

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

SPECIFIX FASTENERS PTY. LTD)
82-88 Mills Road,)
Braeside, Victoria 3195,)
Australia,)
ACME EQUIPMENT PTY LTD.,)
82-88 Mills Road,)
Braeside, Victoria 3195,)
Australia,)
ACME OPERATIONS PTY., LTD.)
/dba/ AJAX ENGINEERED FASTENERS)
and /dba/ AJAX Fasteners)
82-88 Mills Road,)
Braeside, Victoria 3195,)
Australia,)

Plaintiffs.)

vs.)

ALL FASTENERS USA LLC)
c/o Mark Wooten, Statutory Agent)
4548 Industrial Parkway)
Cleveland, OH 44135)

ALL FASTENERS USA LLC)
15401 Commerce Park Drive)
Brookpark, OH 44142)

and)

ALL FASTENERS ENTERPRISES LLC)
15401 Commerce Park Drive)
Brookpark, OH 44142,)

ALL FASTENERS ENTERPRISES LLC)
c/o Mick Strange, Statutory Agent)
15401 Commerce Park Drive)
Brookpark, OH 44142)

CASE NO. 1:15 CV 01366

JUDGE: CHRISTOPHER A. BOYKO

SECOND AMENDED COMPLAINT

(JURY DEMAND ENDORSED HEREON)

and)
)
ALL FASTENERS LA LLC)
c/o Mick Strange, Statutory Agent)
15401 Commerce Park Drive)
Brookpark, OH 44142)
)
Defendants.)

This is an action for (i) patent infringement arising under 35 U.S.C. §371, (ii) unlawful and unfair competition arising under 15 U.S.C. §1125, et seq. (the “Lanham Act”), (iii) theft of trade secrets arising under Ohio's Uniform Trade Secrets Act ("UTSA"), Ohio Rev. Code §§1331.61 et seq., and (iv) breach of contract arising from the misuse of Plaintiffs’ confidential and proprietary information.

I. PARTIES

1. Plaintiff Specifix Fasteners Ltd Pty Ltd. (hereafter “Specifix”) is an Australian corporate form of business established and in good standing under the laws of the Commonwealth of Australia and is the sole owner and parent entity of Plaintiffs Acme Engineered Holdings Pty Ltd.; which in turn, is the sole owner of Plaintiff Acme Equipment Pty. Ltd and Plaintiff ACME Operations Pty Ltd.

2. Plaintiff Acme Equipment Pty Ltd., (hereinafter “Equipment”) is an Australian corporate form of business established and in good standing under the laws of the Commonwealth of Australia

3. Plaintiff ACME Operations Pty, Ltd. /dba/ Ajax Engineered Fasteners (hereafter “Plaintiff” or “Ajax”) is an Australian corporate form of business established and in good standing under the laws of the Commonwealth of Australia. (Specifix, Equipment and Ajax may be collectively referred to herein as “Plaintiffs.”)

4. Ajax does business in the United States and elsewhere as “Ajax Engineered Fasteners” and as “Ajax Fasteners.”

5. Equipment is the sole owner of United States Patent No. 7,373,709.

6. Plaintiffs have their offices and establishments for doing business at the addresses set forth in the caption above. Plaintiffs do not maintain an office or business establishment in this Judicial District or otherwise in the United States. Plaintiffs are therefore, foreign corporations with standing to bring this action in the Court and this Judicial District.

7. Defendant All Fasteners USA LLC (“AF USA”) is an Ohio limited liability company with its principal place of business at the address set forth in the caption above. (A copy of the Ohio Secretary of State registration is included in **Exhibit A** hereto.)

8. Defendant All Fasteners Enterprises LLC (“AF Enterprises”) is an Ohio limited liability company with its principal place of business at the address set forth in the caption above. (A copy of the Ohio Secretary of State registration is included in **Exhibit A** hereto.)

9. Defendant All Fasteners LA LLC (“AF LA”) is a California Limited Liability Company registered to do business in the State of Ohio as a foreign corporation and maintains its principal place of business at 5450 W. 83rd Street, Los Angeles, California 90045. (A copy of the Ohio Secretary of State registration is included in **Exhibit A** hereto.)

10. Defendants AF USA, AF Enterprises, and AF LA (collectively referred to as “All Fasteners”) are agents and/or affiliates of All Fasteners Pty. Ltd. an Australian company which does business in the United States exclusively through Defendants. All Fasteners Pty and operate under the common control of one or more officers and directors, including Michael Strange.

11. AF USA, AF Enterprises, and AF LA (collectively referred to as “All Fasteners” or “Defendants”) are, upon information and belief, acting as one and the same under the control of AF USA, and they are jointly and severally engaged in the conduct alleged in this action. Further, all conduct giving rise to this action occurred in or was directed in and from this Judicial District by AF USA.

II. JURISDICTION AND VENUE

12. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§1331 and 1338 and concurrent jurisdiction over Plaintiffs’ state law claims for violation of Ohio’s UTSA, Ohio Rev. Code §1331.61 et seq., and breach of contract pursuant to 28 U.S.C. §§1331 and 1332.

13. AF USA, AF Enterprises, and AF LA are subject to the personal jurisdiction of this Court because they maintain their headquarters in this District and are registered by and with the Ohio Secretary of State as Ohio and California limited liability corporations, and their registered agent Michael (“Mick”) Strange is also located in this District. Therefore, AF USA, AF Enterprises, and AF LA are subject to service of process herein.

14. Jurisdiction is also proper in this Judicial District because all of the acts giving rise to this action occurred in this Judicial District or were expressly directed from this Judicial District; therefore, this Court has both general and specific personal jurisdiction over the named Defendants.

15. Venue of this action is proper in the Northern District of Ohio under 28 U.S.C. § 1391(b)(1) and (2) because the Defendants are all subject to the personal jurisdiction of this Court in this Judicial District and, thus, are defined as residents of this Judicial District under 28 U.S.C.

§1391(c) (2). In addition, all of the acts, events, and conduct giving rise to Plaintiffs' claims have occurred and will continue to occur in the Northern District of Ohio.

III. FACTUAL BACKGROUND

A. Plaintiffs Are Engaged In The Manufacturing Of Patented, High Quality Bolt Products.

16. Through the operations of its subsidiaries, Holdings and Ajax, Specifix manufactures and sells multiple product lines of engineered and/or specialized fasteners for sale in multiple markets, including, but not limited to, structural erection, agriculture, construction, and highway, marine and automotive industries.

17. For its part, Ajax designs, engineers, manufactures, tests and certifies various types of fasteners including the engineered special fasteners at issue in this case, which are used in the construction of cell telephone antenna towers, wind turbine towers, pressure vessels and other steel structures. Ajax sells its engineered special fasteners under its brand, ONESIDE™ Structural Fastener (hereafter referred to as "ONESIDE"). (A compilation of relevant excerpts from Ajax's website located at www.ajaxfast.com.au is attached hereto as **Exhibit B**.)

18. Ajax's ONESIDE consist of a unique combination of bolt, washers, and installation tool which permits the bolt to be installed and tightened in holes in steel structures where the "head" of the bolt is not accessible to tools. Thus, the ONESIDE can be fully installed from one side of a structure. (An illustration depicting a typical application of the ONESIDE is attached hereto as **Exhibit C**.) This type of fastener is generically called a "blind hole fastener."

19. Specifically, in contrast to each and every other blind hole structural fastener on the market (excepting the counterfeit NexGen and NexGen2 fasteners), none of the other fasteners remotely resemble the OneSide. And, critically, none employ the same engineering principles

used by the OneSide, which are unique in application, appearance and operation and are, therefore, distinctive, and instantly recognizable as genuine OneSide products.

20. As illustrated below, the Ajax ONESIDE consists of a special bolt with one solid washer and one split washer that is joined by a plastic film, and a nut.



Figure 1: Ajax ONESIDE

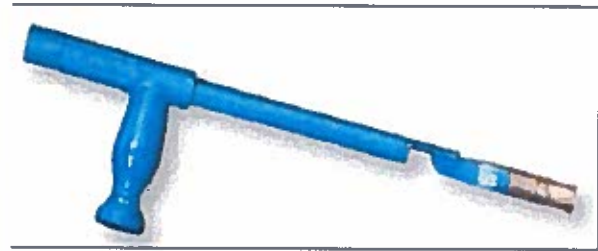


Figure 2: Ajax ONESIDE installation tool

21. Ajax's design for the ONESIDE is the subject of a patent issued by the United States Patent & Trademark Office ("USPTO") under Patent No. 7,373,709 (hereafter "709 Patent"). (A copy of the patent is attached hereto as **Exhibit D.**)

22. Plaintiffs are solely and exclusively authorized by the owner of the '709 Patent, Equipment, to practice *and* enforce the '709 Patent against any and all infringing persons or entities, without limitation.

23. Ajax is the sole manufacturer of the Ajax ONESIDE product line, which incorporates the inventions described in the '709 Patent and which are manufactured, tested, certified, sold and shipped exclusively from Plaintiffs' facility in Australia.

24. Each Ajax ONESIDE is made from steel which Plaintiff obtains from various sources and which is certified by the source as to composition and quality.

25. Each and every ONESIDE manufactured by the Plaintiff is subject to rigorous and documented quality control as well as material and manufacturing standards and specifications

many of which have been adopted by the fastener industry, including, but not limited to, ISO 9001:2008 and ASTM A-490.

26. Ajax ONESIDE products are also tested and certified as to quality and performance by Ajax's in house testing laboratory which is accredited by National Australian Testing Association (NATA). (See Exhibit E, NATA Accreditation Certificate No. 1202; Exhibit F, Ajax ISO9001:2008 Certificate of Registration.)

27. As a result of the foregoing research, development, manufacturing, testing, and obtaining certifications, Ajax has secured a reputation in the steel tower and steel structural industry as the sole manufacturer and seller of the ONESIDE, unique, high quality, and certified to applicable engineering and safety standards, blind installation fasteners.

28. The Ajax ONESIDE products, which may be subjected to loads over 125,000 pounds per square inch, are known and proven to be reliable, of the highest quality, rigorously manufactured, certified to all applicable engineering standards and, therefore, safe to install and utilize in potentially dangerous and highly stressed applications such as cell and wind turbine towers.

29. Plaintiff, through its Ajax ONESIDE, has been and remains established as an acceptable, safe, and reliable source for this unique and instantly recognizable, high strength type of blind fastener products and is recognized in the industry as setting the standard for such products. Based upon this reputation, Plaintiff is able to charge an appropriate price for its ONESIDE in comparison to similar but lesser quality products from other manufacturers.

B. Defendants Were Authorized Re-Sellers of Ajax's ONESIDE products.

30. Ajax ONESIDE products have been sold in the United States through only two authorized re-sellers.

31. As general industrial fastener distributors, Defendants are engaged in the wholesale purchasing, importation, warehousing, distribution and re-sale of several hundred different lines of fastener products and related generic supplies and products.

32. Products sold by All Fasteners are manufactured and supplied by third parties. (Relevant portions of All Fasteners' website are attached hereto as **Exhibit G.**)

33. All Fasteners has served as a re-seller of Ajax's ONESIDE products since 2012. (Material promoting the ONESIDE on All Fasteners' website is attached hereto as **Exhibit H.**)

34. Under the re-sale arrangement between Plaintiff and All Fasteners, All Fasteners acquired and resold Ajax ONESIDE products to end-user customers. Under this arrangement, All Fasteners was permitted to re-sell only those Ajax ONESIDE products that were exclusively manufactured and delivered by Plaintiffs.

35. At all times relevant, it was Plaintiff's practice to ensure that the end-user customer applications for which the Ajax ONESIDE were designed, intended and, in many instances specified by the end-customers, were properly satisfied with un-altered genuine Ajax ONESIDE.

36. The re-sale arrangement between Plaintiff and Defendants did not, in any way, authorize Defendants to manufacture (directly or indirectly through a party other than Plaintiffs) any Ajax ONESIDE product. In fact, the arrangements between the parties were solely and exclusively entered into for the sale of the Ajax ONESIDE by Plaintiff directly to All Fasteners for resale to end-users. Substitution of counterfeit, non-genuine Ajax ONESIDE was neither contemplated nor permitted.

37. The re-sale arrangements between Plaintiff and Defendants were limited to the activities set forth above, so Plaintiff could ensure that the Ajax ONESIDE conformed to the express specifications and standards for steel, manufacturing, quality control, testing and

certification under industry standards and would be safe for installation and use in high stress and safety critical applications such as cell and wind turbine towers.

38. Ajax is expressly and exclusively authorized by Holdings to exercise its rights to practice and enforce the '709 Patent and has, for practical purposes, exclusively practiced the inventions set forth in said patent since its issuance in 2008. The existence of the '709 Patent and the incorporation of its claimed inventions in the genuine Ajax ONESIDE are well known in the industry and particularly well known to the Defendants who expressly sold and marketed it as a patented product as recently as September 2015.

39. Inherent in, and a prime objective of, this collaborative process of the Plaintiff and Defendant was the clear recognition in the marketplace that the genuine Ajax ONESIDE was manufactured, tested, and most importantly, independently certified such that each and every genuine Ajax ONESIDE met or exceeded numerous industry engineering and performance standards. Strict compliance with these standards ensured the buyers, installers, and most importantly the owners of the cell and wind turbine towers in which the genuine Ajax ONESIDE were installed were buying and using genuine Ajax ONESIDE products that would perform safely and that the structures in which they were installed were themselves safe for the general public.

40. As one of only two authorized re-sellers of the Ajax ONESIDE in the United States, All Fasteners enjoyed the marketplace exclusivity conferred by the '709 Patent and capitalized upon it by referring to Holdings' patent in its advertising and communications for the sale of Ajax's ONESIDE.

41. As part of their business relationship, Ajax authorized and assisted Defendants to establish All Fasteners web pages utilizing Ajax's genuine ONESIDE trade dress including web

pages wherein All Fasteners was permitted to closely imitate the distinctive Ajax type face, color, and characteristics.

42. Throughout All Fasteners relationship with Plaintiff, All Fasteners relied on the Ajax brand and trade dress as it appeared in product packaging, trade show exhibits, printed materials, web pages, and a YouTube video created by the Ajax which demonstrated the installation of the Ajax ONESIDE. Indeed, despite Ajax's requests that All Fasteners cease and desist in using its brand and trade dress, All Fasteners continued to do so through mid-September 2015.

43. In addition, Ajax, acting on its own behalf pursuant to the Agreement set forth below, provided All Fasteners with access to substantial amounts of Ajax's confidential, proprietary and trade secret information.

44. Based on All Fasteners representations that it needed detailed product, manufacturing, engineering and development information in order to understand and market the ONESIDE; All Fasteners Pty Ltd, acting on behalf of All Fasteners as their agent by and through their common director and officer Michael Strange, and entered into a Confidentiality Agreement ("Agreement") with both Specifix and Ajax. (A true and accurate copy of the Agreement is attached hereto as **Exhibit I**).

45. The Agreement was executed by Michael Strange of behalf of All Fasteners Pty Ltd., its employees, servants, agents and successors of the parties including, but not limited to, Defendants.

46. The Agreement, dated March 5, 2013, granted All Fasteners access to substantial additional amounts of trade secret information, engineering information, material specifications,

manufacturing technology and know-how, application information, and similar confidential information which neither Specifix nor Ajax would otherwise have disclosed.

47. All Fasteners established an additional presence in the United States market for Ajax ONESIDE and sold significant amounts of Ajax ONESIDE based entirely upon its use of Plaintiff's confidential and proprietary information, Plaintiff's existing reputation and the reputation of the Ajax ONESIDE, and the representation to the marketplace of the existence and enforceability of '709 Patent, none of which were ever developed or used by the Defendants prior thereto.

C. Defendants Have Improperly Used Ajax's Technology and Trade Secrets to Make and Sell a Competing and Infringing Product.

48. While actively selling the genuine Ajax ONESIDE, Defendants used Plaintiff's confidential, proprietary and trade secret information to improperly copy the Ajax ONESIDE for an All Fasteners' branded product which they called "NexGen 1."

49. Plaintiffs became aware of All Fasteners' efforts and the existence of the NexGen 1 project and products on or around November 26, 2014 and confronted All Fasteners.

50. When confronted by Ajax, All Fasteners unambiguously assured Ajax that it had scrapped the NexGen type fastener project and would thus continue to buy and re-sell genuine Ajax ONESIDE fasteners to the exclusion of any other type of blind hole fastener.

51. Thereafter, in January of 2015, Defendants requested Ajax's confidential records of its certifications of the type of steel, source, and chemical composition, as well as other manufacturing, testing, certification and engineering information, claiming that having and understanding this information was necessary to accommodate customer requests for information.

52. At the same time, Ajax requested that All Fasteners enter into a more formal, written Distributor Agreement, which contained express provisions prohibiting competition

between Plaintiffs and All Fasteners, but All Fasteners delayed the execution of the agreement through March of 2015.

53. At some time prior to February 2015, despite its prior representations and continued sale of genuine OneSide products; All Fasteners commenced commercial production and sale of the counterfeit NexGen2 products, and concealed this activity from Ajax

54. Then, on or about April 9, 2015, after Ajax inquired of All Fasteners about marketplace information regarding a NexGen type of product, All Fasteners finally admitted to Ajax that they had commenced marketing and selling their own blind hole fastener, substantially identical in design, appearance and operation to the NexGen1, which they branded as “NexGen2.”

55. All Fasteners marketing campaign for “NexGen2” includes a webpage that is substantially identical to both the All Fasteners’ existing webpage for the genuine Ajax ONESIDE and Plaintiff’s own web pages for the genuine Ajax ONESIDE. (Copies of the All Fasteners ONESIDE webpage and the All Fasteners NexGen2 webpage are attached hereto as **Exhibit J.**)

56. In addition, All Fasteners has posted a “NexGen2” installation video that mimics the installation video for the genuine Ajax ONESIDE. (A comparison of still frames taken from the Ajax ONESIDE installation video and the All Fasteners NexGen2 installation video is attached hereto as **Exhibit K.**)

57. Thus, despite their unambiguous prior assurances in November , All Fasteners not only continued to clandestinely develop a competing product that infringes upon Ajax’s ONESIDE but it also utilized the confidential and trade secret information provided to it by Plaintiff in order to organize the expedited commercial manufacture of the NexGen2 - an inferior, counterfeit, and infringing blind hole fastener.

58. All Fasteners’ blind hole fasteners and installation tools are supplied from multiple sources. And, as illustrated in Figures 3 and 4 below, they are visually indistinguishable from Ajax’s patented ONESIDE and installation tool:

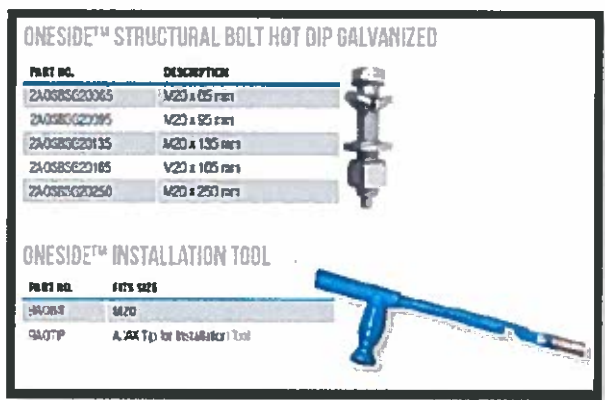


Figure 3: Ajax ONESIDE bolt and installation tool

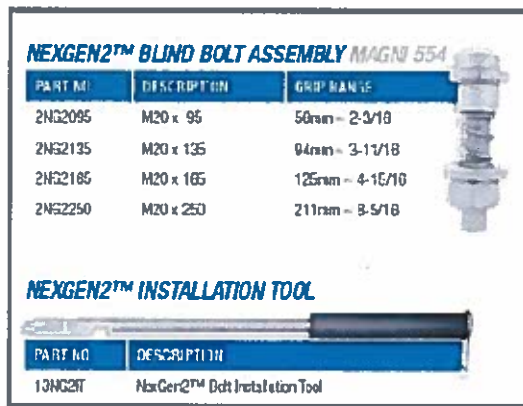


Figure 4: All Fasteners NexGen2 bolt and installation tool

D. Defendants Are Misrepresenting the Nature And Quality of Their Infringing Product.

59. In marketing the NexGen2 products, All Fasteners has repeatedly represented that the NexGen2 was manufactured in the USA by Defendants and that the NexGen2 is a “grade A-490” fastener, which by implication and reference also conforms to several other ASTM standards, and that, therefore, the NexGen2 bolt assemblies are safe to use in tower applications.

60. Each lot of blind hole fasteners sold in the tower and structural industry must be accompanied by discrete and independently accredited certifications of quality, manufacturing source, and material composition. The purpose of this documentation is to ensure the safety of the products in their intended use and to provide a means of tracing the manufacturer and original steel supplier in the event of a structural failure.

61. Plaintiffs properly provide necessary product documentation and further maintain an ISO9001:2008 certification and a NATA laboratory accreditation to substantiate the representations in the product documentation.

62. All Fasteners does not have the manufacturing and capability for the cold forging fastener and product process coating technology necessary to manufacture blind structural fasteners, like the NexGen2.

63. All Fasteners did not design the NexGen2. NexGen2 products are manufactured and allegedly tested by others as vendors to All Fasteners.

64. All Fasteners is not certified under the applicable industry standards required to manufacture blind structural fasteners.

65. Upon information and belief, none of the persons or entities that have designed, and/or manufactured the NexGen2 products are certified under applicable industry standards including but not limited to ISO 9000.

66. Further, a review of an All Fasteners product certification that was recently delivered to an end user in connection with the sale of NexGen2 products demonstrates that All Fasteners' product certifications fail to conform to the requirements followed by the Plaintiffs, including the required identity of actual manufacturer of the NexGen2. (*Compare a redacted copy of a NexGen2 certification attached hereto as Exhibit L and correct product documentation delivered to end users of genuine Ajax ONESIDE products attached hereto as Exhibit M.*)

67. Products such as the Ajax ONESIDE and the NexGen2 are further subject to the legal and regulatory requirements of 15 U.S.C. §5401 also known as the Fastener Quality Act (FQA), which establishes a legal standard requiring fasteners such as the Ajax ONESIDE and the

NexGen2 to bear an “insignia” - a unique raised/or recessed arbitrary marking on the head of the bolt that identifies the manufacturer and the type of fastener.

68. Pursuant to the FQA, each manufacturer of products is required to register its insignia(s) with the USPTO which is used to identify the manufacturing source of said fasteners and the identity of the manufacturer.

69. All Fasteners uses a stylized mark, “AF,” which All Fasteners has not registered with the USPTO.

70. The only stylized “AF” insignia registered with the USPTO was registered by ATF, Inc. of Lincolnwood Illinois, an entity which is unrelated to any party hereto and does not manufacture similar or related products.

71. Evaluation and testing of multiple samples of the Defendants’ NexGen2 products obtained on the open market demonstrate that the NexGen2 products are materially not in conformance with the industry standards, demonstrating that they are of inferior quality, unsafe, and unfit for All Fastener's publicly represented use.

72. All Fasteners also unambiguously markets the NexGen2 products as being “Made in the USA” for the express purpose of distinguishing said products from the Ajax products (which have been properly and lawfully represented by *both* Ajax and All Fasteners as “Made in Australia”) to gain an improper advantage in the marketplace.

73. All Fasteners, in its sales of the NexGen2 products in the United States is subject to the legal standards set forth in the requirements of the United States Federal Trade Commission (FTC) governing the use of the language “Made in the USA”

74. On information and belief, the NexGen2 products do not conform to the foregoing legal standards as set forth in the applicable FTC regulations so as to be lawfully designated and

represented in writing to customers in the United States as “Made in the USA” and, therefore, are willfully and deceptively labelled with respect to their true origin, which constitutes an unfair and unlawful business practice.

E. Defendants Have Harmed Plaintiffs.

75. As a result of their close commercial relationship of presumed good faith in dealing and honesty, Defendants obtained from Plaintiffs substantial amounts of engineering, material specifications, manufacturing technology and know-how, application information and other information that Plaintiffs ordinarily would not disclose to the public, and provided to Defendant based on their representation that it was necessary to effectively market the ONESIDE.

76. In entering into, and agreeing to be bound by the terms of the Confidentiality Agreement with Specifix and Ajax, Defendants induced Ajax to produce substantial additional amounts of highly confidential and trade secret engineering documents, material specifications, manufacturing technology and know-how, testing and certification processes and procedures, end-user application information, and similar confidential information which Ajax would not otherwise have disclosed. And, Defendants improperly and unlawfully used Plaintiff’s confidential and trade secret information to undertake the manufacture of identical and counterfeit NexGen by others on behalf of the Defendants and to sell the resulting products in direct competition with Ajax.

77. All Fasteners’ infringing conduct is continuing and presumed willful because Defendants actions are not unrelated in time or affiliation with their distribution arrangement with Plaintiff. Indeed, the parties were close business collaborators for several years before All Fasteners clandestinely proceeded to compete unlawfully and unfairly.

78. Defendants are wrongfully and unlawfully trading upon the reputation and identity of Ajax and the genuine Ajax ONESIDE. This includes, but is not limited to, the utilization of

nearly identical websites and nearly identical installation videos on YouTube and elsewhere; by making false claims of origin, source, location of manufacture, quality and safety; and by willfully infringing on the '709 Patent.

79. Defendants' improper conduct in inducing Ajax to divulge and disclose its confidential, proprietary and trade secret information has enabled Defendants to unlawfully short-cut the lengthy and arduous process undertaken by Ajax and its affiliates in the engineering, development, testing, certifying, and manufacturing the genuine Ajax ONESIDE and has allowed Defendants to obtain the manufacture of visually indistinguishable and counterfeit NexGen by others acting on Defendants' behalf.

80. Defendants' conduct has also caused the infringement of the '709 Patent by All Fasteners because the Defendants neither designed nor manufactured the NexGen2 products and have, instead, relied upon the manufacture and testing provided by others as vendors to All Fasteners.

81. Moreover, none of the Defendants are properly certified under the numerous required industry standards including but not limited to ISO9001:2008, nor have the Defendants identified any manufacturer of its products that are so certified.

82. The Defendants' actions by making (or having others make under their direction), and selling the counterfeit NexGen in a form visually indistinguishable from the genuine Ajax ONESIDE directly and indirectly infringes upon the claims set forth in the '709 Patent.

83. Defendants' actions are knowing and willful in that during the time period when the Defendants were legitimately obtaining and reselling genuine Ajax ONESIDE, they particularly utilized and benefitted from the exclusivity in the marketplace of the genuine Ajax ONESIDE conferred upon it by the '709 Patent in the marketplace.

84. Indeed, All Fasteners' counterfeit NexGen products are made to be visually indistinguishable, used in exactly the same applications, are entirely interchangeable, applied/installed in the same manner, are represented to have the same benefits and characteristics, despite Defendants' long established and full knowledge that by making and selling these products in this manner, they are infringing upon Holdings' '709 Patent.

85. All Fasteners use of the "Made in USA" representation is an unlawful and deceptive business practice willfully undertaken to misrepresent the origin of the NexGen2 to the United States marketplace to gain an improper and prohibited business advantage over Ajax, which lawfully represents its products as made in Australia.

86. Ajax has been harmed and will continue to be harmed by the sale of the visually indistinguishable but materially unsafe and defective NexGen2 products as such conduct damages the reputation of the genuine OneSide and dilutes the well-established and respected OneSide brand of blind hole fastener products

COUNT I
(Patent Infringement)

87. Plaintiff restates, re-alleges, and re-avers each of the allegations set forth in the preceding paragraphs as is fully rewritten herein.

88. Each and every one of the Defendant's NexGen2 products directly infringes upon the '709 Patent and such infringement jointly and severally by the Defendants is willful, and Holdings and Ajax have been damaged by such conduct and will continue to be damaged by such conduct.

89. Each and every one of the Defendant's NexGen2 products indirectly infringes upon the '709 Patent and such infringement jointly and severally by the Defendants is willful, and

Holdings and Ajax have been damaged by such conduct and will continue to be damaged by such conduct.

90. Defendants, jointly and severally, have induced their several actual manufacturers of the NexGen2 products to infringe upon the '709 Patent and such inducement of infringement jointly and severally by the Defendants is willful, and Holdings and Ajax have been damaged by such conduct and will continue to be damaged by such conduct.

91. All Fasteners' willful and deliberate acts described above have caused injury and damages to Equipment and Ajax, have caused injury to Ajax's goodwill and reputation, and unless enjoined, will cause further irreparable injury, whereby Equipment and Ajax will have no adequate remedy at law.

92. Plaintiff requests herein the Preliminary and Permanent Injunctive relief of unconditional prohibition of the making, using and selling of the NexGen2 products by the Defendants and any and all of those acting in concert with them; a recall, recovery and seizure of any and all such infringing products wherever located and or installed in any structures, a determination of willful direct infringement, willful indirect infringement, and willful inducement of infringement; money damages in excess of \$1,000,000.00; multiplication of said damages for willful conduct; and their reasonable attorney's fees.

COUNT II
(Violation of 15 U.S.C. §§1125 et. seq. the Lanham Act)

93. Plaintiffs restate, re-allege, and re-aver each of the allegations set forth in the preceding paragraphs as is fully rewritten herein.

94. Defendants have engaged in conduct identified by and prohibited by 15 U.S.C. §§1125 et seq. which has a substantial effect on United States commerce, that the corporate

Defendants are citizens of the state of Ohio and the United States, and there is an absence of conflict with foreign law.

95. Defendants conduct has and continues to misrepresent the nature, characteristics, qualities and geographic origin of the Defendants' goods and as such constitutes willful false designations thereof in violation of the Act.

96. Defendants have engaged in commercial advertising and promotions which have independently continued to misrepresent the nature, characteristics, qualities, origin, manufacturing sources and geographic origin of the Defendant's goods and as such constitutes violations of the Act.

97. Defendants have engaged in prohibited dilution of Plaintiff's business identity and trade dress as well as damaging its reputation by way of the improper and unlawful use of the information obtained by the Defendants in violation of Ohio Rev. Code §1333.61 and breach of the Confidentiality Agreement, all of which constitute unfair trade practices in violation of the Act.

98. Through the marketing and sales of materially inferior and unsafe NexGen2 products, which are visually indistinguishable from the genuine OneSide products, Defendants have engaged in dilution of Ajax's business identity and the OneSide product identity and damaged Ajax's reputation all of which constitute unfair trade practices in violation of the Act.

99. Because of the prior business affiliation of Plaintiff and Defendants and the prior authorized use of Plaintiff's trade dress and true representations of the nature, characteristics, qualities and geographic origin of Plaintiff's genuine goods, the present conduct is willful and in violation of the Act.

100. Ajax requests Preliminary and Permanent Injunctive relief of unconditional prohibition of any use of its trade dress, business identity, any advertising or product packaging

that contains any resemblance to its product and the unconditional prohibition of the making, using and selling of the NexGen2 products by the Defendants and any and all of those acting in concert with them; and a determination of Defendants' violation of the Act, money damages in excess of \$1,000,000.00, multiplication of said damages for willful conduct, and its reasonable attorney's fees.

COUNT III
(Theft of Trade Secrets under Ohio Rev. Code §§1333.61 et seq.)

101. Plaintiffs restate, re-allege, and re-aver each of the allegations set forth in the preceding paragraphs as is fully rewritten herein.

102. The trade secret information as described herein constituted the technical information, design, process, procedure, pattern formula, method and techniques of Ajax and such information had independent and intrinsic economic value.

103. Defendants, jointly and severally, have by deception, trick, misrepresentation, and abuse of trust and good faith in dealing acquired trade secret information of Plaintiff by misappropriation and improper means, used said trade secret information for their own economic gain by their own use and/or by disclosing the same to others acting on behalf of the Defendants.

104. Plaintiff requests herein the Preliminary and Permanent Injunctive relief of unconditional prohibition of any use of its trade secret information by the Defendants and any and all of those acting in concert with them, the return of any and all such information to Ajax and the destruction of any copies thereof, a determination that Defendants violated O.R.C. §1333.61, money damages in excess of \$1,000,000.00, punitive damages for willful conduct, and its reasonable attorney's fees.

COUNT IV
(Breach of Contract)

105. Plaintiffs restate, re-allege, and re-aver each of the allegations set forth in the preceding paragraphs as is fully rewritten herein.

106. Defendants entered into the Agreement with both Specifix and Ajax on or about March 5, 2013.

107. The Agreement constitutes a valid and binding contract that can be enforced against Defendants and those acting in concert with them including, but not limited to, All Fasteners Pty Ltd and their common officer and director Michael Strange.

108. Defendants have breached and continue to breach the Confidentiality Agreement (either directly and/or indirectly through third parties acting on their behalf) and, therefore, have obtained and are improperly and unlawfully using the trade secret information as described herein which constituted the technical information, design, process, procedure, pattern formula, method and techniques of Ajax and which information has independent and intrinsic economic value.

109. Ajax states that Defendants, jointly and severally, have, by their breach of the Confidentiality Agreement, acquired its trade secret information by improper means, and have used said trade secret information for their own economic gain by their own use and/or disclosing the same to others acting on behalf of Defendants.

110. Plaintiff Specifix has an interest in protecting the proprietary, confidential, trade secret information of its subsidiary Ajax and Ajax has a concurrent interest in protecting its confidential trade secret information. Therefore, they jointly and severally request herein the Preliminary and Permanent Injunctive relief of unconditional prohibition of any use of its trade secret information by Defendants and any and all of those acting in concert with them, the return of any and all such information to Plaintiff and the destruction of any copies thereof, a

determination that Defendants breached the Confidentiality Agreement, money damages in excess of \$1,000,000.00, and its reasonable attorney's fees.

WHEREFORE, Plaintiff prays for judgment against Defendants, All Fasteners USA LLC, All Fasteners Enterprises LLC and All Fasteners LA LLC, as follows:

- a. Awarding Ajax monetary damages as to each count in this Complaint, in an amount in excess of \$1,000,000.00;
- b. Ordering an accounting of, and recovery of, Defendants' profits in connection with sales of its infringing NexGen2 products;
- c. Granting preliminary and permanent injunctive relief, enjoining and restraining Defendants and their affiliates, partners, representatives, servants, employees, attorneys and all persons in concert, privity or participation with Defendants, of and from:
 - i. making, using and selling any NexGen2 products;
 - ii. otherwise infringing the '709 patent;
 - iii. damaging Plaintiff's goodwill;
 - iv. using Plaintiff's confidential, proprietary and/or trade secret information;
 - v. using Plaintiff's trade dress, business identity, any advertising or product packaging that contains any resemblance to Plaintiff's products;
- d. Ordering Defendants to locate, identify, recall, recover and seize any and all such infringing products wherever located and or installed in any structures, all at the sole cost and expense of the Defendants ;

- e. Ordering Defendants to locate, identify, recall, recover and seize any and all such defective and/or misrepresented products wherever located and or installed in any structures, all at the sole cost and expense of the Defendants
- f. Ordering Defendants to return or destroy any and all of Plaintiff's confidential, proprietary or trade secret information in their possession;
- g. Ordering Defendants to produce a verified accounting of all sales of its infringing products, its production costs and expenses, and its profits;
- h. Declaring that Defendants have violated 35 U.S.C. §371, 15 U.S.C. §1125, and Ohio Rev. Code §1331.61;
- i. Awarding punitive damages and enhanced damages against Defendants;
- j. Awarding attorney's fees and costs, including but not limited to fees and costs authorized by law and equity;
- k. That this Court notify the United States Department of Homeland Security's Customs Services to seize and sequester any inbound shipments of the infringing products at all United States points of entry.
- l. Granting such further relief as this Court may deem appropriate.

Dated: October 28, 2015

Respectfully submitted,

/s/ Robert W. McIntyre

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JURY DEMAND

Plaintiff hereby demands a trial by the maximum number of jurors permissible in this matter on all triable issues.

/s/ Robert W. McIntyre
ROBERT W. McINTYRE (0006768)
Attorney for Plaintiff Acme Operations Pty Ltd.

CERTIFICATE OF SERVICE

I hereby certify that a copy the foregoing *Second Amended Complaint* was filed electronically this 28th day of October, 2015. Notice of this filing will be sent by operation of the Court's electronic system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's ECF system.

/s/ Robert W. McIntyre
ROBERT W. McINTYRE (0006768)