

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

Centrex Plastics, LLC
an Ohio Limited Liability Company,

Plaintiff,

vs.

HONORABLE

CIVIL ACTION NO.

Diversified Re-Packaging Corporation
(d/b/a U.S. Merchants), a California company,

Defendant.

JURY TRIAL DEMANDED

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COMPLAINT

THE PARTIES

1. Plaintiff, Centrex Plastics, LLC, ("Centrex") is an Ohio limited liability company having its principal place of business at 814 West Lime St., Findlay, Ohio 45840.

2. Upon information and belief, Defendant, Diversified Re-Packaging Corporation ("Diversified"), is a California company having its principal place of business at 8737 Wilshire Blvd., Beverly Hills, CA 90211. Upon information and belief, Diversified manufactures or has manufactured on its behalf, offers for sale, sells, and/or uses in the United

States storage containers and an accompanying lid.

JURISDICTION

3. This is an action for violation of the patent laws of the United States of America, 35 U.S.C. § 1, *et seq.*; for tortious interference with contracts in violation of Ohio law; for tortious interference with business relationships in violation of Ohio law; for violation of the Ohio deceptive trade practices laws, Ohio Rev. Code 4165.01, *et seq.*; and for trade dress infringement under the Trademark Act of 1946, 15 U.S.C. § 1051, *et seq.*

4. The Court has jurisdiction over the subject matter of this action pursuant to section 39 of the Lanham Act, 28 U.S.C. §§ 1331, 1332 and 1338(a), 1338(b) and 1367(a). The amount in controversy exceeds the sum of \$75,000 and diversity of citizenship exists. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

5. This Court has jurisdiction over Diversified because, *inter alia*, it: (1) transacts business in this state; (2) engages in infringing conduct in this state, and/or induces others to engage in infringing conduct in this state.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b) because Diversified does business in the State of Ohio, has committed acts of infringement in this State and in this District, has regular and established business in this District, and is subject to personal jurisdiction in this District.

BACKGROUND FACTS

7. Centrex owns a design patent for a container, U.S. Pat. No. D648,535 ("the '535 patent"), and a design patent for a lid that accompanies the container, U.S. Pat. No. D648,538 ("the '538 patent") (the patents are discussed in more detail below).

8. Centrex manufactures a container and lid as depicted in the respective patents. Centrex has manufactured hundreds of thousands of containers and lids as claimed in the '535 and '538 patents. Such containers and the accompanying lids are sold for over \$5 apiece.

9. Centrex has sold hundreds of thousands of such containers and lids to Costco Wholesale Membership, Inc.

10. The containers and lids sold by Centrex to Costco Wholesale Membership, Inc. under the TOUGH BOX® trademark, and the TOUGH BOX® container and lid included a part number of 718262, as shown in the photograph of Exhibit A.

11. On information and belief, Diversified is making or having made a container and accompanying lid that infringes the '535 patent and the '538 patent.

12. On information and belief, Diversified has entered into contracts or relationships with certain third-parties to provide the infringing containers and accompanying lids, and such contracts have resulted in the lost sales of the containers and lids of Centrex.

13. On information and belief, Diversified is making or having made a container and accompanying lid for Costco Wholesale Membership, Inc. that infringes U.S. the '535 patent and the '538 patent and selling the same to Costco under the PROFESSIONAL BOX trademark.

14. The PROFESSIONAL BOX container sold to Costco Wholesale

Membership, Inc. and includes a part number of 718262, the exact same part number as the TOUGH BOX® container sold by Centrex, as shown in the photograph of Exhibit B.

15. The lid of the PROFESSIONAL BOX container joins with and is a perfect fit with the TOUGH BOX® container.

16. The PROFESSIONAL BOX container joins with and is a perfect nesting fit with the TOUGH BOX® container.

17. On information and belief and in view of the foregoing, Diversified has entered into such contracts or relationships to manufacture infringing containers and lids knowingly, willingly, and intentionally in violation of the rights of Centrex.

THE PATENTS

18. On October 15, 2010, a patent application ("the container Application") was filed for "CONTAINER," naming inventors Terrence L. Reinhart and Nickolas L. Reinhart.

19. On November 15, 2011, the container Application issued as U.S. Patent No. D648,535 (the '535 patent). A copy of the '535 patent is attached as Exhibit C.

20. Since November 15, 2011, Centrex has been the owner of the '535 patent.

21. On October 15, 2010, a patent application ("the lid Application") was filed for "LID FOR A CONTAINER," naming inventors Terrence L. Reinhart and Nickolas L. Reinhart.

22. On November 15, 2011, the lid Application issued as U.S. Patent No. D648,538 (the '538 patent). A copy of the '538 patent is attached as Exhibit D.

23. Since November 15, 2011, Centrex has been the owner of the '535 patent.

THE TRADE DRESS

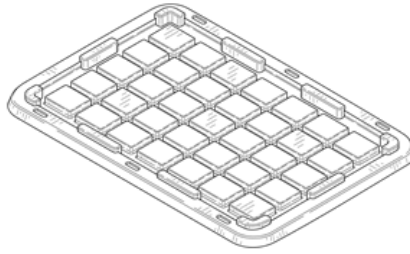
24. The container of Centrex sold under its TOUGH BOX® trademark is a well-known container that has a distinctive appearance, including at least a unique and non-functional combination of trapezoidal design elements on each side of the container, as depicted below:



25. The distinctive appearance of Centrex's TOUGH BOX® container has acquired distinctiveness among consumers as an indication of the source or origin of said containers.

26. An application for registration of the distinctive appearance of Centrex's TOUGH BOX® container was filed with the United States Patent and Trademark Office on May 12, 2015 and assigned Serial No. 86/627,227.

27. The container of Centrex sold under its TOUGH BOX® trademark is accompanied by a lid. The Centrex lid has a distinctive appearance, including at least a unique and non-functional combination of rectilinear design elements on a surface thereof and a series of upstanding design elements disposed around a perimeter of the lid, as depicted below:



28. The distinctive appearance of the lid has acquired distinctiveness in the minds of consumers of such containers and accompanying lids.

29. An application for registration of the distinctive appearance of the lid accompanying Centrex's TOUGH BOX® container was filed with the United States Patent and Trademark Office on May 14, 2015 and assigned Serial No. 86/629,520.

30. Since introducing its TOUGH BOX® trade dress, Centrex has spent tens of thousands of dollars promoting its product and its appearance. As a result of the continuous and exclusive use of the TOUGH BOX® trade dress in connection with its products, the trade dress enjoys wide public acceptance and association with Centrex, and has come to be recognized widely and favorably by the public as an indicator of the origin of Centrex's goods.

31. As a result of Centrex's extensive use and promotion of its TOUGH BOX® trade dress, Centrex has built up and now owns valuable goodwill that is symbolized by the trade dress. The purchasing public has come to associate the TOUGH BOX® trade dress with Centrex. Centrex's TOUGH BOX® trade dress is distinctive and non-functional and has achieved significant secondary meaning.

COUNT I (INFRINGEMENT OF THE '535 PATENT)

32. Centrex re-alleges and incorporates by reference the allegations set forth in paragraphs 1-31 above as if fully set forth herein.

33. On November 15, 2011, the '535 patent was duly and lawfully issued.

34. Since November 15, 2011, Centrex has been the owner of the '535 patent.

35. Upon information and belief, in violation of 35 U.S.C. § 271, Diversified is and has been infringing, contributing to infringement, and/or offering to sell in the United States, or importing into the United States, products that practice the invention claimed in the '535 patent, including without limitation a container solder under the PROFESSIONAL BOX trademark.

36. As a result of Diversified's unlawful infringement of the '535 patent, Centrex has and will continue to suffer damages. Centrex is entitled to recover from Diversified the damages suffered by Centrex as a result of its unlawful acts.

37. On information and belief, Diversified intends to continue its unlawful infringing activity, and Centrex continues to and will continue to suffer irreparable harm – for which there is no adequate remedy at law - from such unlawful infringing activities unless this Court enjoins Diversified from further infringing activities.

COUNT II (INFRINGEMENT OF THE '538 PATENT)

38. Centrex re-alleges and reincorporates the allegations set forth in paragraphs 1-37 above as if fully set forth herein.

39. On November 15, 2011, the '535 patent was duly and lawfully issued.

40. Since November 15, 2011, Centrex has been the owner of the '538 patent.

41. Upon information and belief, in violation of 35 U.S.C. § 271, Diversified is and has been infringing, contributing to infringement, and/or offering to sell in the United

States, or importing into the United States, products that practice the invention claimed in the '538 patent, including without limitation a lid for a container solder under the PROFESSIONAL BOX trademark.

42. As a result of Diversified's unlawful infringement of the '538 patent, Centrex has and will continue to suffer damages. Centrex is entitled to recover from Diversified the damages suffered by Centrex as a result of its unlawful acts.

43. On information and belief, Diversified intends to continue its unlawful infringing activity, and Centrex continues to and will continue to suffer irreparable harm – for which there is no adequate remedy at law - from such unlawful infringing activities unless this Court enjoins Diversified from further infringing activities.

COUNT III (FEDERAL UNFAIR COMPETITION AS TO TRADE DRESS)

44. Centrex repeats and re-incorporates by reference the allegations in paragraphs 1-43.

45. Centrex's container Trade Dress and lid Trade Dress have acquired secondary meaning.

46. Centrex's container Trade Dress and lid Trade Dress are non-functional.

47. Diversified's use of knockoff duplicates or confusingly similar imitations of Centrex's container Trade Dress and lid Trade Dress has caused and is likely to cause confusion, deception, and mistake by creating the false and misleading impression that Diversified's goods are manufactured or distributed by Centrex, or are affiliated, connected, or associated with Centrex, or have the sponsorship, endorsement, or approval of Centrex.

48. Diversified has made false representations, false descriptions, and false

designations of origin of its goods in violation of 15 U.S.C. § 1125(a), and Diversified's activities have caused and, unless enjoined by this Court, will continue to cause a likelihood of confusion and deception of members of the trade and public and, additionally, injury to Centrex's goodwill and reputation as symbolized by the container Trade Dress and lid Trade Dress, for which Centrex has no adequate remedy at law.

49. Diversified's actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with Centrex's container Trade Dress and lid Trade Dress to the great and irreparable injury of Centrex.

50. Diversified's conduct has caused, and is likely to continue causing, substantial injury to the public and to Centrex, and Centrex is entitled to injunctive relief and to recover Diversified's profits, actual damages, enhanced profits and damages, costs, and reasonable attorneys' fees pursuant to 15 U.S.C. §§ 1125(a), 1116 and 1117.

COUNT IV (TORTIOUS INTERFERENCE WITH CONTRACTS CLAIM)

51. Centrex re-alleges and re-incorporates the allegations set forth in paragraphs 1-50 above as if fully set forth herein.

52. Diversified had knowledge of Centrex's contractual relationship with Costco Wholesale Membership, Inc., and had knowledge of Centrex's intended business plan with respect to the manufacture and sale of its containers and accompanying lids covered by the '535 and '538 patents, respectively.

53. Diversified intentionally, improperly, and maliciously committed acts that caused damage to Centrex's business plans with respect to the manufacture and sale of its

containers to Costco Wholesale Membership, Inc.

54. The actions of Diversified as alleged herein were taken with malicious purpose, in bad faith, or in a wanton and reckless manner.

COUNT V (TORTIOUS INTERFERENCE WITH BUSINESS RELATIONSHIP CLAIM)

55. Centrex re-alleges and re-incorporates the allegations set forth in paragraphs 1-54 above as if fully set forth herein.

56. Diversified had knowledge of Centrex's business relationship with Costco Wholesale Membership, Inc., and had knowledge of Centrex's intended business plan with respect to the manufacture and sale of its containers and accompanying lids covered by the '535 and '538 patents, respectively.

57. Diversified intentionally, improperly, and maliciously committed acts that caused damage to Centrex's business relationship with Costco Wholesale Membership, Inc.

58. The actions of Diversified as alleged herein were taken with malicious purpose, in bad faith, or in a wanton and reckless manner.

COUNT VI (STATE DECEPTIVE TRADE PRACTICES)

59. Centrex re-alleges and re-incorporates the allegations set forth in paragraphs 1-58 above as if fully set forth herein.

60. Defendant, Diversified, is a "person" within the meaning of Ohio Rev. Code § 4165.01(D).

61. The acts of Diversified constitute deceptive trade in violation of Ohio's

deceptive trade practices laws, Ohio Rev. Code § 4165.01, *et seq.*

62. As a result of the deceptive trade practices of Diversified, Centrex has suffered and is entitled to the recovery of damages and attorneys' fees pursuant to § 4165.03 of the Ohio Rev. Code.

63. Diversified's deceptive actions and practices have caused and will continue to cause irreparable harm to Centrex, unless enjoined.

64. Centrex has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

A. That Diversified be declared to have infringed, induced others to infringe, and/or committed acts of contributory infringement with respect to the claims of the patents-in-suit as alleged above;

B. That Diversified and its officers, agents, servants, employees, and all those persons acting or attempting to act in concert or in participation with them or acting on their behalf be immediately, preliminarily, and permanently enjoined from further from infringement of the patents-in-suit;

C. That Diversified be ordered to account for any pay to Centrex all damages caused by Diversified by reason of Diversified's infringement of the patents-in-suit pursuant to 35 U.S.C. § 289, or, in the alternative, that Diversified be ordered to pay to Centrex a reasonable royalty by reason of Diversified's infringement of the patents-in-suit pursuant to 35 U.S.C. § 289;

D. That Diversified be ordered to pay treble damages for willful infringement of each of the patents-in-suit pursuant to 35 U.S.C. § 284;

E. That this case be declared exceptional under 35 U.S.C. § 285 and that Centrex be awarded its attorneys' fees, expenses, and costs incurred in this action;

F. That Diversified pay Centrex compensatory damages, pursuant to 15 U.S.C. 1117(a), in a sum to be determined at trial;

G. That Diversified pay Centrex all profits made by Diversified, as a result of its infringement of Centrex's trademark rights;

H. That damages increased to the maximum of three times the compensatory damages, pursuant to 15 U.S.C. Sec. 1117(a), due to the willful, intentional, and deliberate nature of Diversified's infringement;

I. An Order requiring Diversified to file with the Court and to account to Centrex for Diversified's sales and profits realized by Diversified through the use of Diversified's infringing trade dress;

J. An Order directing Diversified to surrender for destruction all products, labels, tags, signs, prints, packages, advertisements, nameplates, and other materials in its possession or under its control, incorporating or reproducing Centrex's Trade Dress or any trade dress that is confusingly similar to that of Centrex pursuant to Section 36 of the Lanham Act (15 U.S.C. § 1118);

K. An Order compelling Defendants to pay Plaintiff's attorneys' fees, together with costs of this suit, pursuant to Section 35 of the Lanham Act (15 U.S.C. § 1117);

L. That Centrex be granted an award of actual damages in excess of \$5,000,000 in an amount to be determined at trial;

M. That Centrex be granted pre-judgment and post-judgment interest on the damages caused to it by reason of Diversified's infringement of the patents-in-suit;

N. That Diversified be ordered to pay all costs associated with this action;

and

O. That Centrex be granted such other and additional relief as the Court deems just and proper.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury as to all issues so triable.

Respectfully submitted,

By: /s/ Michael E. Dockins
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