

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

BRANDT INDUSTRIES LTD.)	
)	Civil Case No. _____
and)	
)	
BRANDT AGRICULTURAL PRODUCTS LTD.)	<u>COMPLAINT</u>
)	
Plaintiffs,)	(TRIAL BY JURY DEMAND)
)	
v.)	
)	
HARVEST INTERNATIONAL CORP.)	
)	
Defendant.)	
)	

Plaintiff Brandt Industries, Ltd. and Brandt Agricultural Products, Ltd. (“Brandt”), by its counsel, brings this action against Defendant Harvest International Corp. (“HI”) and alleges as follows:

1. Brandt Industries, Ltd., headquartered in Regina, Saskatchewan, provides many services and equipment to customers, including engineering and manufacturing of quality agricultural equipment. Brandt comprises numerous companies, including Brandt Agricultural Products Ltd. Brandt has invented many technologies incorporated in the agricultural equipment sold by Brandt Agricultural Products Ltd. Such inventions are embodied in certain patents held by Brandt. This case involves one such patent, referred to below as the ‘511 patent.

2. HI also makes agricultural equipment, and it is a direct competitor of Brandt in the marketplace. HI’s equipment includes the FC1545 Conveyor as advertised on HI’s website, www.harvestauger.com/fc-series-conveyors.php. This particular piece of equipment incorporates technology covered by Brandt’s ‘511 patent, in particular, the belt envelope portion of the FC1545 Conveyor that is covered by the ‘511 patent, and thus infringes that patent.

3. In addition to using Brandt's patented technology in its own equipment, HI also is competing unfairly in the marketplace by copying Brandt's trade dress, in particular, the overall look and feel, mechanics, color, layout, configuration, and overall design of Brandt's product. In addition, HI further duplicated the distinctive design and coloration of several decals on Brandt's products, including the configuration and arrangement of information presented.

4. Brandt is filing this lawsuit to protect its patented technology and trade dress, and to ensure that Brandt and HI compete in the marketplace in a fair manner.

PARTIES

5. Brandt Industries, Ltd. is a privately owned company, headquartered in Regina, Saskatchewan, established over 80 years ago and employing more than 1800 people across Canada and the United States. Brandt services markets in over 20 countries and six continents. It provides equipment for industries including agriculture, construction, forestry, geomatics, landscaping, mining, and manufacturing.

6. Brandt Agricultural Products, Ltd. is a wholly-owned subsidiary of Brandt Industries Ltd. It designs and manufactures a complete line of grain handling equipment, including grain belt conveyors for the agricultural industry. Its products are offered throughout the world by an extensive network of dealers and distributors. It has been selling agricultural products in the United States since 1977.

7. On information and belief, HI is an Iowa Corporation having a principle place of business at 401 West 20th Street, Storm Lake Iowa. As noted above, HI makes, has made, uses, offers for sale, and/or sells, among other things, the FC1545 Conveyor ("the Infringing Conveyor"), which includes a belt envelope covered by Brandt's '511 patent. The web page

showing this model is attached hereto as Exhibit A, and detailed photographs of the conveyor and the belt envelope covered by the '511 patent are attached as Exhibits B-F.

JURISDICTION AND VENUE

8. This action arises under the patent laws of the United States, codified at 35 U.S.C. § 1, *et seq.*; the United States unfair competition laws, codified in the Lanham Act at 15 U.S.C. § 1125(a), and various state laws.

9. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331, 1338(a) and (b), and 1367; and 15 U.S.C. § 1121.

10. Upon information and belief, HI's acts of unfair competition were and are being committed in interstate commerce.

11. This Court has personal jurisdiction over HI because HI has transacted business in Minnesota and, on information and belief, has committed acts of infringement, and is continuing to commit acts of infringement, in this district. Among other things, on information and belief, HI sells and offers for sale products, including the Infringing Conveyor, within this district through dealers that include, at a minimum, Isaacson Implement Co. Inc., located in Nerstrand, MN, and Jungclaus Motorsports, located in North Glencoe, MN. *See* Exhibit G.

12. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (d) and 1400(b).

THE '511 PATENT AND THE INFRINGING CONVEYOR

13. Brandt Industries, Ltd. is the owner of all right, title, and interest in and to United States Patent No. 8,061,511, entitled "Conveyor Belt Guide," which was duly and legally issued on Nov. 22, 2011 ("the '511 patent"). A copy of this patent is attached hereto as Exhibit H.

14. The '511 patent relates to a belt guide apparatus for attachment to a belt conveyor, the belt guide apparatus being designed to allow an endless belt to slide freely through the belt opening but to substantially prevent the belt from moving laterally or vertically.

15. The '511 patent has 2 independent claims.

16. Claim 1, for example, of the '511 patent requires a belt guide apparatus adapted for attachment to a belt conveyor comprising an endless belt with a conveying run and a return run, the apparatus comprising right and left flat top plates; right and left flat bottom plates oriented substantially parallel to the right and left flat top plates and oriented such that the right top and bottom plates are located in substantially the same plane, and such that the left top and bottom plates are located in substantially the same plane; a right wall extending between the right top plate and the right bottom plate; and a left wall extending between the left top plate and the left bottom plate; wherein the right and left top plates, right and left bottom plates, and right and left walls form a belt envelope that defines a belt opening that substantially corresponds to a cross-section of the endless belt such that the endless belt can slide freely through the belt opening; wherein a front entrance of the belt envelope is configured to funnel the return run of the endless belt into the belt opening in a flat orientation; wherein the belt envelope, when attached to the belt conveyor, is configured and oriented such that the belt opening is aligned with a desired flat path of the return run of the endless belt, and the walls are in proximity to edges of the return run of the endless belt to prevent the return run of the endless belt from moving laterally and the right and left top and bottom plates are in proximity to corresponding right and left upper and lower surfaces of the return run of the endless belt to prevent at least outer portions of the return run of the endless belt from moving vertically while passing through

the belt opening, and wherein the conveying run is located above the top plates of the belt envelope.

17. The Infringing Conveyor includes a belt guide apparatus adapted for attachment to a belt conveyor comprising an endless belt with a conveying run and a return run, the apparatus comprising right and left flat top plates; right and left flat bottom plates oriented substantially parallel to the right and left flat top plates and oriented such that the right top and bottom plates are located in substantially the same plane, and such that the left top and bottom plates are located in substantially the same plane; a right wall extending between the right top plate and the right bottom plate; and a left wall extending between the left top plate and the left bottom plate; wherein the right and left top plates, right and left bottom plates, and right and left walls form a belt envelope that defines a belt opening that substantially corresponds to a cross-section of the endless belt such that the endless belt can slide freely through the belt opening; wherein a front entrance of the belt envelope is configured to funnel the return run of the endless belt into the belt opening in a flat orientation; wherein the belt envelope, when attached to the belt conveyor, is configured and oriented such that the belt opening is aligned with a desired flat path of the return run of the endless belt, and the walls are in proximity to edges of the return run of the endless belt to prevent the return run of the endless belt from moving laterally and the right and left top and bottom plates are in proximity to corresponding right and left upper and lower surfaces of the return run of the endless belt to prevent at least outer portions of the return run of the endless belt from moving vertically while passing through the belt opening, and wherein the conveying run is located above the top plates of the belt envelope. *See, e.g.*, Exhibits B-F.

18. Claim 10 of the '511 patent claims a belt conveyor apparatus comprising front and rear end rollers mounted on a frame, and an endless belt mounted on the end rollers and driven such that a top conveying run of the endless belt moves from the front roller toward the rear roller along a top of the frame, and a bottom return run of the endless belt moves from the rear roller toward the front roller along a bottom of the frame; at least one belt guide comprising: right and left flat top plates; right and left flat bottom plates oriented substantially parallel to the right and left flat top plates and oriented such that the right top and bottom plates are located in substantially the same plane, and such that the left top and bottom plates are located in substantially the same plane; a right wall extending between the right top plate and the right bottom plate; and a left wall extending between the left top plate and the left bottom plate; wherein the right and left top plates, right and left bottom plates, and right and left walls form a belt envelope that defines a belt opening that substantially corresponds to a cross-section of the endless belt such that the endless belt can slide freely through the belt opening yet is substantially prevented from moving laterally or vertically; and wherein a front entrance of the belt envelope is configured to funnel the bottom return run of the endless belt into the belt opening; wherein the at least one belt guide is mounted on the frame such the right and left walls are aligned with a desired path of the bottom return run of the endless belt, and such that the bottom return run of the endless belt passes through the belt opening, and such that the conveying run of the endless belt is located above the top plates of the belt guide.

19. The Infringing Conveyor is a belt conveyor apparatus comprising front and rear end rollers mounted on a frame, and an endless belt mounted on the end rollers and driven such that a top conveying run of the endless belt moves from the front roller toward the rear roller along a top of the frame, and a bottom return run of the endless belt moves from the rear roller

toward the front roller along a bottom of the frame; at least one belt guide comprising: right and left flat top plates; right and left flat bottom plates oriented substantially parallel to the right and left flat top plates and oriented such that the right top and bottom plates are located in substantially the same plane, and such that the left top and bottom plates are located in substantially the same plane; a right wall extending between the right top plate and the right bottom plate; and a left wall extending between the left top plate and the left bottom plate; wherein the right and left top plates, right and left bottom plates, and right and left walls form a belt envelope that defines a belt opening that substantially corresponds to a cross-section of the endless belt such that the endless belt can slide freely through the belt opening yet is substantially prevented from moving laterally or vertically; and wherein a front entrance of the belt envelope is configured to funnel the bottom return run of the endless belt into the belt opening; wherein the at least one belt guide is mounted on the frame such the right and left walls are aligned with a desired path of the bottom return run of the endless belt, and such that the bottom return run of the endless belt passes through the belt opening, and such that the conveying run of the endless belt is located above the top plates of the belt guide. *See, e.g.*, Exhibits B-F.

20. Thus, the Infringing Conveyor infringes at least claims 1 and 10 of the '511 patent.

TRADE DRESS INFRINGEMENT

21. Brandt has been a leader in the design, manufacture and sale of agricultural equipment for more than 80 years.

22. Brandt's products are sold in interstate commerce in the United States and in this District.

23. Since Brandt began manufacturing, selling and distributing agricultural equipment, its products have become well-known and highly respected in the industry. Brandt has gained a substantial and loyal following of customers, owing to its established reputation for its substantial and robust equipment design. Brandt has worked hard to establish and maintain this reputation and goodwill.

24. Among the products offered by Brandt are its GrainBelt conveyors (“the Brandt Conveyors”), which are well-known in the industry for the powerful combination of speed, gentleness, and versatility. They are durable and easy to transport and come in a variety of configurations to meet a farmer’s grain handling needs.

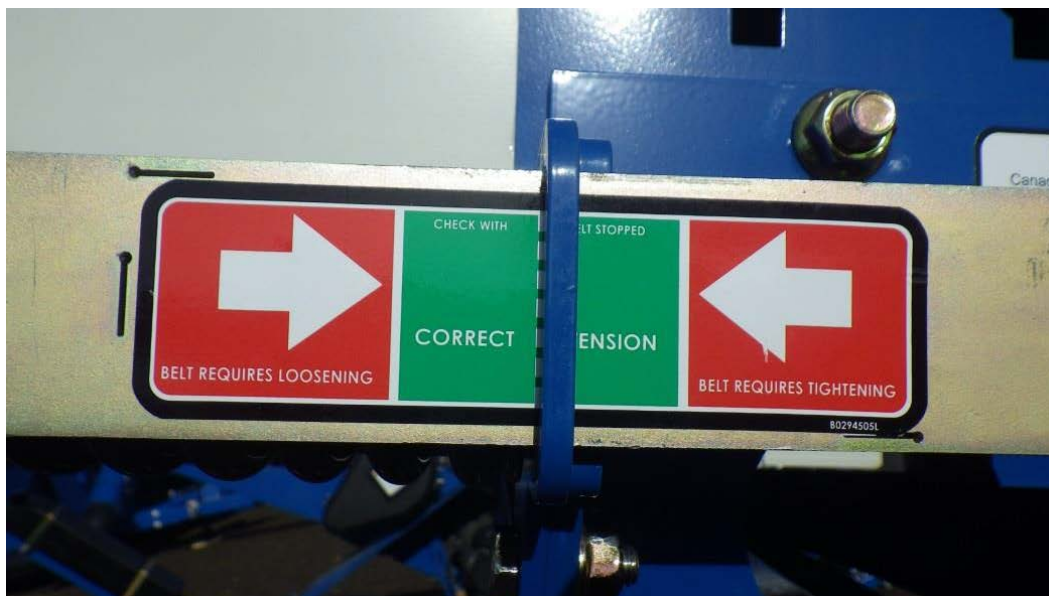
25. The Brandt Conveyors have been sold since 2003.

26. In addition to their superior technical features, the Brandt Conveyors bear a distinctive trade dress consisting of a blue paint color. The use of blue is unique in the marketplace. Blue has been the color that has been used across the Brandt family of agricultural products since 1997. The paint is emphasized in Brandt’s marketing materials as an identifying feature of Brandt agricultural products. Consumers rely upon this blue color to identify Brandt as the source of agricultural equipment.

27. In addition, Brandt’s Grain Conveyors have a distinctive product configuration and characteristics (“Brandt Configuration”) that is known and recognized in the industry consisting of a conveyor tube encased in a wind guard that provides a distinctive rectilinear profile, laser-cut metal edges, a roto-molded bucket discharge spout, a trapezoidal intake throat, and a recognized component arrangement including the location of the belt drive, gas motor, mover control, gas tank, hydraulic tank, and winch., all as shown in the picture below:



28. In addition, Brandt has designed decals, as shown below, that are unique to its conveyor products and that customers have come to associate with the Brandt Grain Conveyors (“Brandt Decals”).



And





29. The blue color, Brandt Configuration, and Brandt Decals are each individually and collectively referred to herein as the Brandt Trade Dress.

30. The Brandt Trade Dress presents a highly distinctive and unique appearance.

31. The Brandt Trade Dress has been used in interstate commerce exclusively and extensively by Brandt since 2003.

32. Since 2003, Brandt has made substantial sales of its grain conveyor products bearing the Brandt Trade Dress.

33. Since 2003, Brandt has expended a large amount of money advertising and promoting its grain conveyor products bearing the Brandt Trade Dress.

34. As a result of Brandt's extensive sales and promotion of its grain conveyor products bearing the Brandt Trade Dress, that trade dress has come to signify or be associated with Brandt among customers for such goods. This powerful and immediate customer association between the distinctive grain conveyor products bearing the Brandt Trade Dress and Brandt existed prior to the acts of HI complained of here. Brandt now owns valuable good will symbolized by, and embodied in its grain conveyor products bearing the Brandt Trade Dress.

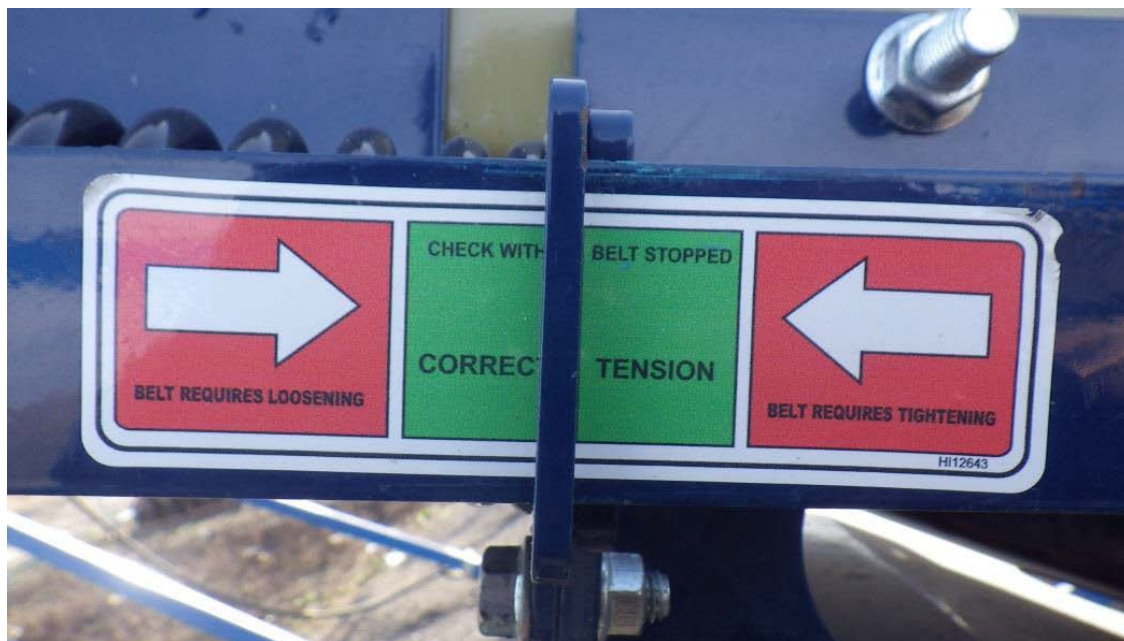
35. The Brandt Trade Dress is non-functional and has acquired secondary meaning in the marketplace.

36. On information and belief, HI is knowingly manufacturing, promoting, distributing, offering for sale, and/or selling to the public goods infringing on Brandt's distinctive trade dress, without authority from Brandt, and will continue to do so unless restrained and enjoined by this Court. Such use is likely to cause confusion or mistake, or to deceive members of the public, who may mistakenly believe that HI's goods originate with, are approved, sponsored or licensed by, or otherwise associated with, Brandt.

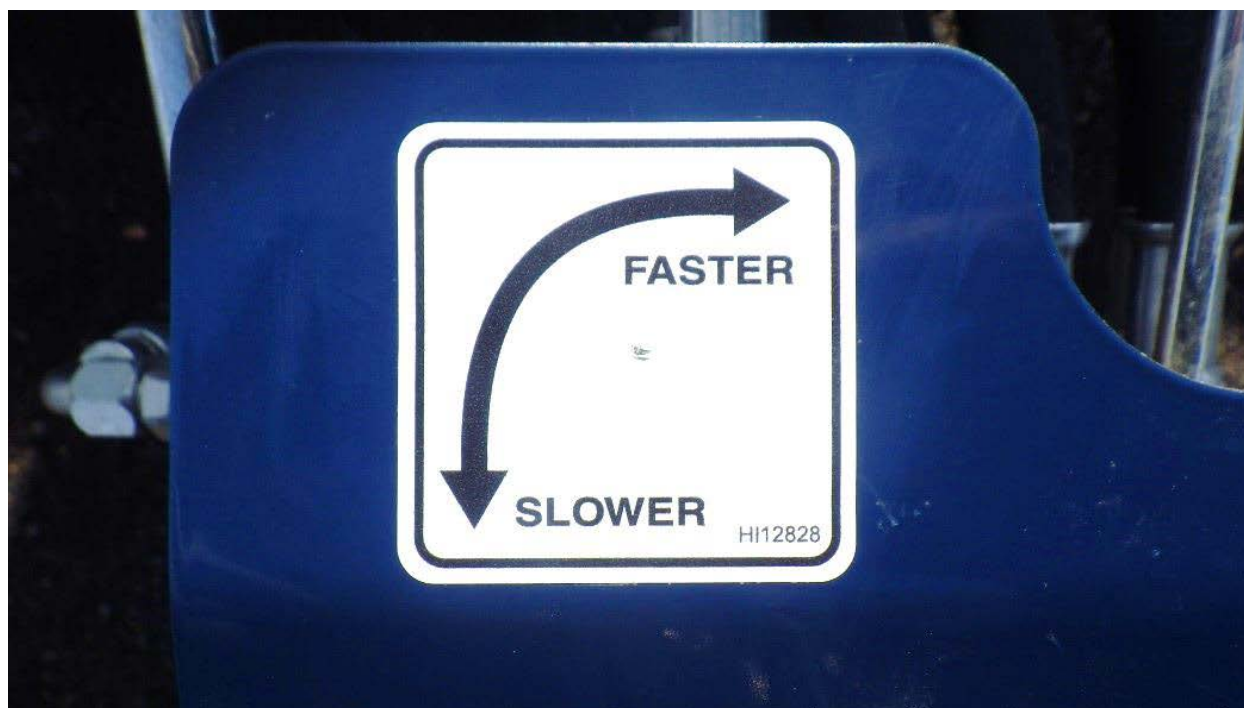
37. The Infringing Conveyor has copied Brandt's distinctive trade dress. It has copied the blue color and the Brandt Configuration:



38. In addition, HI has copied the artistic, non-functional features of the four Brandt Decals as shown below:



And





39. In fact, the Infringing Conveyor is a nearly exact duplicate of the Brandt Conveyors. In addition to copying the Brandt Trade Dress, the Infringing Conveyor copies the distinct look and feel of numerous other nonfunctional elements of the Brandt Conveyor,

including without limitation, the following elements: the hitch shape and profile, the mover lift design, the mover steering design, the design of the hydraulic pump guard, the design of the keyhole slots, engine mounts and battery mount, the belt tension slide used by Brandt, the positioning of the valve mount, valve type and valve hydraulic layout, the location of the manual holder, the guide shapes, the undercarriage components, including the exact dimensions and placement of the components, and holes in the S-drive on the tube that are used by Brandt for mounting additional drive options that are not even offered by HI.

40. These copied features are non-exhaustive, but only a sampling of the many instances of copying by HI showing that HI's copying of the Brandt Conveyor was intentional. The similarity between the two products can be explained in no other way.

41. The features described above, in addition to the Brandt Trade Dress, need not be copied in order to achieve the same functionality. This is demonstrated by other competitor products that are similar in functionality while substantially dissimilar in appearance. *See, e.g.*, Exhibit I.

42. Consumers recognize the Brandt Trade Dress, including the overall look and feel of the product. Because of HI's blatant copying of Brandt's product and the resulting similarity between the Brandt and HI products, consumers have, and will be confused about the origin of HI products and whether there is some affiliation between HI and Brandt.

43. Upon information and belief, HI's use of the infringing trade dress is and/or has been unfair, dishonest, deceptive, destructive, fraudulent, and discriminatory, and was undertaken with the intent of destroying fair and honest competition between HI and Brandt.

44. This false or misleading designation of origin has harmed and will continue to harm Brandt by giving HI an unfair advantage in the industry.

COUNT I
PATENT INFRINGEMENT

45. Brandt re-alleges and incorporates by reference the allegations of the preceding paragraphs as though fully set forth herein.

46. HI has infringed and, on information and belief, is continuing to infringe, the ‘511 patent by making, having made, offering for sale, selling, using, importing into the United States, and/or actively inducing others to use or sell the Infringing Conveyor in direct infringement of the ‘511 patent under 35 U.S.C. § 271(a).

47. HI’s acts of infringement of the ‘511 patent have caused and will continue to cause Brandt substantial and irreparable injury, for which Brandt is entitled to receive injunctive relief and damages adequate to compensate it for such infringement, including in an amount equal to Brandt’s lost profits attributable to HI’s infringement, but in no event less than a reasonable royalty for the use made of the invention of the ‘511 patent by HI.

48. On information and belief, HI’s infringing activities have been willful, entitling Brandt to increased damages.

49. HI’s infringement warrants a finding that this is an exceptional case, entitling Brandt to recover its attorneys’ fees and expenses.

COUNT II
UNFAIR COMPETITION – 15 U.S.C. § 1125 (LANHAM ACT § 43)

50. Brandt re-alleges and incorporates by reference the allegations of the preceding paragraphs as though fully set forth herein.

51. This cause of action for unfair competition arises under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

52. HI's marketing of the Infringing Conveyor provides a false or misleading designation of origin of its products as a result of HI's unauthorized use of the Brandt Trade Dress in the Infringing Conveyors. HI's use of the Brandt Trade Dress has, and is likely to cause future confusion, or to cause mistake, or to deceive customers and potential customers as to the nature, characteristics, qualities, or origin of HI's products.

53. HI's aforesaid actions constitute unfair competition in violation of 15 U.S.C. § 1125(a).

54. Upon information and belief, HI will continue to make such false and misleading designations and representations unless restrained by this Court.

55. HI's acts of unfair competition in violation of the Lanham Act have caused and will continue to cause Brandt substantial and irreparable injury, for which it has no adequate remedy at law.

COUNT IV
TRADE DRESS INFRINGEMENT – MINN STAT. § 325D.44

56. Brandt re-alleges and incorporates by reference the allegations of the preceding paragraphs as though fully set forth herein.

57. The acts herein described also constitute violation of Minn. Stat. §325D.44.

58. As a result of the infringing acts herein described, Brandt has sustained damages in an amount in excess of \$75,000 to be determined at trial, and will continue to sustain damages in the future, including irreparable harm.

PRAYER FOR RELIEF

WHEREFORE, Brandt respectfully demands judgment as follows:

A. That HI be found to infringe the '511 patent;

B. That HI, its officers, agents, servants, employees and attorneys, and all persons in active concert with them, or any of them, be preliminarily and permanently enjoined from infringing the '511 patent;

C. That Brandt be awarded damages adequate to compensate for HI's infringement of the '511 patent;

D. That the Court deem this case to be exceptional;

E. That HI be found to have engaged in unfair competition;

F. That HI, its officers, agents, servants, employees and attorneys, and all persons in active concert with them, or any of them, be preliminarily and permanently enjoined from using the trade dress of the Brandt Conveyor;

G. That Brandt be awarded damages adequate to compensate for HI's unfair competition;

H. That Brandt be awarded its attorneys' fees, expenses, and costs of this action; and

I. That Brandt have such other and further relief as this Court may deem just and proper.

JURY DEMAND

Brandt hereby demands trial by jury for all issues in this action triable of right by jury.

Respectfully submitted,

Dated: November 10, 2014

BRIGGS AND MORGAN, P.A.

By: s/ John B. Lunseth

John B. Lunseth (Minn. #65341)
2200 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402-2157
Telephone: (612) 977-8400
Facsimile: (612) 977-8650
jlunseth@briggs.com

OF COUNSEL:

Ann Schoen
FROST BROWN TODD, LLC
3300 Great American Tower
301 East Fourth Street
Cincinnati, Ohio 45202
Telephone: (513) 651-6128
Facsimile: (513) 651-6981

**ATTORNEYS FOR BRANDT INDUSTRIES,
LTD. AND BRANDT AGRICULTURAL
PRODUCTS, LTD.**