

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT BOWLING GREEN**

GRIFFIN TECHNOLOGY, INC.,)	
)	
Plaintiff,)	
)	
v.)	Case No. <u>1:15-cv-66-GNS</u>
)	
KITEC, INC.,)	JURY DEMAND
)	
Defendant.)	

VERIFIED COMPLAINT

Plaintiff Griffin Technology, Inc. (“Griffin” or “Plaintiff”) hereby states its causes of action against Defendant Kitec, Inc. (“Kitec” or “Defendant”) as follows:

NATURE OF THE ACTION

This is an action at law and equity to remedy acts of (1) unfair competition, trade dress infringement, false advertising, trade disparagement, and dilution under the Lanham Act, 15 U.S.C. § 1125; (2) patent infringement under 35 U.S.C. § 271; (3) trademark infringement under Ky. Rev. Stat. Ann. §§ 365.601-365.603; and (4) unjust enrichment and unfair competition under the common law of the Commonwealth of Kentucky.

THE PARTIES

1. Griffin Technology, Inc. is incorporated and exists under the laws of the State of Tennessee, with its principal place of business at 2030 Lindell Avenue, Nashville, TN 37203-5509.

2. Upon information and belief, Kitec, Inc. is a corporation incorporated and existing under the laws of the State of California, with its principal place of business at 2791 Via Cielo Drive, Corona, CA 92882.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338, and 15 U.S.C. § 1121. The Court has supplemental jurisdiction over the claims in this Complaint which arise under state statutory and common law pursuant to 28 U.S.C. § 1367(a) because the state law claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

4. This Court has personal jurisdiction over Kitec because Kitec has a continuous, systematic, and substantial presence within this judicial District including by selling or offering for sale infringing products in this judicial District, and by committing acts of patent and trademark infringement in this judicial District, including but not limited to selling infringing protective devices for tablet computers directly to consumers and/or school districts in this judicial District and selling such products into the stream of commerce knowing that they would be sold in Kentucky and this District, which acts form a substantial part of the events or omissions giving rise to Griffin's claim.

5. Venue is proper in this Court because a substantial part of the events giving rise to the claims asserted occurred in this District, Kitec has committed acts of infringement in this District, and, upon information and belief, additional acts of infringement will occur in this District unless promptly enjoined by this Court.

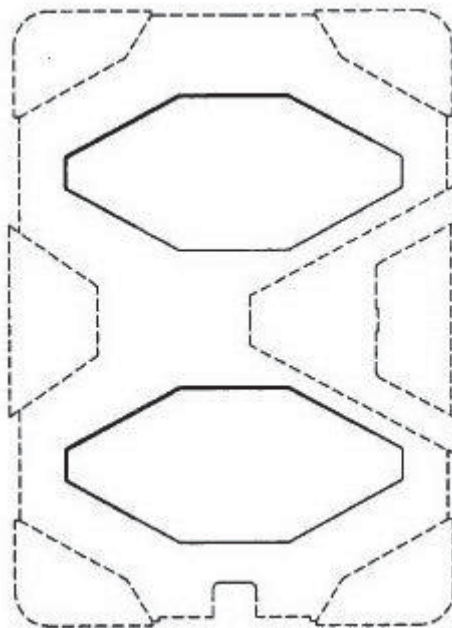
GRIFFIN’S BACKGROUND AND INTELLECTUAL PROPERTY

6. Founded in Nashville, Tennessee by Paul Griffin in 1992, Griffin is one of the largest and most well-recognized manufacturers of accessories for personal computing and digital media in the United States. Among many other products, Griffin manufactures and sells extremely popular protective devices for tablet computers such as the Apple iPad.

7. Griffin has marketed and sold its computer accessory products in Kentucky and this judicial District since Griffin’s founding in 1992.

8. Griffin has a large customer base of educators and students in Kentucky and around the world.

9. Since at least March 1, 2011, Griffin has marketed and sold protective devices for tablet computers, including without limitation the Apple iPad, using the following mark (the “Double-Octagon Mark”):



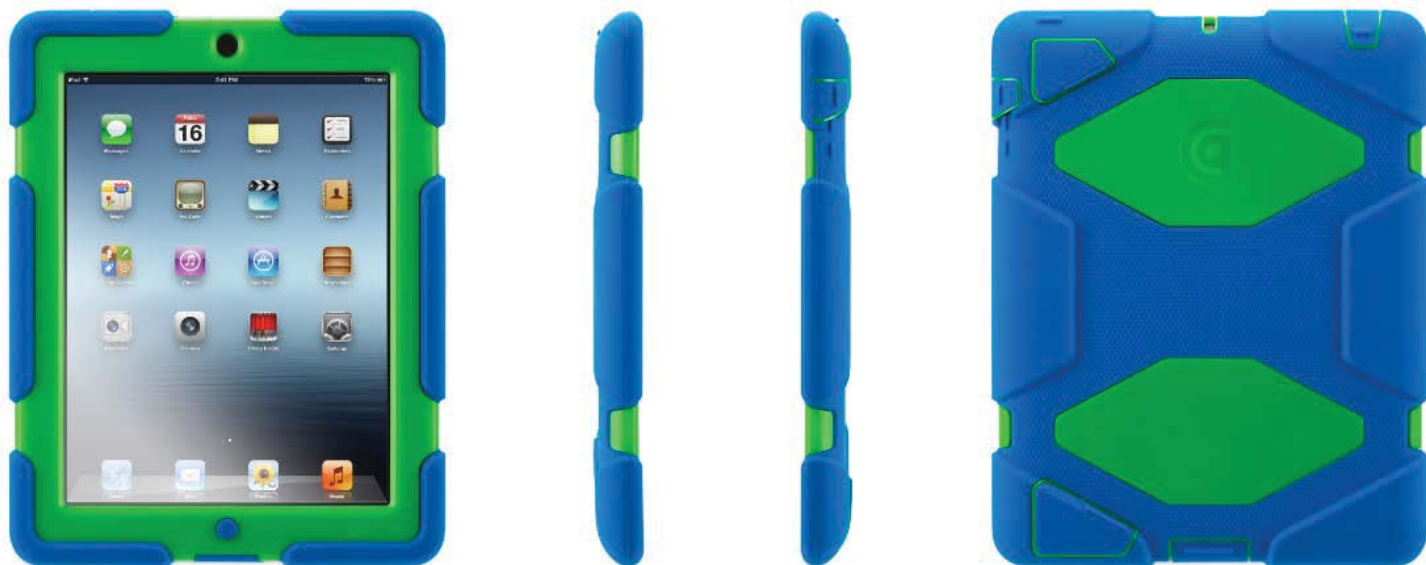
10. The Double-Octagon Mark is distinctive.

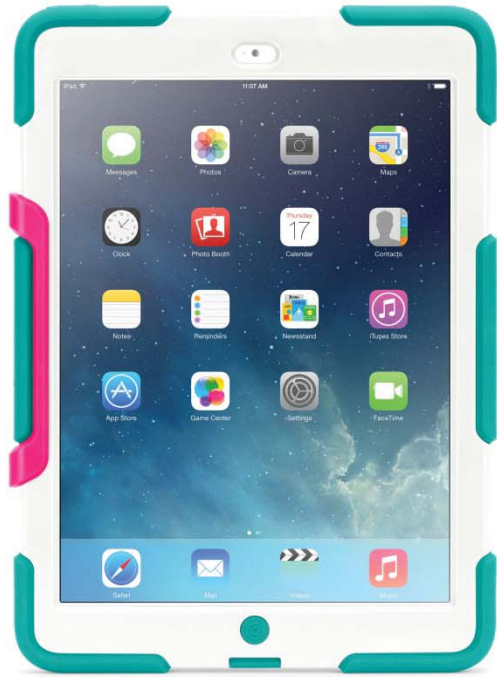
11. Consumers, including without limitation educators and students in this judicial District, have come to associate the Double-Octagon Mark as a designation of origin of Griffin's protective devices for tablet computers.

12. Griffin applied to register the Double-Octagon Mark with the USPTO on May 7, 2014 (Application Serial No. 86/274,413).

13. The non-functional aspects of Griffin's product designs for its protective devices for tablet computers constitute protectable trade dress ("Griffin's Trade Dress"). Griffin's Trade Dress has established secondary meaning in the marketplace such that purchasers, including without limitation educators and students in this judicial District, have come to associate it with Griffin.

14. Griffin's Trade Dress includes the overall appearance and geometric patterns on Griffin's protective devices for tablet computers, as reflected in the following images:





15. The Double-Octagon Mark and Griffin's Trade Dress are famous. They are widely recognized by the general consuming public of the United States as designations of the source of Griffin's goods or services.

16. Griffin has used the Double-Octagon Mark and Griffin's Trade Dress since at least March 1, 2011, and products featuring the Double-Octagon Mark and Griffin's Trade Dress have been extensively advertised and publicized by Griffin and third parties throughout the Americas, Europe and Asia, including without limitation in the Commonwealth of Kentucky and this judicial District.

17. From March 1, 2011 through the present, Griffin has sold approximately 14.5 million protective devices featuring the Double-Octagon Mark and/or Griffin's Trade Dress. For example, in calendar year 2014 alone, Griffin sold approximately 3.9 million protective devices featuring the Double-Octagon Mark and/or Griffin's Trade Dress with a total manufacturer's suggested retail price of approximately \$230.1 million.

18. Consumers readily recognize the Double-Octagon Mark and Griffin's Trade Dress and associate them to mean that the protective device is produced by Griffin.

19. On June 3, 2014, United States Design Patent No. D706,272 S (the "'272 Patent") was issued to Griffin for an invention in a case for a tablet computer. A true and correct copy of the '272 Patent is attached hereto as **Exhibit A**.

20. The following image is Figure 1 of the '272 Patent:

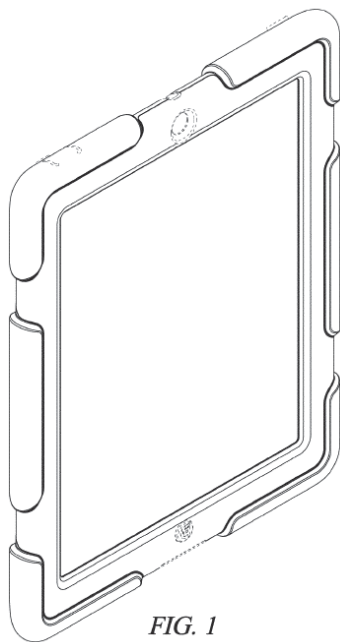


FIG. 1

21. The following image is Figure 8 of the '272 Patent:

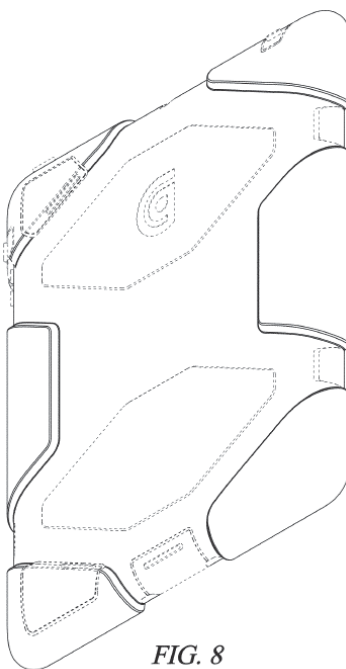


FIG. 8

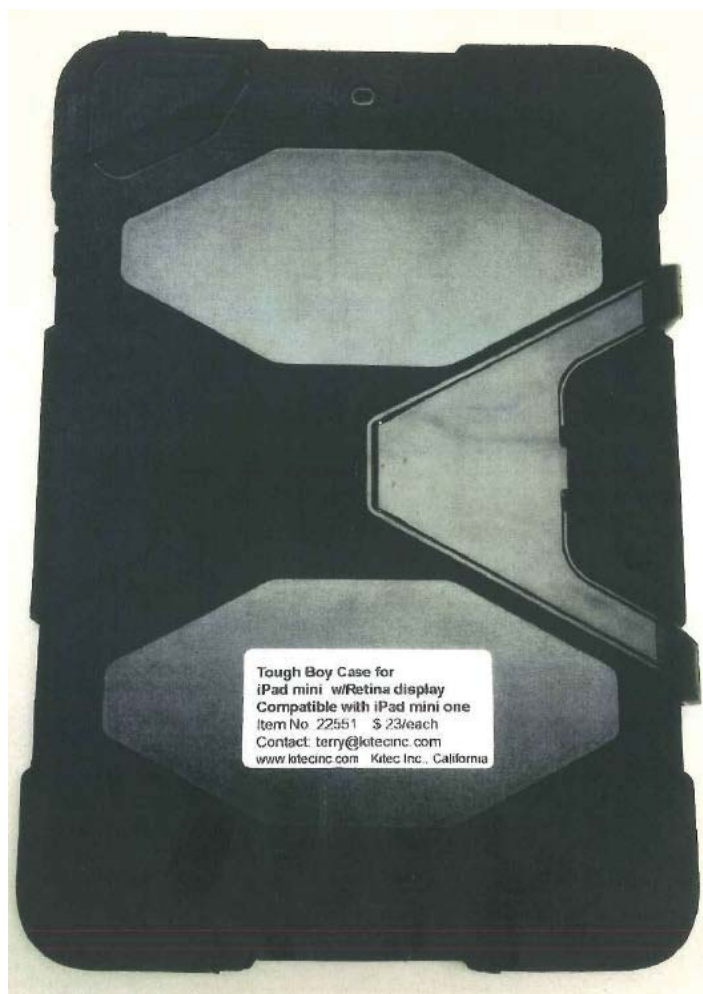
22. Griffin has complied with the statutory requirement of placing a notice of the '272 Patent on all protective devices it manufactures and sells that are covered by the '272 Patent.

KITEC'S INFRINGING PRODUCTS

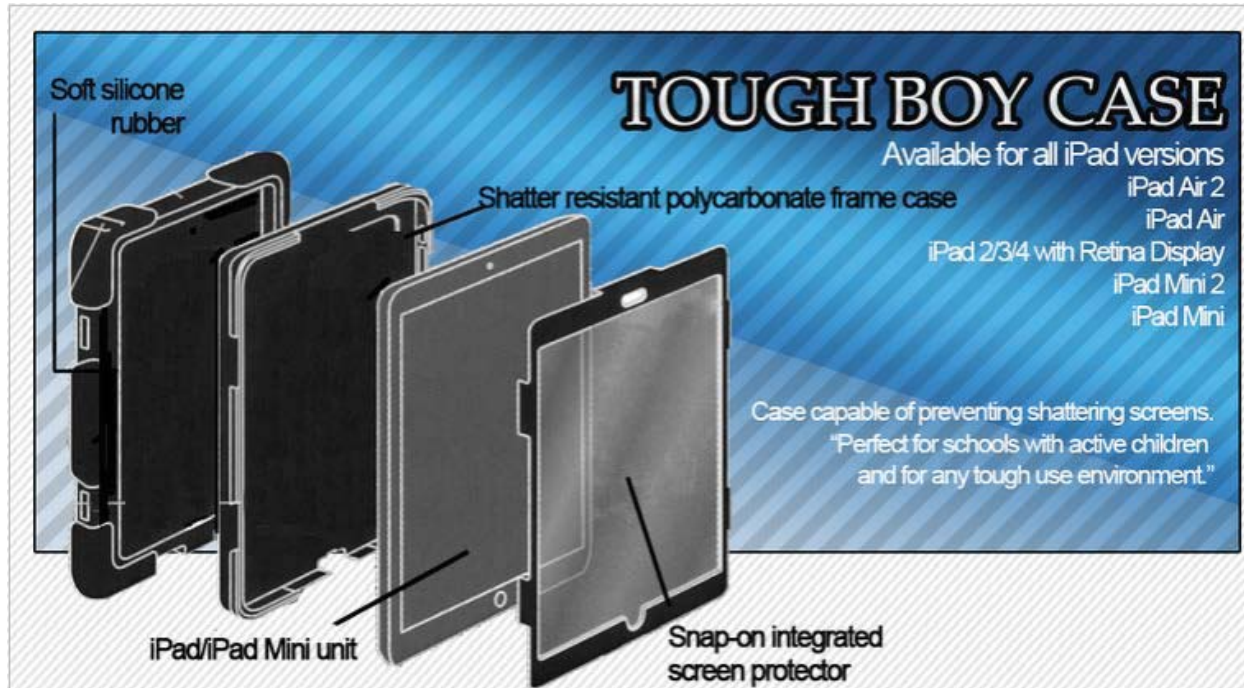
23. Kitec has manufactured, marketed, sold and/or imported protective devices for tablet computers, including without limitation the Apple iPad, throughout the United States, including in Kentucky and this judicial District.

24. Among other purchasers, Kitec markets and sells its protective devices for tablet computers to public school systems.

25. Among other products, Kitec manufactures, markets and/or sells a product called the Tough Boy Case, which appears as follows:



26. Kitec's website contains the following illustrations of the Tough Boy Case:



COUNT I – UNFAIR COMPETITION UNDER THE LANHAM ACT

27. Griffin incorporates each and every allegation contained in Paragraphs 1-26 as if fully set forth here.

28. Griffin has used the Double-Octagon Mark for protective devices for tablet computers in the United States, including without limitation the Commonwealth of Kentucky, since as early as March 1, 2011.

29. Based on its substantial, exclusive, and continuous use of the Double-Octagon Mark for protective devices for tablet computers, Griffin has developed significant trademark rights in the Double-Octagon Mark.

30. Kitec has used the Double-Octagon Mark on its protective devices for tablet computers, including without limitation the Tough Boy Case, without Griffin's consent.

31. Kitec's use of the Double-Octagon Mark for protective devices for tablet computers is likely to cause confusion or mistake, or to deceive as to Kitec's affiliation, connection, or association with Griffin or as to the origin, sponsorship, or approval of Kitec's goods and services.

32. Based upon the foregoing, Kitec's use of the Double-Octagon Mark for protective devices for tablet computers constitutes unfair competition under 15 U.S.C. § 1125.

33. By reason of Kitec's acts, Griffin has suffered and will continue to suffer irreparable harm for which it has no adequate remedy at law, and, thus, Griffin is entitled to injunctive relief.

34. In addition to the irreparable harm suffered, by reason of Kitec's acts, Griffin has suffered and will continue to suffer damages in an amount to be proven at trial, including costs and attorneys' fees.

COUNT II – TRADE DRESS INFRINGEMENT UNDER THE LANHAM ACT

35. Griffin incorporates each and every allegation contained in Paragraphs 1-34 as if fully set forth here.

36. Griffin's Trade Dress is used in commerce, is non-functional, is inherently distinctive, and has acquired secondary meaning in the marketplace.

37. Kitec is unfairly competing with Griffin by adopting an infringing trade dress to identify its protective devices for tablet computers.

38. The intent and result of Kitec's actions have been a palming off of Kitec's protective devices for tablet computers as emanating from or being endorsed by Griffin, causing confusion, mistake, and deception among the public as to the source and origin of those protective devices for tablet computers.

39. The foregoing acts of Kitec are intended to cause, have caused, and are likely to cause confusion, mistake, and deception among consumers, the public, and the trade who recognize and associate Griffin's Trade Dress elements with Griffin.

40. Moreover, Kitec's conduct is likely to cause confusion, to cause mistake, or to deceive consumers, the public, and the trade as to the source of the infringing products, or as to a possible affiliation, connection, or association between Griffin, Kitec, and the infringing products.

41. Kitec's use of an infringing trade dress has caused and, unless restrained, will continue to cause injury to Griffin.

42. Kitec's actions constitute false designations of origin, false and misleading descriptions, and false and misleading representations that are likely to cause confusion, mistake, and deception. By using a confusingly similar trade dress, Kitec has misrepresented the nature, origin, characteristics, and quality of its protective devices for tablet computers in violation of the Lanham Act (15 U.S.C. § 1125(a)).

43. By reason of Kitec's actions, Griffin has suffered and will continue to suffer irreparable harm for which it has no adequate remedy at law, and, thus, Griffin is entitled to injunctive relief.

44. In addition to the irreparable harm suffered by reason of Kitec's actions, Griffin has suffered and will continue to suffer damages in an amount to be proven at trial, including costs and attorneys' fees.

COUNT III – FALSE ADVERTISING AND TRADE DISPARAGEMENT
UNDER THE LANHAM ACT

45. Griffin incorporates each and every allegation contained in Paragraphs 1-44 as if fully set forth here.

46. By using the Double-Octagon Mark and Griffin's Trade Dress in commercial advertisements for its own protective devices for tablet computers, Kitec has misrepresented and is continuing to misrepresent the nature, characteristics, and qualities of Kitec's and Griffin's respective protective devices for tablet computers.

47. Kitec's conduct constitutes a violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

48. Kitec's conduct is causing and will continue to cause Griffin irreparable harm, for which it has no adequate remedy at law, and, thus, Griffin is entitled to injunctive relief.

49. In addition to irreparable harm suffered by reason of Kitec's acts, Griffin has suffered, and will continue to suffer, damages in an amount to be proven at trial, including costs and attorneys' fees.

COUNT IV – TRADEMARK DILUTION UNDER THE LANHAM ACT

50. Griffin incorporates each and every allegation contained in Paragraphs 1-49 as if fully set forth here.

51. This is a claim for trademark dilution under 15 U.S.C. § 1125(c).

52. The products sold by Griffin under the Double-Octagon Mark and Griffin's Trade Dress have been widely advertised, promoted, and distributed to the purchasing public throughout the United States and the world.

53. Products sold under the Double-Octagon Mark and Griffin's Trade Dress, by reason of their style and design and quality of workmanship, have come to be known to the purchasing public throughout the United States as representing products of high quality, which are sold under good merchandising and customer service conditions. As a result, the Double-

Octagon Mark and Griffin's Trade Dress, and the goodwill associated therewith, are of great value to Griffin.

54. By virtue of the wide renown acquired by the Double-Octagon Mark and Griffin's Trade Dress, coupled with the national and international distribution and extensive sale of various products distributed thereunder, the Double-Octagon Mark and Griffin's Trade Dress have become famous.

55. Griffin is informed and believes, and thereon alleges, that Kitec's actions were done willfully with intent to exploit Griffin's reputation and dilute the Double-Octagon Mark and Griffin's Trade Dress.

56. By reason of the aforesaid acts constituting trademark dilution, Griffin has been damaged and is entitled to monetary relief in an amount to be determined at trial.

57. Due to Kitec's actions, constituting trademark dilution, Griffin has suffered and continues to suffer great and irreparable injury, for which Griffin has no adequate remedy at law.

COUNT V – PATENT INFRINGEMENT

58. Griffin incorporates each and every allegation contained in Paragraphs 1-57 as if fully set forth here.

59. This is a claim for patent infringement under 35 U.S.C. § 271.

60. Kitec, through its agents, employees, and servants, has, and continues to, knowingly, intentionally, and willfully directly infringe, engage in acts of contributory infringement, and/or induce the infringement of the '272 Patent by directly and/or indirectly making, using, selling, offering for sale, and/or importing protective devices for tablet computers having a design that is covered by the claim of the '272 Patent, including for example, Kitec's Tough Boy Case.

61. Kitec's acts of infringement of the '272 Patent were undertaken without permission or license from Griffin. Kitec had actual and/or constructive knowledge of the '272 Patent, and its actions constitute willful and intentional infringement of the '272 Patent. Kitec infringed the '272 Patent with reckless disregard of Griffin's patent rights. Kitec knew, or it was so obvious that Kitec should have known, that its actions constituted infringement of the '272 Patent. Kitec's acts of infringement of the '272 Patent were not consistent with the standards of commerce for its industry.

62. As a direct and proximate result of Kitec's patent infringement, Kitec has derived and received gains, profits, and advantages in an amount not presently known to Griffin.

63. Pursuant to 35 U.S.C. § 284, Griffin is entitled to damages for Kitec's infringing acts and treble damages together with interests and costs as fixed by this Court.

64. Pursuant to 35 U.S.C. § 289, Griffin is entitled to Kitec's total profits from the sale of protective devices for tablet computers that infringe Griffin's patent rights.

65. Pursuant to 35 U.S.C. § 285, Griffin is entitled to reasonable attorneys' fees for the necessity of bringing this claim.

66. Due to the aforesaid infringing acts, Griffin has suffered great and irreparable injury, for which Griffin has no adequate remedy at law.

67. Kitec will continue to directly and/or indirectly infringe Griffin's patent rights to the great and irreparable injury of Griffin, unless enjoined by this Court.

COUNT VI – KENTUCKY TRADEMARK INFRINGEMENT

68. Griffin incorporates each and every allegation contained in Paragraphs 1-67 as if fully set forth here.

69. Kitec has used reproductions, copies, colorable imitations, and/or confusingly similar trademarks in connection with the sale or offering for sale of goods that are likely to cause confusion of the source or origin of the goods.

70. Kitec has reproduced, copied, or colorably imitated a trademark and applied it to labels, signs, prints and other writings intended to be used in conjunction with the sale or distribution of goods and services.

71. Upon information and belief, Kitec knowingly acted with the intent to cause confusion between its products and Griffin's products in violation of Kentucky Revised Statutes 365.601-365.603.

72. Upon information and belief, Kitec has made and will continue to make substantial profits and gains to which it is not in law or equity entitled.

73. Upon information and belief, Kitec intends to continue its infringing acts, unless restrained by this Court.

74. In addition to the irreparable harm suffered by reason of Kitec's actions, Griffin has suffered and will continue to suffer damages in an amount to be proven at trial.

COUNT VII – UNJUST ENRICHMENT

75. Griffin incorporates each and every allegation contained in Paragraphs 1-74 as if fully set forth here.

76. The acts set out above constitute unjust enrichment of Kitec at Griffin's expense, in violation of the common law of the Commonwealth of Kentucky.

77. Griffin has suffered and will continue to suffer damages by reason of Kitec's actions in an amount to be proven at trial.

COUNT VIII – UNFAIR COMPETITION

78. Griffin incorporates each and every allegation contained in Paragraphs 1-77 as if fully set forth here.

79. Kitec made false and/or misleading statements and advertisements to Griffin's customers and potential customers intended to deceive the public for business reasons.

80. Kitec's conduct constitutes unfair competition under the common law of the Commonwealth of Kentucky.

81. Griffin has suffered and will continue to suffer damages by reason of Kitec's actions in an amount to be proven at trial.

82. Griffin is without an adequate remedy at law and is entitled to injunctive relief as well as damages in an amount to be proven at trial.

JURY DEMAND

83. Griffin requests jury trial on all issues so triable.

PRAYER FOR RELIEF

Wherefore, Griffin demands that:

A. The Court find that Griffin has valid and existing rights in the Double-Octagon Mark, Griffin's Trade Dress, and the '272 Patent and that Kitec's conduct as described herein constitutes an infringement of Griffin's valuable intellectual property rights;

B. Kitec be held liable under each claim for the relief set forth in this Complaint;

C. The Court enter a temporary restraining order and preliminary and permanent injunction enjoining Kitec, its agents, servants, employees, and attorneys and all other persons in active concert or participation with it, from:

- (i) Further actual or threatened infringement of Griffin's valid and existing rights in the Double-Octagon Mark, Griffin's Trade Dress, and the '272 Patent;
- (ii) Further unfair competition and/or false advertising based on the Double-Octagon Mark, Griffin's Trade Dress, and/or the '272 Patent; and
- (iii) Further dilution of Griffin's Double-Octagon Mark and/or Griffin's Trade Dress.

D. Kitec be required to pay to Griffin all damages it has suffered by reason of Kitec's unlawful acts set forth herein, together with legal interest from the date of accrual thereof;

E. Kitec be required to account for and pay to Griffin all profits wrongfully derived by Kitec through its unlawful acts set forth herein, together with legal interest from the date of accrual thereof;

F. Kitec be required to pay treble damages and/or punitive damages to Griffin, as determined by this Court, for Kitec's deliberate and willful unfair competition, trade dress infringement, false advertising, trade disparagement, trademark dilution, patent infringement, and trademark infringement;

G. Kitec be required to pay Griffin its reasonable attorneys' fees and disbursements incurred herein, pursuant to 15 U.S.C. § 1117, 35 U.S.C. § 285, Kentucky statutory law, and the equitable powers of the Court;

H. Kitec be required to pay to Griffin the costs of this action; and

I. The Court award Griffin any such other and further relief that it deems just and equitable after a trial on the merits.

Respectfully submitted,

s/ Molly K. Ruberg
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*Counsel for Plaintiff
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VERIFICATION

JEFF ALTHEIDE declares as follows:

1. I am over the age of 18 and I am the Director of Manufacturing Support and General Manager at Griffin Technology, Inc. ("Griffin"). I am authorized to make this Verification on behalf of Griffin.
2. I have personal knowledge of the facts contained in the foregoing Verified Complaint. I have also reviewed Griffin's files and records pertaining to the facts contained in the foregoing Verified Complaint.
3. I have reviewed the factual statements made in the foregoing Verified Complaint. Those factual statements are true and correct to the best of my knowledge, information and belief.
4. Exhibit A to the Verified Complaint is a true and accurate copy of U.S. Patent No. D706,272, which is maintained in Griffin's records in the ordinary course of business.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on: May 18, 2015.



Jeff Altheide