

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA**

FLIP FACE U.S.A., LLC,  
a Florida Limited Liability Company, and  
FLIP FACE, INC.,  
a Foreign Corporation,

**CASE NO.:**

Plaintiffs,

v.

ALEXANDRIA MOULDING, INC.,  
a Washington Corporation, and  
MOULURE ALEXANDRIA MOULDING, INC.,  
a Canadian Corporation,

Defendants.

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**COMPLAINT**

Plaintiffs, FLIP FACE U.S.A., LLC, a Florida Limited Liability Company, and FLIP FACE, INC., a foreign corporation, by and through the undersigned counsel, hereby file this Complaint against Defendants, ALEXANDRIA MOULDING, INC., a Washington Corporation, and MOULURE ALEXANDRIA MOULDING, INC., a Canadian Corporation, and, in so doing, state as follows:

**JURISDICTION, VENUE AND THE PARTIES**

1. This is an action which is, *in part*, brought pursuant to the Patent and Trademark Laws of the United States, 35 U.S.C. §§ 271, *et. seq.* and 15 U.S.C. §§ 1114, *et. seq.*

2. This Court has original jurisdiction pursuant to Title 28, United States Code, Section 1331, as this case involves a federal question arising under the Constitution, laws, or treaties of the United States.

3. Plaintiff, FLIP FACE, INC., is a Foreign Corporation with its principal address located in Canada (hereinafter “FLIP FACE CANADA”).

4. Plaintiff, FLIP FACE U.S.A., LLC, is a Florida Limited Liability Company with its principle address located in Broward County, Florida (hereinafter “FLIP FACE USA”, and together with FLIP FACE CANADA “the FLIP FACE ENTITIES”).

5. At all times material hereto, Defendant, ALEXANDRIA MOULDING, INC. (hereinafter “ALEXANDRIA”), was a Washington Corporation and engaged in the conduct of interstate commerce, and regularly conducted business in this judicial district, and is otherwise *sui juris*.

6. At all times material hereto, Defendant, MOULURE ALEXANDRIA MOULDING, INC. (hereinafter “MOULURE ALEXANDRIA”, and together with ALEXANDRIA “the ALEXANDRIA ENTITIES”), was a Canadian Corporation, and is otherwise *sui juris*.

7. This action also arises, *in part and principally*, as a result of a willful breach of a confidential settlement agreement stemming from infringing conduct of

the ALEXANDRIA ENTITIES, and others, which implicates interstate commerce. A redacted version of the confidential settlement agreement (hereinafter “Settlement Agreement”) is attached hereto as Exhibit “A.”<sup>1</sup>

8. Obligations and/or duties required of the ALEXANDRIA ENTITIES by the Settlement Agreement were required to be done, *in part*, within the state of Georgia. As a result of the ALEXANDRIA ENTITIES’ willful breach of said obligations and/or duties, discussed further herein, the FLIP FACE ENTITIES have been injured.

9. Upon information and belief, at all times material hereto relating to said injury, the ALEXANDRIA ENTITIES were engaged in the solicitation or service activities within this judicial district, and, upon further information and belief, the ALEXANDRIA ENTITIES distributed manufactured products and materials in North America and possibly within this judicial district in the ordinary course of commerce, trade, or use.

10. Venue is appropriate in this judicial district inasmuch as the Settlement Agreement breached by the ALEXANDRIA ENTITIES (and possibly others) resulted from previous litigation within this judicial district, *to wit: Flip*

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<sup>1</sup> The Settlement Agreement is confidential in nature, but said agreement allows for disclosure “as required in a formal legal proceeding to enforce any term or condition of this Agreement.” Exhibit “A” at ¶ 7.1(e). As such, the monetary provisions of the Settlement Agreement have been redacted on the filed exhibit version.

*Face U.S.A., LLC v. Home Depot U.S.A., Inc., et.al.*, Civil Action No. 1:11-cv-02560-AT (N.D. Ga.) (hereinafter “*Flip Face I*”), and was negotiated in part in this judicial district. In fact, on at least one occasion the ALEXANDRIA ENTITIES, through their representatives, attended a mediation conference in connection with the *Flip Face I* litigation, which was conducted by a United States Magistrate Judge presiding in the Northern District of Georgia.

11. The venue for this action is also appropriate in this judicial district inasmuch as Section 8.4 of the Settlement Agreement dictates that its provisions “shall be interpreted in accordance with and governed by the federal law of the United States and, where appropriate, by the laws of the State of Georgia...”

12. All conditions precedent have been met, waived, or satisfied to bring this lawsuit.

#### **GENERAL ALLEGATIONS**

13. The FLIP FACE ENTITIES are businesses involved primarily in the field of designing reversible crown moulding for residential and commercial buildings. The FLIP FACE ENTITIES have invested extensive capital in securing a Federal Trademark registration, as well as a number of domestic and foreign patents, to protect its intellectual property associated therewith.

14. For example, FLIP FACE CANADA is the registered owner of U.S. Trademark Reg. No. 3,775,851 for the mark “FLIP FACE,” in connection with the products described as: “Wood and particle board trim and mouldings for residential and commercial buildings.” A copy of the registration certificate is attached as Exhibit “B.” The registration issued on April 13, 2010, and enjoys a priority-of-use date of August 26, 2009.

15. Since August 2009, the FLIP FACE ENTITIES have invested extensive capital in building the goodwill of its business by advertising under the FLIP FACE mark to promote its business. The FLIP FACE ENTITIES have invested considerable effort to build a business reputation throughout Canada and the United States for providing quality reversible crown moulding at reasonable rates.

16. The United States Patent and Trademark Office (“USPTO”) has also issued two utility patents and several design patents on the reversible crown moulding that inure benefit to either FLIP FACE CANADA and/or FLIP FACE U.S.A. The issued U.S. Patents include Patent Nos. 8,516,758; 8,919,059; D620,136; D620,137; D620,138; D620,139; D620,140; D620,141; D620,142; D620,143; D621,966; D623,771; and D623,772 (hereinafter “U.S. Issued Patents”).

17. FLIP FACE CANADA has transferred, *via* an assignment, all of the U.S. Issued Patents to FLIP FACE U.S.A., and FLIP FACE U.S.A. is currently the holder of all of said U.S. Issued Patents.

18. Further, several sister patents were issued by the Canadian Intellectual Property Office covering the same subject matter. This additional portfolio of patents includes Canadian Patent No. 2,696,099 and Canadian Industrial Design Registration Nos. 131,361, 131,362, 131,363, 131,392, 131,394, 131,435, 131,436, 131,437, 131,454, 131,456, 131,457, 131,715, 138,456, and 138,545 (the Canadian and U.S. Issued Patents are hereinafter collectively referred to as the “FLIP FACE Patents”). A list of the FLIP FACE Patents at issue in *Flip Face I* are attached as Exhibit “C.”

19. Following issuance of a number of the FLIP FACE Patents, it was learned that Home Depot started to market two-sided, reversible, crown molding (hereinafter “reversible crown molding”), which was being marketed as “available exclusively at The Home Depot.” However, Home Depot marketed the reversible crown moulding products under a different name; *to wit*: “Perfect Cut Crown.”

20. Through an instructional and promotional video once publicly available on their website, Home Depot advertised that the Perfect Cut Crown product “cut install time in half,” and touted the invention as being the “latest

innovation in moulding,” and as “a breakthrough” due to its “unique reversible design.”

21. The profiles of the Perfect Cut Crown products that were being sold to consumers by Home Depot infringed at least all of the claims of U.S. Patent No. D623,771 (hereinafter “the ‘771 Patent”) and U.S. Patent No. 8,516,758 (hereinafter “the ‘758 Patent”). The ‘758 Patent was issued following the conclusion of the litigation of *Flip Face I*. The ‘758 Patent originated from U.S. Patent Application No. 12/670,086.

22. U.S. Patent No. 8,919,059 (hereinafter “the ‘059 Patent”) was also issued following the conclusion of the litigation of *Flip Face I*. A copy of the ‘771 Patent, the ‘758 Patent, the ‘059 Patent, the ‘138 Patent and the ‘142 Patent are attached hereto as Composite Exhibit “D”.

23. On July 7, 2013 (hereinafter “the Effective Date”), FLIP FACE USA entered into the Settlement Agreement with the defendants named in *Flip Face I* and several third-party vendors involved with the infringing activity at issue in *Flip Face I*, including the ALEXANDRIA ENTITIES. Through the Settlement Agreement, the issues in *Flip Face I*, including claims of patent infringement associated with select FLIP FACE Patents, were intended to be fully and finally resolved.

24. Importantly, after the Effective Date of the Settlement Agreement, the ALEXANDRIA ENTITIES and the other settling parties had in their possession, custody, or control, reversible crown moulding products that infringed one or more of the FLIP FACE Patents.

25. Pursuant to the terms of the Settlement Agreement, however, the ALEXANDRIA ENTITIES and the other settling parties, agreed, *inter alia*, that they “shall not infringe . . . any of the claims of any of the Flip Face Patents, which shall include . . . making, using, offering for sale, selling, and/or importing any product(s) so as to infringe any of the claims of any of the Flip Face Patents.” *See* Exhibit “A” at ¶ 6.3(a).

26. The “Flip Face Patents” referenced in the Settlement Agreement, a Schedule of which is attached hereto as Exhibit “C”, includes the FLIP FACE Patents (*i.e.*, the Canadian *and* U.S. Issued Patents) referenced in this Complaint and at issue *sub judice*.

27. Within days following execution of the Settlement Agreement, the ALEXANDRIA ENTITIES, being keenly aware of the prohibition against selling moulding products that would violate any of the FLIP FACE Patents, requested through an agent that the FLIP FACE ENTITIES permit it to sell the inventory that remained on hand following the Effective Date of the Settlement Agreement. In



response, the FLIP FACE ENTITIES offered to grant a license in order to permit such a sale of reversible crown moulding; however, the offer was declined.

28. Thereafter, notwithstanding the above mentioned prohibition, the ALEXANDRIA ENTITIES continued (and continue) to make, use, sell, and/or offer to sell reversible crown moulding, in the United States and Canada, that infringes upon select FLIP FACE Patents.

29. Retailers to which the ALEXANDRIA ENTITIES have supplied the aforementioned reversible crown moulding to (and through) include, but may not be limited to: (1) Schutte Lumber Company, a Missouri Corporation; (2) Busy Beaver Building Centers, Inc., a Pennsylvania Corporation (hereinafter “Busy Beaver”); and (3) Kent, a Canadian-based home improvement store that is part of the J.D. Irving, Limited group of companies.

30. Schutte, Busy Beaver and Kent are all entities which have received and/or been induced to sell infringing reversible crown moulding from the ALEXANDRIA ENTITIES after the Effective Date of the Settlement Agreement.

31. The ALEXANDRIA ENTITIES’ sale of reversible crown moulding to Schutte, Busy Beaver, Kent and any others, without authorization from the FLIP FACE ENTITIES infringes select FLIP FACE Patents and the FLIP FACE mark, and materially breaches the Settlement Agreement.

32. Evidencing at least one instance of said infringing and breaching conduct by the ALEXANDRIA ENTITIES, on November 10, 2014, reversible crown moulding was sold by Schutte. A copy of the Schutte invoice is attached as Exhibit “E”.

33. On or about November 19, 2014, the sold pieces of reversible crown moulding were received from Schutte. A fair and accurate partial view of the pieces is attached hereto as Exhibit “F.” The FLIP FACE mark was clearly labeled on the piece of reversible crown moulding and indicates “ALEXANDRIA” to be the manufacturer.

34. In another instance of infringing and breaching conduct by the ALEXANDRIA ENTITIES, on November 18, 2014 several pieces of reversible crown moulding, unlawfully offered for sale under the FLIP FACE mark, were purchased from Busy Beaver. A copy of the invoice is attached as Exhibit “G”.

35. Upon receipt of the pieces of reversible crown moulding, said products had labels bearing the FLIP FACE mark. A fair and accurate partial view of one of the pieces of infringing reversible crown moulding bearing the FLIP FACE mark is attached hereto as Exhibit “H.”

36. The pieces of the FLIP FLACE crown moulding were denoted as being supplied to Busy Beaver by “ALEXANDRIA.” *See* Exhibit “H.”

37. It has also been learned that on or about December 2014, the ALEXANDRIA ENTITIES sold infringing reversible crown moulding to Affordable Construction Supplies (hereinafter “ACS”), a Canadian based company, in direct and material violation of the Settlement Agreement.

38. Thereafter, on or about January 23, 2015, ACS offered for sale in its store, reversible crown moulding received from the ALEXANDRIA ENTITIES. *See Exhibit “I.”*

39. Said reversible crown moulding was offered for sale by ACS, and at least a portion of said reversible crown moulding included a partial bar code. Another portion included the full bar code displaying both “ALEXANDRIA” as the manufacturer, as well as the FLIP FACE mark. *See Exhibit “I.”*

40. At least a portion of said reversible crown moulding was structurally defaced, but still retained the FLIP FACE mark. *See Exhibit “J.”*

41. The product was structurally defaced in such a manner that when viewed by ordinary customers, the lack of quality disrupts the commercial value of the FLIP FACE mark.

42. Upon information and belief, in and around January/February 2015, the ALEXANDRIA ENTITIES structurally defaced additional units of the infringing reversible crown moulding bearing the FLIP FACE mark. Similar to

those pieces supplied to ACS, these units were structurally defaced in such a manner that when viewed by ordinary customers, the lack of quality disrupts the commercial value of the FLIP FACE mark.

43. Finally, in addition to infringing the Flip Face Patents, and thereby materially breaching the Settlement Agreement, the ALEXANDRIA ENTITIES have further breached the Settlement Agreement by printing brochures that advertised the FLIP FACE mark in connection with reversible crown moulding after the Effective Date of the Settlement Agreement. *See* Exhibit “K”.

44. Similarly, the ALEXANDRIA ENTITIES also own, operate, or control the URL internet address [www.alexandriamoulding.com](http://www.alexandriamoulding.com), which actively advertises, offers for sale, and sells products and services to consumers throughout North America, including the reversible crown moulding that is the subject of the instant action.

45. Advertisement of crown moulding on [www.alexandriamoulding.com](http://www.alexandriamoulding.com) that would infringe on any of the FLIP FACE Patents also amounts to a material breach of the Settlement Agreement. *See* Exhibit “L”.

46. The ALEXANDRIA ENTITIES’ conduct in breaching the Settlement Agreement was performed in a willful, malicious and vindictive manner towards the FLIP FACE ENTITIES.

47. As a direct result of the ALEXANDRIA ENTITIES' actions, the FLIP FACE ENTITIES have retained the services of counsel, and are obligated to pay their counsel all attorneys' fees and costs associated with the investigation, preparation and prosecution of the instant lawsuit.

48. In this regard, Section 8.6 of the Settlement Agreement provides, in part, that if "any Party brings an action...to enforce [the Settlement Agreement], including, but not limited to an action for patent infringement concerning any of the Flip Face Patents, the prevailing Party shall recover its reasonable attorneys' fees, costs, and expenses from the non-prevailing Party."

49. The FLIP FACE ENTITIES have complied with and met all conditions precedent and concurrent to the bringing of this action, or all conditions precedent and concurrent to the bringing of this action have been waived or excused by the ALEXANDRIA ENTITIES' conduct.

#### **COUNT I - BREACH OF SETTLEMENT AGREEMENT**

50. The FLIP FACE ENTITIES reallege and rever paragraphs one (1) through forty-nine (49) as if fully set forth herein.

51. The Settlement Agreement constitutes a valid contract between the FLIP FACE ENTITIES and the ALEXANDRIA ENTITIES.

52. The Settlement Agreement required the ALEXANDRIA ENTITIES and any of its respective Affiliates to, *inter alia*, after the Effective Date of the Settlement Agreement, no longer make, use, offer for sale, sell, import, or manufacture any reversible crown molding product so as to infringe any of the claims of any of the FLIP FACE Patents. See Exhibit “A” at ¶ 6.3(a).

53. The obligations set forth in Section 6.3 of the Settlement Agreement are a material provision thereto.

54. As more fully set forth above, the ALEXANDRIA ENTITIES have materially breached this provision of the Settlement Agreement by continuing to make, use, offer for sale, sell, import, or manufacture infringing reversible crown molding products in Canada and the United States.

55. The ALEXANDRIA ENTITIES’ actions were taken in a malicious and willful manner with the specific intent to injure the FLIP FACE ENTITIES.

56. The FLIP FACE ENTITIES have suffered damage as a result of the ALEXANDRIA ENTITIES’ willful material breach.

57. Pursuant to Section 8.6 of the Settlement Agreement, the FLIP FACE ENTITIES are entitled to recover from the ALEXANDRIA ENTITIES’ its “reasonable attorneys’ fees, costs, and expenses” for having to investigate, prepare and prosecute this action.

WHEREFORE, FLIP FACE USA, LLC, a Florida Limited Liability Company, and FLIP FACE, INC., a foreign corporation, by and through the undersigned, hereby respectfully demand judgment against Defendants, ALEXANDRIA MOULDING, INC., a Washington Corporation, and MOULURE ALEXANDRIA MOULDING, INC., a Canadian Corporation, said judgment which should include provisions:

- a) compensating the FLIP FACE ENTITIES for the full amount of damages sustained, including, but not limited to, any and all damage remedies available which include, but are not limited to, lost profits, a reasonable royalty award, statutory damages, and disgorgement of the profits received by the ALEXANDRIA ENTITIES;
- b) awarding punitive damages against the ALEXANDRIA ENTITIES at the maximum amount allowable by law;
- c) imposition of all pre and post judgment interest at the maximum allowable rate on the full compensatory and punitive amount awarded to the FLIP FACE ENTITIES;
- d) awarding remuneration of all attorneys' fees, costs and expenses for the FLIP FACE ENTITIES having to investigate, prepare and prosecute this action; and
- e) for such further and additional relief this Court deems just and proper under the circumstances.

**COUNT II - BREACH OF SETTLEMENT AGREEMENT**

58. The FLIP FACE ENTITIES reallege and rever paragraphs one (1) through forty-nine (49) as if fully set forth herein.

59. The Settlement Agreement constitutes a valid contract between the FLIP FACE ENTITIES and the ALEXANDRIA ENTITIES.

60. The Settlement Agreement acknowledges the FLIP FACE ENTITIES' unfettered ownership and rights to the FLIP FACE mark and also required the ALEXANDRIA ENTITIES, and any respective Affiliates, to return all literature and printed material that may be found with reasonable diligence containing the FLIP FACE mark, or alternatively, to confirm in writing that all such material that can be found with reasonable diligence has been gathered and destroyed. *See* Exhibit "A" at ¶ 3.4.

61. The Settlement Agreement also required the ALEXANDRIA ENTITIES to refrain from producing future advertisements or products bearing the FLIP FACE mark.

62. The aforementioned provisions contained within the Settlement Agreement are material provisions thereto.

63. As more fully set forth above, the ALEXANDRIA ENTITIES have materially breached these provision of the Settlement Agreement by continuing to sell, market, advertise, display, offer for sale, or distribute reversible crown molding products bearing the FLIP FACE mark in Canada and the United States.



64. Additionally, upon information and belief, the ALEXANDRIA ENTITIES further breached the Settlement Agreement by printing brochures after the Effective Date of the Settlement Agreement that advertised products using the FLIP FACE mark in Canada and the United States. *See* Exhibit “K”.

65. The ALEXANDRIA ENTITIES’ actions were taken in a malicious and willful manner with the specific intent to injure the FLIP FACE ENTITIES.

66. The FLIP FACE ENTITIES have suffered damage as a result of the ALEXANDRIA ENTITIES’ willful material breach.

67. Pursuant to Section 8.6 of the Settlement Agreement, the FLIP FACE ENTITIES are also entitled to recover from the ALEXANDRIA ENTITIES its “reasonable attorneys’ fees, costs, and expenses” for having to investigate, prepare and prosecute this action.

WHEREFORE, FLIP FACE USA, LLC, a Florida Limited Liability Company, and FLIP FACE, INC., a foreign corporation, by and through the undersigned, hereby respectfully demand judgment against Defendants, ALEXANDRIA MOULDING, INC., a Washington Corporation, and MOULURE ALEXANDRIA MOULDING, INC., a Canadian Corporation, said judgment which should include provisions:

- a) requiring the ALEXANDRIA ENTITIES to deliver for destruction to the FLIP FACE ENTITIES all labels, stickers, signs, prints, packages,

products, wrappers, receptacles, advertisements, signage, and any written or printed materials in its possession, custody, or control which bear the term “FLIP FACE” alone or in combination with any other words, marks, or other elements;

- b) compensating the FLIP FACE ENTITIES for the full amount of damages sustained, including, but not limited to, any and all damage remedies available which include, but are not limited to, lost profits, a reasonable royalty award, statutory damages, and disgorgement of the profits received by the ALEXANDRIA ENTITIES;
- c) awarding punitive damages against the ALEXANDRIA ENTITIES at the maximum amount allowable by law;
- d) imposition of all pre and post judgment interest at the maximum allowable rate on the full compensatory and punitive amount awarded to the FLIP FACE ENTITIES;
- e) awarding remuneration of all attorneys’ fees, costs and expenses for the FLIP FACE ENTITIES having to investigate, prepare and prosecute this action; and
- f) for such further and additional relief this Court deems just and proper under the circumstances.

### **COUNT III - FRAUD**

68. The FLIP FACE ENTITIES reallege and rever paragraphs one (1) through forty-nine (49) as if fully set forth herein.

69. Prior to the FLIP FACE ENTITIES’ execution of the Settlement Agreement, the ALEXANDRIA ENTITIES made several material representations to induce the FLIP FACE ENTITIES to settle, including:

a. That the ALEXANDRIA ENTITIES had no intention to make use, offer for sale, import, or manufacture any reversible crown moulding product that infringes any of the claims of any of the FLIP FACE Patents (*See* Exhibit “A” at Recital No. 4); and

b. That the ALEXANDRIA ENTITIES would use all commercially reasonable efforts to remove publically available out-of-date marketing material, advertisements, or displays in stores, print, or online regarding reversible crown molding products in their possession, custody or control. (*See* Exhibit “A” at ¶¶ 3.4 & 6.3).

70. Based upon their conduct following the Effective Date, the material representations made by the ALEXANDRIA ENTITIES were fraudulent misrepresentations designed to induce the FLIP FACE ENTITIES into executing the Settlement Agreement, upon which the FLIP FACE ENTITIES justifiably relied.

71. The material misrepresentations made by A the ALEXANDRIA ENTITIES were material to the execution of the Settlement Agreement, and it is clear, based upon its subsequent conduct, the ALEXANDRIA ENTITIES intentionally made these statements with disregard as to the FLIP FACE ENTITIES’ rights or the injuries that would, and have, been sustained.

72. As a direct and proximate result of the fraudulent misrepresentations by the ALEXANDRIA ENTITIES, the FLIP FACE ENTITIES have suffered damages in an amount yet to be fully determined.

73. The ALEXANDRIA ENTITIES' actions were taken in a malicious and willful manner with the specific intent to injure the FLIP FACE ENTITIES.

74. Pursuant to Section 8.6 of the Settlement Agreement, the FLIP FACE ENTITIES are also entitled to recover from the ALEXANDRIA ENTITIES its "reasonable attorneys' fees, costs, and expenses" for having to investigate, prepare and prosecute this action.

WHEREFORE, FLIP FACE USA, LLC, a Florida Limited Liability Company, and FLIP FACE, INC., a foreign corporation, by and through the undersigned, hereby respectfully demand judgment against Defendants, ALEXANDRIA MOULDING, INC., a Washington Corporation, and MOULURE ALEXANDRIA MOULDING, INC., a Canadian Corporation, said judgment which should include provisions:

- a) requiring the ALEXANDRIA ENTITIES to deliver for destruction to the FLIP FACE ENTITIES all labels, stickers, signs, prints, packages, products, wrappers, receptacles, advertisements, signage, and any written or printed materials in its possession, custody, or control which bear the term "FLIP FACE" alone or in combination with any other words, marks, or other elements;

- b) compensating the FLIP FACE ENTITIES for the full amount of damages sustained, including, but not limited to, any and all damage remedies available which include, but are not limited to, lost profits, a reasonable royalty award, statutory damages, and disgorgement of the profits received by the ALEXANDRIA ENTITIES;
- c) awarding punitive damages against the ALEXANDRIA ENTITIES at the maximum amount allowable by law;
- d) imposition of all pre and post judgment interest at the maximum allowable rate on the full compensatory and punitive amount awarded to the FLIP FACE ENTITIES;
- e) awarding remuneration of all attorneys' fees, costs and expenses for the FLIP FACE ENTITIES having to investigate, prepare and prosecute this action; and
- f) for such further and additional relief this Court deems just and proper under the circumstances.

#### **COUNT IV - WILLFUL PATENT INFRINGEMENT**

75. FLIP FACE USA realleges and revers paragraphs one (1) through forty-nine (49) as if fully set forth herein.

76. This is an action for direct and indirect patent infringement pursuant to Title 35, United States Code, Section 271, of the United States Patent Act.

77. FLIP FACE USA is the assignee of the '771 Patent, the '758 Patent, the '059 Patent, the '138 Patent and the '142 Patent.

78. ALEXANDRIA has infringed, and continues to infringe, claims of at least the '771 Patent, the '758 Patent, the '059 Patent, the '138 Patent and the '142 Patent by, *at least*, making, using, selling, or offering for sale, infringing technology, *i.e.*, reversible crown moulding products.

79. Specifically, ALEXANDRIA has infringed, literally and under the doctrine of equivalents, claims of the '771 Patent, the '138 Patent and the '142 Patent by using, making, selling, and offering to sell reversible crown moulding products with a substantially identical design to that ornamental design claimed in the aforementioned Patents.

80. ALEXANDRIA has also infringed, literally and under the doctrine of equivalents, claims of the '758 Patent and the '059 Patent by using, making, selling, and offering to sell reversible crown moulding products with a reversibility function of that claimed by the '758 Patent and the '059 Patent.

81. As set forth above, U.S. Patent Application No. 12/670,086 matured into the '758 Patent following the execution of the Settlement Agreement. U.S. Patent Application No. 12/670,086 is clearly listed on the "Flip Face Patents" referenced in the Settlement Agreement, the Schedule of which is attached as Exhibit 1 thereto. As such, ALEXANDRIA clearly had knowledge of the same prior to the execution of the Settlement Agreement.

82. ALEXANDRIA has also induced infringement of claims of at least the '771 Patent, the '758 Patent, the '059 Patent, the '138 Patent and the '142 Patent by Schutte, Busy Beaver and others, by making, using, and selling infringing reversible crown moulding products for resale by Schutte, Busy Beaver and others with knowledge of the aforesaid Patents covering said reversible crown moulding products.

83. All such infringing conduct of ALEXANDRIA has occurred and was committed in a willful manner by at least its knowledge of the aforementioned Patents, and its knowledge of FLIP FACE USA's demands to cease their infringing conduct and recognize the rights under the FLIP FACE Patents.

84. ALEXANDRIA'S willful and malicious conduct is also evidenced by its complete disregard for the material provision of the Settlement Agreement, and their breach thereof.

85. ALEXANDRIA'S actions have caused, and continue to cause, irreparable harm to FLIP FACE USA to which there is no adequate remedy at law.

86. ALEXANDRIA'S conduct in this instance is exceptional, and, as such, FLIP FACE USA should be entitled to recover its attorneys' fees in this action pursuant to 35 USC § 285 which provides that the "court in exceptional cases may award reasonable attorney fees to the prevailing party."

87. Pursuant to Section 8.6 of the Settlement Agreement, FLIP FACE USA is also entitled to recover from ALEXANDRIA its “reasonable attorneys’ fees, costs, and expenses” for having to investigate, prepare and prosecute this action.

WHEREFORE, FLIP FACE USA, LLC, a Florida Limited Liability Company, and FLIP FACE, INC., a foreign corporation, by and through the undersigned, hereby respectfully demand judgment against Defendant, ALEXANDRIA MOULDING, INC., a Washington Corporation, said judgment which should include provisions:

- a) temporarily and permanently enjoining the ALEXANDRIA ENTITIES and all of those acting in concert with it, including, but not limited to, their agents, affiliates, subsidiaries, officers, directors, attorneys and employees from using, making, selling, or offering to sell infringing reversible crown moulding products, and all colorable imitations thereof;
- b) compensating FLIP FACE USA for the full amount of damages sustained, including, but not limited to, any and all damage remedies available pursuant to the Patent Laws of the United States, 35 U.S.C. §§ 271, *et.seq.*, which include, but are not limited to, lost profits, a reasonable royalty award, and disgorgement of the profits received by ALEXANDRIA;
- c) declaring this case exceptional and trebling all damages awarded to FLIP FACE USA;
- d) imposition of all pre and post judgment interest at the maximum allowable rate on the full compensatory and trebled amount awarded to FLIP FACE USA;



- e) awarding remuneration of all attorneys' fees, costs and expenses for FLIP FACE USA having to investigate, prepare and prosecute this action; and
- f) for such further and additional relief this Court deems just and proper under the circumstances.

### **COUNT V - TRADEMARK INFRINGEMENT AND COUNTERFEITING**

88. FLIP FACE CANADA realleges and revers paragraphs one (1) through forty-nine (49) as if fully set forth herein.

89. This is a claim for trademark infringement and counterfeiting under 15 U.S.C. § 1114(1).

90. FLIP FACE CANADA is the legal and rightful owner of the Federal mark FLIP FACE, Registration No. 3775851, in connection with “wood and particle board trim and mouldings for residential and commercial buildings.” This registration enjoys a priority-of-use date of at least October 7, 2009.

91. This registration also enjoys a statutory presumption of validity, ownership of the mark, and FLIP FACE CANADA's exclusive right to use the FLIP FACE mark in connection with the aforementioned goods.

92. FLIP FACE CANADA's use of the FLIP FACE mark has assured that the FLIP FACE mark has acquired recognition in the minds of consumers and is associated with the FLIP FACE ENTITIES.

93. As more fully set forth above, ALEXANDRIA, without permission or authorization from FLIP FACE CANADA, and before *and* after the Effective Date of the Settlement Agreement, marketed, advertised, sold, or offered for sale reversible crown moulding products bearing the FLIP FACE mark.

94. The reversible crown moulding products that were marketed, advertised, sold, or offered for sale by ALEXANDRIA included an identical or substantially indistinguishable mark to that of the FLIP FACE mark.

95. The use of the FLIP FACE mark by ALEXANDRIA is likely to cause confusion, mistake, or deception as to the source of origin of the FLIP FACE crown moulding in that customers and potential customers are likely to believe that the goods sold, offered for sale, or distributed by ALEXANDRIA under the FLIP FACE mark are provided by, sponsored by, approved by, licensed by, affiliated or associated with, or in some other way legitimately connected to FLIP FACE CANADA, or its patented two-sided crown moulding.

96. The likely confusion, mistake, or deception caused by ALEXANDRIA is in violation of the Lanham Act, 15 U.S.C. § 1114(1).

97. The acts of ALEXANDRIA were taken in willful, deliberate, and/or intentional disregard of FLIP FACE CANADA's rights in said FLIP FACE mark.

98. As a direct result of the likely confusion, mistake, or deception, FLIP FACE CANADA has suffered and will continue to suffer irreparable harm if the unlawful conduct of ALEXANDRIA is not enjoined.

99. As a direct result of ALEXANDRIA'S actions and the likely confusion, mistake or deception, FLIP FACE CANADA has suffered damages in an amount not yet determined.

100. ALEXANDRIA'S conduct in this instance is exceptional, and, as such, FLIP FACE CANADA should be entitled to recovery its attorneys' fees in this action pursuant to 15 U.S.C. § 1117(a) which provides, *in part*, that the "court in exceptional cases may award reasonable attorney fees to the prevailing party."

101. Pursuant to Section 8.6 of the Settlement Agreement, FLIP FACE CANADA is also entitled to recover from ALEXANDRIA its "reasonable attorneys' fees, costs, and expenses" for having to investigate, prepare and prosecute this action.

WHEREFORE, FLIP FACE USA, LLC, a Florida Limited Liability Company, and FLIP FACE, INC., a foreign corporation, by and through the undersigned, hereby respectfully demand judgment against Defendants, ALEXANDRIA MOULDING, INC., a Washington Corporation, said judgment which should include provisions:

- a) temporarily and permanently enjoining the ALEXANDRIA ENTITIES and all of those acting in concert with it, including, but not limited to, their agents, affiliates, subsidiaries, officers, directors, attorneys and employees from using the name FLIP FACE or any similar trademark, trade name, logo, corporate name, service mark in connection with the sale of reversible crown moulding;
- b) requiring the ALEXANDRIA ENTITIES to deliver for destruction to the FLIP FACE ENTITIES all labels, stickers, signs, prints, packages, products, wrappers, receptacles, advertisements, signage, and any written or printed materials in its possession, custody, or control which bear the term “FLIP FACE” alone or in combination with any other words, marks, or other elements;
- c) compensating FLIP FACE CANADA for the full amount of damages sustained, including, but not limited to, any and all damage remedies available which include, but are not limited to, lost profits, a reasonable royalty award, statutory damages, and disgorgement of the profits received by ALEXANDRIA;
- d) declaring this case exceptional and trebling all damages awarded to FLIP FACE CANADA;
- e) imposition of all pre and post judgment interest at the maximum allowable rate on the full compensatory and trebled amount awarded to FLIP FACE CANADA;
- f) awarding remuneration of all attorneys’ fees, costs and expenses for FLIP FACE CANADA having to investigate, prepare and prosecute this action; and
- g) for such further and additional relief this Court deems just and proper under the circumstances.

**COUNT VI - FEDERAL DILUTION AS TO FLIP FACE MARK**

102. FLIP FACE CANADA realleges and revers paragraphs one (1) through forty-nine (49) as if fully set forth herein.

103. FLIP FACE CANADA has extensively and continuously promoted and used the registered FLIP FACE mark in Canada and the United States, and the mark has become a well-known, distinctive, and famous symbol of its goods.

104. ALEXANDRIA is making commercial use in commerce of marks that dilute and are likely to dilute the distinctiveness of the FLIP FACE mark by eroding the public's exclusive identification of this mark with the FLIP FACE ENTITIES' mark, tarnishing and degrading the positive associations of the marks, and otherwise lessening the capacity of the mark to identify and distinguish the FLIP FACE ENTITIES' goods.

105. ALEXANDRIA'S actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with the FLIP FACE mark or to maliciously cause dilution of the FLIP FACE mark, to the great and irreparable injury of the FLIP FACE ENTITIES.

106. ALEXANDRIA has caused and will continue to cause irreparable injury to the FLIP FACE ENTITIES' goodwill and business reputation, and dilution of distinctiveness and value of the famous and distinctive nature of the

FLIP FACE mark in violation of 15 U.S.C. § 1125(c), and FLIP FACE CANADA, therefore, is entitled to injunctive relief.

107. ALEXANDRIA'S conduct in this instance is exceptional, and, as such, FLIP FACE CANADA should be entitled to recover its attorneys' fees in this action pursuant to 15 U.S.C. § 1117(a) which provides, *in part*, that the "court in exceptional cases may award reasonable attorney fees to the prevailing party."

108. Pursuant to Section 8.6 of the Settlement Agreement, FLIP FACE CANADA is also entitled to recover from ALEXANDRIA its "reasonable attorneys' fees, costs, and expenses" for having to investigate, prepare and prosecute this action.

WHEREFORE, FLIP FACE USA, LLC, a Florida Limited Liability Company, and FLIP FACE, INC., a foreign corporation, by and through the undersigned, hereby respectfully demand judgment against Defendants, ALEXANDRIA MOULDING, INC., a Washington Corporation, said judgment which should include provisions:

- a) temporarily and permanently enjoining the ALEXANDRIA ENTITIES and all of those acting in concert with it, including, but not limited to, their agents, affiliates, subsidiaries, officers, directors, attorneys and employees from using the name FLIP FACE or any similar trademark, trade name, logo, corporate name, service mark in connection with the sale of reversible crown moulding;

- b) requiring the ALEXANDRIA ENTITIES to deliver for destruction to FLIP FACE CANADA all labels, stickers, signs, prints, packages, products, wrappers, receptacles, advertisements, signage, and any written or printed materials in its possession, custody, or control which bear the term “FLIP FACE” alone or in combination with any other words, marks, or other elements;
- c) compensating FLIP FACE CANADA for the full amount of damages sustained, including, but not limited to, any and all damage remedies available which include, but are not limited to, lost profits, a reasonable royalty award, statutory damages, and disgorgement of the profits received by ALEXANDRIA;
- d) declaring this case exceptional and trebling all damages awarded to FLIP FACE CANADA;
- e) imposition of all pre and post judgment interest at the maximum allowable rate on the full compensatory and trebled amount awarded to FLIP FACE CANADA;
- f) awarding remuneration of all attorneys’ fees, costs and expenses for FLIP FACE CANADA having to investigate, prepare and prosecute this action; and
- g) for such further and additional relief this Court deems just and proper under the circumstances.

**COUNT VII - FALSE DESIGNATION OF ORIGIN**

109. FLIP FACE CANADA realleges and revers paragraphs one (1) through forty-nine (49) as if fully set forth herein.

110. This is a claim for false designation of origin under 15 U.S.C. § 1125(a).

111. FLIP FACE CANADA is the legal and rightful owner of the Federal mark FLIP FACE, Registration No. 3775851, in connection with “wood and particle board trim and mouldings for residential and commercial buildings.” This registration enjoys a priority-of-use date of at least as early as October 07, 2009.

112. This registration also enjoys a statutory presumption of validity, ownership of the mark, and the exclusive right for FLIP FACE CANADA to use the FLIP FACE mark in connection with the aforementioned goods.

113. FLIP FACE CANADA’S long use of the FLIP FACE mark has assured that the FLIP FACE mark has acquired recognition in the minds of consumers and is associated with the FLIP FACE ENTITIES.

114. As more fully set forth above, ALEXANDRIA has, without permission or authorization from FLIP FACE CANADA after the Effective Date of the Settlement Agreement, marketed, advertised, sold, or offered for sale reversible crown moulding products bearing the FLIP FACE mark.

115. The use of the FLIP FACE mark by ALEXANDRIA is likely to cause confusion between consumers as to the source of origin of the FLIP FACE crown moulding, in that customers and potential customers are likely to believe that the goods sold, offered for sale, or distributed by ALEXANDRIA under the FLIP FACE mark are provided by, sponsored by, approved by, licensed by, affiliated or



associated with, or in some other way legitimately connected to FLIP FACE CANADA, FLIP FACE USA, or its patented reversible crown moulding.

116. The likely confusion, mistake, or deception caused by ALEXANDRIA is in violation of the Lanham Act, 15 U.S.C. § 1125(a).

117. The acts of ALEXANDRIA were taken in willful, deliberate, and/or intentional disregard of FLIP FACE CANADA'S rights in said FLIP FACE mark.

118. As a direct result of the likely confusion, mistake, or deception, FLIP FACE CANADA has suffered and will continue to suffer irreparable harm if the conduct of ALEXANDRIA is not enjoined.

119. As a direct result of ALEXANDRIA'S actions and the likely confusion, mistake or deception, FLIP FACE CANADA has suffered damages in an amount not yet determined.

120. ALEXANDRIA'S conduct in this instance is exceptional, and, as such, FLIP FACE CANADA should be entitled to recover its attorneys' fees in this action pursuant to 15 U.S.C. § 1117(a) which provides, *in part*, that the "court in exceptional cases may award reasonable attorney fees to the prevailing party."

121. Pursuant to Section 8.6 of the Settlement Agreement, FLIP FACE CANADA is also entitled to recover from ALEXANDRIA its "reasonable

attorneys' fees, costs, and expenses" for having to investigate, prepare and prosecute this action.

WHEREFORE, FLIP FACE USA, LLC, a Florida Limited Liability Company, and FLIP FACE, INC., a foreign corporation, by and through the undersigned, hereby respectfully demand judgment against Defendants, ALEXANDRIA MOULDING, INC., a Washington Corporation, said judgment which should include provisions:

- a) temporarily and permanently enjoining the ALEXANDRIA ENTITIES and all of those acting in concert with it, including, but not limited to, their agents, affiliates, subsidiaries, officers, directors, attorneys and employees from using the name FLIP FACE or any similar trademark, trade name, logo, corporate name, service mark in connection with the sale of reversible crown moulding;
- b) requiring the ALEXANDRIA ENTITIES to deliver for destruction to FLIP FACE CANADA all labels, stickers, signs, prints, packages, products, wrappers, receptacles, advertisements, signage, and any written or printed materials in its possession, custody, or control which bear the term "FLIP FACE" alone or in combination with any other words, marks, or other elements;
- c) compensating FLIP FACE CANADA for the full amount of damages sustained, including, but not limited to, any and all damage remedies available which include, but are not limited to, lost profits, a reasonable royalty award, statutory damages, and disgorgement of the profits received by ALEXANDRIA;
- d) declaring this case exceptional and trebling all damages awarded to FLIP FACE CANADA;

- e) imposition of all pre and post judgment interest at the maximum allowable rate on the full compensatory and trebled amount awarded to FLIP FACE CANADA;
- f) awarding remuneration of all attorneys' fees, costs and expenses for FLIP FACE CANADA having to investigate, prepare and prosecute this action; and
- g) for such further and additional relief this Court deems just and proper under the circumstances.

**DEMAND FOR JURY TRIAL**

Plaintiffs, FLIP FACE, INC., a Foreign Corporation, and FLIP FACE U.S.A., LLC, a Florida Limited Liability Company, hereby demand trial by jury of all issues so triable as a matter of law.

**Dated this 27th day of March, 2015.**

Respectfully Submitted,

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By:



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