

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

DEHN’S INNOVATIONS LLC

Plaintiff,

v.

**CLEANBLASTOR, LLC,
TORNADORCLEAN.COM LLC AND
CHRIS BOSUA, INDIVIDUALLY**

Defendants.

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Civil Action No. 3:14-cv-2139

JURY TRIAL DEMANDED

COMPLAINT

I. PARTIES

1. Plaintiff Dehn’s Innovations LLC (“Dehn”) is a Texas limited liability company with its principal place of business at 4421 Black Otter Trail, Dallas, Texas 75287.

2. Defendant CleanBlastor, LLC (“CleanBlastor”) is, upon information and belief, a company with a principal place of business at 182 Highgate Park Blvd., Davenport, Florida 33897.

3. Defendant Tornadorclean.com LLC (“Tornadorclean”) is, upon information and belief, a company with a principal place of business at 731 Milford, Davenport, Florida 33897.

4. Defendant Chris Bosua (“Bosua”) is an individual and the owner of CleanBlastor and Tornadorclean, with the same address of CleanBlastor and/or Tornadorclean.

5. Defendant CleanBlastor, Tornadorclean, and Bosua are collectively referred to herein as “Defendants,” unless otherwise individually specified.

II. JURISDICTION AND VENUE

6. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331, 1332 and 1338 because this action is for patent and trademark infringement, and unfair competition, and arises under the Patent and Trademark Laws of the United States, Titles 35 and 15, respectively, of the United States Code. The Court has supplemental jurisdiction over all other claims pursuant to 28 U.S.C. § 1367. Upon information and belief, Defendants have sold and offered for sale the accused infringing products in Texas and this Court's jurisdiction. Defendants have previously been a reseller for Dehn's products and have purchased those products from Dehn in Texas. Defendants have purposefully used Dehn's trademarks in the United States and in Texas in order to offer for sale and sell the accused infringing products. Defendants' websites are interactive websites, which establishes jurisdiction for the Court.

7. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400.

III. GENERAL AVERMENTS

Plaintiff's Patent and Other Rights

8. Dehn makes and sells certain cleaning tools and products, including the Tornador cleaning tools for cleaning automobiles. *See Exhibit A*. This product is covered by numerous patents and trademarks.

9. United States Patent No. 8,690,077 (the '077 Patent), which sets forth various claims regarding spray nozzles, was duly and legally issued on April 8, 2014. *See Exhibit B*.

10. United States Patent No. 8,480,011 (the '011 Patent), which also sets forth various claims regarding spray nozzles, was duly and legally issued on July 9, 2013. *See Exhibit C*.

11. United States Patent No. 6,883,732 (the '732 Patent), which also sets forth various claims regarding spray nozzles, was duly and legally issued on April 26, 2005. *See Exhibit D*.

12. The '077 Patent, the '011 Patent, and the '732 Patent are collectively referred to herein as the "Patents," unless otherwise individually specified. Dehn is the owner of all rights in and to the Patents.

13. Dehn is also the registered owner of U.S. Registration No. 3,553,562 for the mark "TORNADOR," for the following goods: pneumatic cleaning tools for cleaning fluids incorporating an oscillating tornado action to clean surfaces such as fabric and hard plastics. The trademark was registered on December 30, 2008, and is now incontestable. *See Exhibit E.*

14. Dehn also owns common law trademark rights in the marks "Z-010," which identifies Dehn's Tornador classic product (*see Exhibit F*), and "Z-020," which identifies Dehn's Tornador black product (*see Exhibit G*).

15. The trademarks identified in the previous two paragraphs shall be referred to herein as the Marks, and collectively as "Dehn's Marks."

Defendants and their Infringing Activity

16. Defendant Bosua was previously a reseller for Dehn for the Tornador products. Defendant Bosua placed Dehn's patent notice labels on products while he was a reseller of Tornado products.

17. As a result of Bosua's prior relationship with Dehn, Bosua became familiar with Dehn's products and services, including the products, Patents, and Marks at issue herein. Bosua interacted with Dehn's representatives in Texas, via phone, email, and other correspondence, on numerous occasions while he was a reseller for Dehn.

18. After the business relationship between Bosua and Dehn was terminated, Bosua started his own companies CleanBlastor and Tornadorclean, and began selling identical Tornador products as sold by Dehn. *See Exhibit H*, which shows the "Infringing Products."

19. Defendants purchased these Infringing Products from Dehn's own supplier of the products in Taiwan and imports these infringing products into the United States.

20. Defendants have made, used, sold, offered for sale and/or imported the Infringing Products in United States, including Texas and this district.

21. Defendants have infringed, induced infringement, and/or contributorily infringed one or more claims of the Patents.

22. Defendants' infringing conduct is and has been without authorization from Dehn.

23. Defendants falsely claim on their website that these Infringing Products are "currently not available in the U.S." *See Exhibit I.* The Infringing Products are available for sale in the United States and are sold and offered for sale by Defendants in the United States.

24. Defendants also falsely allege that their Infringing Products are patented, when such products are not covered by any patents.

25. As a former reseller of Dehn's products, Defendants were aware of Dehn's Patents prior to their infringing activities, and know that the Infringing Products infringe upon Dehn's Patents. Defendants also knowingly induce their customers to infringe up Dehn's Patents because Defendants know about the Patents and cannot reasonably assert that the Infringing Products do not infringe the Patents.

26. Defendants also use Dehn's Marks for their Infringing Products in order to confuse consumers in the United States as to the source of Defendants' Infringing Products. For instance, Defendants use the Tornador mark for their website address (www.tornadorclean.com), the e-mail contact address (info@tornadorclean.com), and throughout their websites www.tornadorclean.com and www.cleanblastor.com. *See Exhibit J.*

27. Defendants use the Tornador mark in their website address, e-mail contact information and on their websites in order to drive consumers looking for Dehn's products to Defendants' website.

28. Defendants also use the Tornador mark on their product literature. *See Exhibit K.*

29. Defendants are impermissibly using Dehn's unique product identifiers (Z-010 and Z-020) for Defendants' Infringing Products. Specifically, Defendant's identify their products as TB-020. *See* photograph of a box and copies of Defendant's product literature within the box and on the Defendants' website, attached hereto as **Exhibit L.**

30. Defendants use these product identifiers for their Infringing Products in order to confuse their customers and potential customers as to the source of their products.

31. As a former reseller of Dehn's products, Defendants are aware of Dehn's Marks, and are willfully infringing upon them.

32. Defendants have shipped their Infringing Products to their customers using Dehn's UPS account information (Defendant Bosua has obtained this UPS account information while he was a reseller of Tornador products). Defendants were not authorized to use this account information for their Infringing Products.

33. Defendants have knowingly made false statements about Dehn's products. For instance, Defendants falsely allege to customers and potential customers that the Infringing Products are an "upgrade" over Dehn's products. This is a false statement and Defendants know that it is a false statement. *See Exhibit M.*

34. Defendants also falsely allege to customers and potential customers that they will have to “constantly” replace the wearing front part of Dehn’s Tornado products. This is a false statement and Defendant knows that it is a false statement. *See Exhibit M.*

IV. CAUSES OF ACTION

Count 1 – Patent Infringement

35. Dehn hereby repeats and incorporates the allegations of paragraphs 1 through 34 above as if fully set forth herein.

36. This cause of action arises under the Patent Laws of the United States, Title 35, United States Code.

37. Defendants have infringed and continue to infringe the Patent under 35 U.S.C. § 271 *et seq.* This infringement was and is willful and intentional for the reasons stated above.

38. Upon information and belief, Defendants have, without authority, consent, right or license, and in direct infringement of the Patents, made, used, sold, offered for sale, and/or imported the Infringing Products in the United States and this district.

39. Defendants’ infringing conduct is willful, intentional, and unlawful and, upon information and belief, will continue unless enjoined by this Court.

Count 2 - Inducement of Patent Infringement

40. Dehn hereby repeats and incorporates the allegations of paragraphs 1 through 39 above as if fully set forth herein.

41. This cause of action arises under the Patent Laws of the United States, Title 35, United States Code, in particular under 35 U.S.C. § 271(b).

42. Upon information and belief, Defendants have, in the United States and this district, actively and/or intentionally induced others to use products that infringe upon the Patents.

43. Defendants' infringing conduct is willful, intentional, and unlawful and, upon information and belief, will continue unless enjoined by this Court.

Count 3 – Contributory Patent Infringement

44. Dehn hereby repeats and incorporates the allegations of paragraphs 1 through 43 above as if fully set forth herein.

45. This cause of action arises under the Patent Laws of the United States, Title 35, United States Code, in particular under 35 U.S.C. § 271(c).

46. Defendants are liable for contributory infringement, in that Defendants have made, imported and/or sold within the United States a component of a patented machine, manufacture, composition, combination, or system, and/or a material or apparatus for use in practicing a patented process, including a material part of the invention, knowing the same to be especially made or adapted for use in the infringement of the Patents and not a staple article or commodity of commerce suitable for substantial non-infringing use, and, upon information and belief, have done such activities in the state of Texas and in this district.

47. Defendants' infringing conduct is willful, intentional, and unlawful and, upon information and belief, will continue unless enjoined by this Court.

Count 4 – Willful Infringement of Registered and Common Law Trademarks

48. Dehn hereby repeats and incorporates the allegations of paragraphs 1 through 47 above as if fully set forth herein.

49. This cause of action arises under §32 of the Trademark Act of 1946 as amended (15 U.S.C. §1114) for infringement of federally registered trademark.

50. Dehn's Tornador products at issue are and have been sold under the registered Tornador mark and the unique product identifiers for many years prior to Defendants' infringing activities set forth herein.

51. Consumers have come to recognize and know that products associated with the Marks originate from or are manufactured by Dehn.

52. By reason of their actions and activities set forth herein, Defendants have willfully and intentionally infringed, and shall continue to infringe, Dehn's Marks, causing irreparable injury, the full extent of which cannot presently be determined. Unless Defendants are enjoined by the Court, the irreparable injury to Dehn shall continue.

Count 5 – False Designation of Origin, False Description and Representation

53. Dehn hereby repeats and incorporates the allegations of paragraphs 1 through 52 above as if fully set forth herein.

54. This cause of action arises under § 43(a) of the Trademark Act of 1946 as amended (15 U.S.C. § 1125(a)) for false designation of the origin of goods and false description and representation.

55. By reason of their actions and activities set forth herein, Defendants have falsely designated the origin of goods and/or services they are marketing and selling, and have otherwise made false descriptions and representations about such goods and/or services.

56. Upon information and belief, Defendants' activities are likely to create confusion among the purchasing public, are likely to deceive purchasers concerning the source or sponsorship of such goods and/or services, and will otherwise mislead purchasers as to the origin

of the goods, services and/or franchises sold by the Defendants, and cause purchasers and others to believe that Defendants' goods and/or services comes from, or is sponsored or approved by, Dehn, thereby causing irreparable injury to Dehn.

Count 6 –Unfair Competition

57. Dehn hereby repeats and incorporates the allegations of paragraphs 1 through 56 above as if fully set forth herein.

58. This cause of action arises under the common law of unfair competition of the State of Texas.

59. By reason of their actions and activities set forth herein, Defendants have traded upon and appropriated the reputation and valuable goodwill of Dehn and have acted to create the likelihood of confusion and mistake on the part of the purchasing public as to the source of Defendants' goods and/or services.

60. Upon information and belief, Defendants' acts are likely to lead the public mistakenly to the belief that Defendants' goods and/or services are in some way sponsored by, or associated with, Dehn, and/or create the impression that Defendants' and Dehn's goods and/or services are distributed under the same corporate aegis and authority.

61. Upon information and belief, Defendants' activities constitute unfair competition and a misappropriation and infringement of Dehn's common law trademark rights, and have caused and will continue to cause irreparable injury to Dehn unless enjoined by this Court.

Count 7 - Misappropriation

62. Dehn hereby repeats and incorporates the allegations of paragraphs 1 through 61 above as if fully set forth herein.

63. Dehn has invested extensive time, labor, skill, money, and resources in the design, development, and/or creation of its products.

64. Upon information and belief, Defendants have willfully copied Dehn's products. Defendants' copying of Dehn's products was in competition with Dehn, and enabled Defendants to gain a special advantage in that competition (*i.e.*, a "free ride") because Defendants were burdened with little or none of the expense incurred in designing, developing, and/or creating the Infringing Products.

65. Defendants' copying of the Dehn products commercially damaged Dehn.

66. The acts of Defendants complained of above constitute unfair competition and misappropriation actionable under the common law of the State of Texas.

Count 8 – Theft

67. Dehn hereby repeats and incorporates the allegations of paragraphs 1 through 66 above as if fully set forth herein.

68. Dehn is the sole owner of and sole entity permitted to use Dehn's UPS account billing code.

69. Defendants unlawfully appropriated and stole Dehn's account billing code when Defendants used the codes to ship Infringing Products to their customers.

70. Defendants intended to use this UPS account billing code to avoid payment for the shipment to UPS.

71. Dehn sustained damages as a result of the theft.

72. Defendant's conduct is actionable under the Texas Theft Liability Act (Tex. Civ. Prac. & Rem. Code §§134.001-134.005).

Count 9 – False Marking

73. Dehn hereby repeats and incorporates the allegations of paragraphs 1 through 72 above as if fully set forth herein.

74. Defendants' product literature states that their product is "patented." *See Exhibit N.*

75. Defendants allege that their Infringing Product is "covered under patent" on their website. *See Exhibit O.*

76. Defendants do not have an issued patent for their Infringing Products.

77. Defendants are in violation of 35 U.S.C. § 292.

78. Defendants have used the term "patent" and "patented" in advertisements and product literature without first obtaining a registered patent for the purpose of deceiving the public.

V. DAMAGES

79. Dehn has suffered, is suffering, and will continue to suffer irreparable harm and injury as a result of Defendants' aforesaid unlawful activities. Defendants will, unless restrained and enjoined, continue to act in the unlawful manner complained of herein, all to Dehn's irreparable damage. Dehn's remedy at law is not adequate to compensate it for the injuries suffered and threatened.

80. By reason of Defendants' acts complained of herein, Dehn has suffered monetary damages in an amount that has not yet been determined, including but not limited to any and all past and future actual, incidental, general, special, direct, consequential, and lost profits damages associated with, produced and/or proximately caused by Defendants' conduct, as more

specifically described hereinabove. These damages also include, but are not limited to, reasonable royalties.

81. Dehn further seeks any and all exemplary damages, attorneys' fees, costs, and pre-judgment and post-judgment interest.

VI. REQUEST FOR JURY TRIAL

82. Dehn has paid the required fee and hereby demands that this cause be tried by a jury.

VII. NOTICE OF REQUIREMENT OF LITIGATION HOLD

83. Defendants are hereby notified that they are legally obligated to locate, preserve and maintain all records, notes, drawings, documents, data, communications, materials, electronic recordings, audio/video recordings and other information and tangible things that Defendant(s) know, or reasonably should know, may be relevant to actual or potential claims, counterclaims, defenses and damages by any party or potential party in this lawsuit, whether created or residing in hard copy form or in the form of electronically stored information (hereafter collectively referred to as "Potential Evidence").

84. As used above, the phrase "electronically stored information" includes without limitation: computer files (and file fragments), e-mail (both sent and received, whether internally or externally), information concerning e-mail (including but not limited to logs of e-mail history and usage, header information, and deleted but recoverable e-mails), text files (including drafts and revisions, and active and deleted word processing documents), instant messages, audio recordings and files, video footage and files, spreadsheets, databases, calendars, telephone logs, contact manager information, internet usage files, and all other information created, received or

maintained on any and all electronic and/or digital forms, sources and media, including, without limitation, any and all hard disks, removable media, peripheral computer or electronic storage devices, laptop computers, mobile phones, personal data assistant devices, Blackberry devices, and any and all other locations where electronic data is stored. These sources may also include the personal electronic, digital and storage devices of any and all of Defendants' agents or employees if Defendants' electronically stored information resides there.

85. Defendants are hereby further notified and forewarned that any alteration, destruction, negligent loss, or unavailability, by act or omission, of any Potential Evidence may result in damages or a legal presumption by the Court and/or jury that the Potential Evidence is not favorable to Defendants' claims and/or defenses. To avoid such a result, Defendants' preservation duties require Defendants to immediately notify their agents and employees and to halt and/or supervise the auto-delete functions of Defendants' electronic systems.

VIII. PRAYER

86. WHEREFORE, Dehn demands that Defendants be summoned to appear and answer, and that Dehn have judgment from this Court against Defendants for the following:

- (a) That Defendants and their agents, officers, directors, employees, servants, representatives, customers, privies, successors and assigns, and all holding by, through or under Defendants, and all those acting for or on the behalf of Defendants, or in active concert, participation, or combination with Defendants, be enjoined and restrained, immediately and preliminarily (*i.e.*, a temporary restraining order, preliminary injunction, and/or permanent injunction as deemed appropriate by the Court), during the

pendency of this action and permanently thereafter from, in the United States from:

- (1) making, using, offering to sell, selling and/or importing the Infringing Products, or any colorable imitation thereof,
 - (2) inducing others from infringing the Patents, and/or contributing to the infringement of the Patents by others;
 - (3) using the Marks or any colorable imitation thereof, and
 - (3) otherwise infringing upon the Patents and Marks.
- (b) That Defendants be required to pay to Dehn such damages as Dehn has sustained in consequence of Defendants' infringement of the Patents and Marks, and Defendants' other wrongful acts.
- (c) That, in the alternative, a reasonable royalty be awarded to Dehn pursuant to 35 U.S.C. § 284.
- (d) That Defendants be ordered to account for and pay over to Dehn all their respective gains, profits and advantages derived from the infringement of the Patents, the Marks, or such damages as to the Court shall appear proper within the patent, trademark and unfair competition laws.
- (e) That Defendants be ordered to pay Dehn enhanced damages (*e.g.*, treble damages).
- (f) That Defendants be ordered to pay to Dehn the costs of this action, prejudgment interest, and post-judgment interest.
- (g) That this case be found to be exceptional.

- (h) That Defendants be ordered to pay Dehn's reasonable attorneys' fees, experts' fees, and costs.
- (i) That Defendants be ordered to pay damages pursuant to 35 U.S.C. § 292.
- (i) That Dehn be awarded such other and further relief as the Court may deem just and proper.

Respectfully submitted,

s/ Ryan T. Beard

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