive and misleading statements constituting false representations and false advertising in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

THIRD CLAIM FOR RELIEF
(Unfair Competition under N.J.S.A. § 56:4-1 *et seq.*)

54. Broadway repeats and realleges the allegations contained in Paragraphs 1 through 53 above as if fully set forth herein.

55. Pratt has appropriated and continues to appropriate for its own use the reputation and goodwill of Broadway by the foregoing acts of Pratt, which constitute unfair competition in violation of N.J.S.A. § 56:4-1 *et seq.*

FOURTH CLAIM FOR RELIEF
(Common Law Unjust Enrichment)

56. Broadway repeats and realleges the allegations contained in Paragraphs 1 through 55 above as if fully set forth herein.

57. Pratt's acts complained of above constitute Pratt's unjust enrichment at Broadway's expense, in violation of the common law of the State of New Jersey.

REQUEST FOR RELIEF

WHEREFORE, Pratt respectfully requests that this Court:

(a) enter a judgment that Pratt has directly infringed, induced others to infringe, and contributed to the infringement by others one or more claims of the '490 patent and is liable as an infringer under 35 U.S.C. §§ 271(a), (b) and (c);

(b) enter a judgment that Pratt's acts of infringement of the '490 patent have been and continue to be willful;

(c) enter a judgment enjoining Pratt from further directly infringing, inducing others to infringe and contributing to others' infringement of the '490 patent;

(d) award Broadway all relief available under the United States patent laws based on Pratt's infringement of the '490 patent, including, but not limited to, monetary damages;

(e) award up to treble damages upon a finding that Pratt's infringement of the '490 patent has been willful and wanton under 35 U.S.C. § 284;

(f) enter a judgment that Broadway's Trade Dress has been and continues to be infringed by Pratt in violation of 15 U.S.C. § 1125(a);

(g) enter a judgment that Pratt's use of Broadway's Trade Dress constitutes unfair competition in violation of 15 U.S.C. § 1125(a);

(h) enter a judgment enjoining Pratt from using Broadway's Trade Dress to market, advertise, distribute or identify Pratt's products where that designation would create a likelihood of confusion, mistake or deception with Broadway's Trade Dress;

(i) require Pratt to, at its own costs, deliver up, remove, disable and/or destroy all devices, literature, websites, advertising, labels and other materials in its possession bearing Pratt's infringing trade dress pursuant to 15 U.S.C. § 1118;

(j) enter a judgment that Pratt's use of Broadway's Trade Dress constitutes unfair competition in violation of N.J.S.A. § 56:4-1 *et seq.* and has also unjustly enriched Pratt in violation of New Jersey common law;

(k) enter a judgment enjoining Pratt from engaging in any activity constituting unfair competition with Broadway or acts that deceive consumers, the public and/or trade, including the use of Broadway's Trade Dress, pursuant to N.J.S.A. § 56:4-2.

(l) order Pratt to account to Broadway for, and disgorge to Broadway, all profits it has derived as a result of Pratt's infringement of Broadway's Trade Dress, and direct that such profits or actual damages be trebled pursuant to 15 U.S.C. § 1117 and N.J.S.A. § 56:4-2.

(m) declare this case exceptional under 35 U.S.C. § 285 and/or 15 U.S.C. § 1117 and award Broadway its attorneys' fees and costs of suit;

(n) award Broadway pre-judgment interest on any monetary award made part of the judgment against Pratt; and

(o) award Broadway such additional and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Broadway demands a trial by jury on all issues so triable.

Dated: April 7, 2014

Respectfully Submitted,

s/ Gregory A. Petroff

Gregory A. Petroff, Esq.
Reitler Kailas & Rosenblatt LLC
5 Vaughn Drive
Princeton, NJ 08540
609-514-1500
gpetroff@reitlerlaw.com

Attorneys for Plaintiff
Broadway Holdings I, LLC