

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

TRUXEDO, INC., a  
Delaware Corporation,

Plaintiff,

v.

Case No:

TRUXMART,  
a Canadian corporation,

Defendant.

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**COMPLAINT FOR PATENT AND TRADEMARK INFRINGEMENT**

Plaintiff TruXedo, Inc. (“Plaintiff” or “TruXedo”) by and through its undersigned counsel, alleges as follows:

**NATURE OF THE ACTION**

1. This action seeks to redress Defendant TruXmart’s (“Defendant” or “TruXmart”) infringement of TruXedo’s U.S. Patent No. 7,445,264 (“the ‘264 Patent”), (“the Patent in Suit”), and infringement of TruXedo’s registered marks, **TRUXEDO** (Federal Trademark Registration No. 2,449,064), **TRUXEDO** (Federal Trademark Registration No. 2,449,070), and **TRUXPORT** (Federal

Trademark Registration No. 3,074,760), and TruXedo's common law mark **TruXedo** (Federal Trademark Serial No. 86/853,863). As pled, *infra*, TruXmart has infringed and continues infringing the Patent in Suit through its manufacture, use, offer for sale and/or sale of its TruXmart Smart Roll tonneau cover system, and has infringed and continues to infringe TruXedo's Federally Registered and Common Law Marks through its advertising, marketing, offering for sale and selling of TruXmart Smart Roll, TruXmart Quattro and TruXmart Forte tonneau cover systems under the TruXmart name.

### **THE PARTIES**

2. Plaintiff TruXedo, Inc. is a Delaware Corporation and has its principal place of business at 2209 Kellen Gross Dr., Yankton, South Dakota 57078.

3. Upon information and belief, Defendant TruXmart is a Canadian Corporation and has its principal place of business at 8820 Jane Street, Vaughan, Ontario L4K 2M9 Canada.

### **JURISDICTION AND VENUE**

4. This is an action for patent infringement arising under the patents laws of the United States, 35 U.S.C. § 1, *et seq.* and trademark infringement arising under the United States Trademark Act of 1946, as amended, 15 U.S.C. § 1051, *et seq.*

5. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a) and personal jurisdiction for state law claims pursuant to 28 U.S.C. § 1338(b) and § 1367.

6. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and (c) and §1400(b), because TruXmart has committed acts of patent infringement and/or contributed to or induced acts of patent infringement by others in this District and because TruXmart has committed acts of trademark infringement in this District.

### **BACKGROUND**

7. TruXedo devotes a substantial amount of its business to manufacturing tonneau covers for truck beds. TruXedo's products include the TruXedo Lo Pro ("TruXedo product").

8. TruXedo seeks to protect its TruXedo products by applying for patent protection. For example, the '264 Patent protects the TruXedo Lo Pro.

9. An application for the '264 Patent was filed on December 9, 2003. On November 4, 2008, after fully examining the application, the United States Patent and Trademark Office ("USPTO") duly issued the '264 Patent, entitled "Cover System for Truck Box." A true and correct copy of the '264 Patent is attached as Exhibit A.

10. TruXedo is the assignee of record and the owner of all right, title, and interest in the Patent in Suit, including the rights to sue, recover damages and obtain equitable relief for the patent's infringement.

11. TruXedo also seeks to protect its TruXedo products by adopting, using and developing substantial rights and good will in its Marks in connection with fitted covers for pickup truck beds.

12. An application for Trademark Registration No. 2,449,064 ("the '064 mark") was filed on March 17, 2000. On May 8, 2001, after fully examining the application, the United States Patent and Trademark Office ("USPTO") duly issued the '064 mark, entitled **TRUXEDO**®. A true and correct copy of the '064 mark registration is attached as Exhibit B.

13. An application for Trademark Registration No. 2,449,070 ("the '070 mark") was filed on March 17, 2000. On May 8, 2001, after fully examining the application, the United States Patent and Trademark Office ("USPTO") duly issued the '070 mark, entitled **TRUXEDO**®. A true and correct copy of the '070 mark registration is attached as Exhibit C.

14. An application for Trademark Registration No. 3,074,760 ("the '760 mark") was filed on December 2, 2004. On March 28, 2006, after fully examining the application, the United States Patent and Trademark Office ("USPTO") duly

issued the '760 mark, entitled **TRUXPORT**®. A true and correct copy of the '760 mark registration is attached as Exhibit D.

15. An application for Trademark Serial No. 86/853,863 ("the '863 application") was filed on December 18, 2015, entitled **TruXedo**. A true and correct copy of the '863 application is attached as Exhibit E.

16. TruXedo's marks are more particularly identified below (collectively "the Marks"):

Mark	Registration/Serial Number	Goods
<b>TRUXEDO</b>	2,449,064	Fitted covers for pickup truck beds, in International Class 012
<b>TRUXEDO</b>	2,449,070	Fitted covers for pickup truck beds, in International Class 012
<b>TRUXPORT</b>	3,074,760	Fitted covers for pickup truck beds, International Class 012
<b>TruXedo</b>	86/853,863	fitted covers for pickup truck beds; cargo storage bins uniquely adapted to fit in trucks, vans, off-road vehicles, or SUV's and related cargo management systems consisting primarily of cargo storage bins especially adapted to fit in truck, vans, off-road vehicles, or SUV's fitted

		liners for the cargo area of vehicles, International Class 012
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17. The '064, '070 and '060 Marks are valid, subsisting and incontestable.

18. TruXedo, Inc. is the assignee of record and the owner of all right, title, and interest in its Marks, including the rights to sue, recover damages and obtain equitable relief for infringement.

19. As a result of its longstanding use, widespread sales, and significant promotional activities, TruXedo has developed substantial rights and recognition in the marketplace for fitted covers for truck beds bearing its distinctive Marks. As such, TruXedo has established the exclusive right to use the Marks in connection with fitted covers for truck beds.

20. As used in connection with TruXedo's fitted covers for truck beds, TruXedo's Marks are widely known and distinctive resulting in customer recognition that the goods offered under the Marks emanate from a single source.

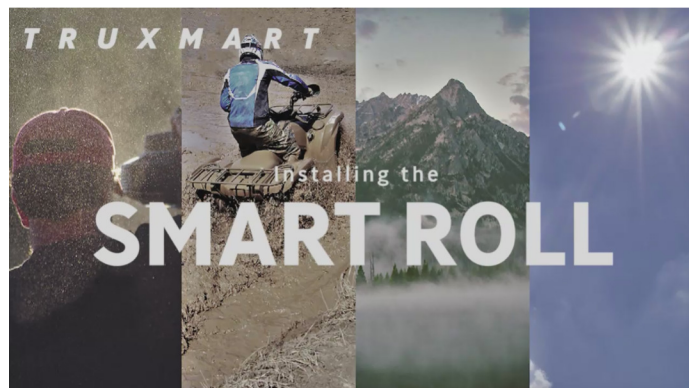
21. As a result of TruXedo's extensive advertising and business operations, the Marks have become, through favorable public acceptance and recognition, an asset of substantial value as a symbol of the fitted covers for pickup trucks provided by TruXedo.

## TRUXMART'S TONNEAU COVER SYSTEMS

22. The facts chronicled *supra* and *infra* confirm that TruXmart makes, uses, sells, and offers to sell in the U.S., infringing products under the aforementioned patents and infringing products that bear the infringing TruXmart name. TruXmart's infringing product is the TruXmart Smart Roll, and infringing products bearing the infringing TruXmart name are the TruXmart Smart Roll, the TruXmart Quattro and the TruXmart Forte (photos below, respectively) (collectively the "Accused Products").

### *TruXmart Smart Roll*

23. The TruXmart Smart Roll is depicted in the following photographs taken from its website, <http://www.truxmartcovers.com/>.





24. As noted at AutoAnything's website, <http://www.autoanything.com>, TruXmart offers to sell and sells its TruXmart Smart Roll throughout the U.S.

25. Photographs depicting the infringing product, as taken from the AutoAnything website, are as follows:





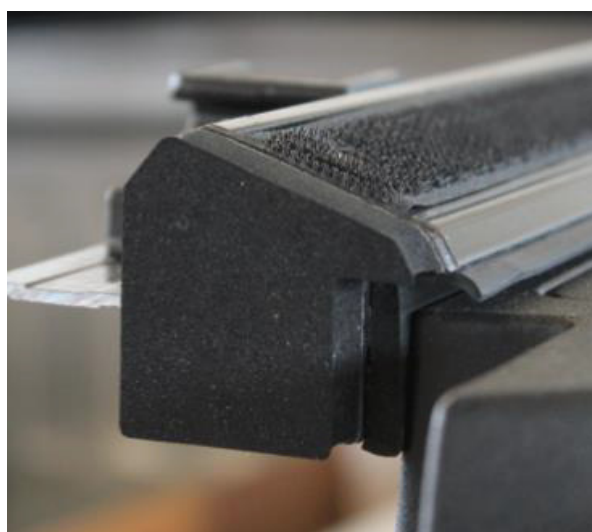
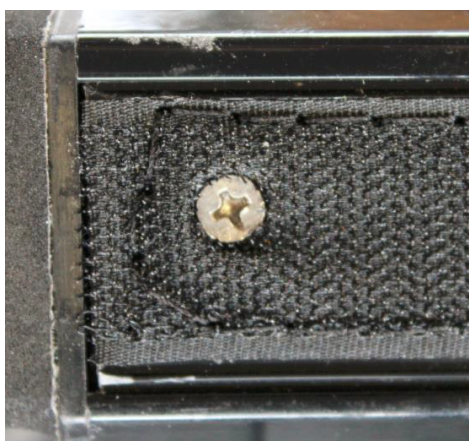
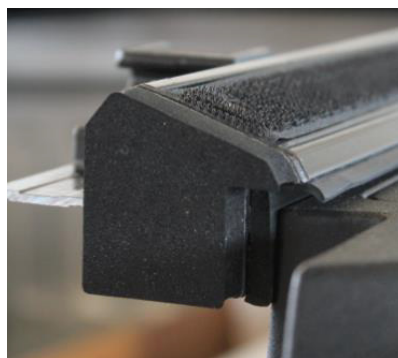


Home » Tonneau Covers » Roll Up Tonneau Covers » [TruXmart Smart Roll Tonneau Cover](#)



26. TruXmart, as noted in its website and on AutoAnything's website, offers to sell and sells the TruXmart Smart Roll infringing product throughout the U.S., and including in this District.

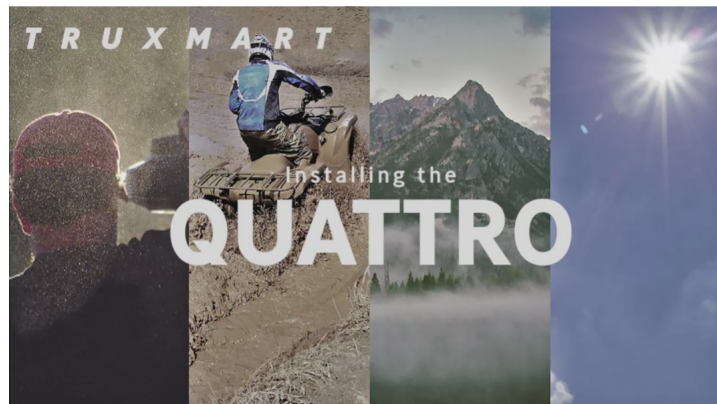
27. A TruXmart Smart Roll infringing product was purchased and is otherwise identified as Model 35-3136. Photos depicting various attributes, that are relevant to the claims of infringement, are as follows:





*TruXmart Quattro*

28. The TruXmart Quattro is depicted in the following photographs taken from its website, <http://www.truxmartcovers.com/>.



29. As noted at AutoAnything's website, <http://www.autoanything.com>, TruXmart offers to sell and sells its TruXmart Quattro throughout the U.S.

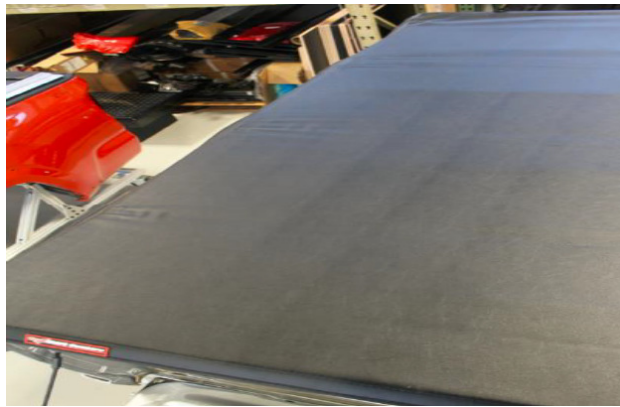
30. Photographs depicting the product, as taken from the AutoAnything website, are as follows:



31. TruXmart, as noted in its website and on AutoAnything's website, offers to sell and sells the TruXmart Quattro throughout the U.S., and including in this District.

32. A TruXmart Quattro product was purchased and is otherwise identified as Model 28-3136. Photos depicting various attributes are as follows:





***Truxmart Forte***

33. The TruXmart Forte is depicted in the following photographs taken from its website, <http://www.truxmartcovers.com/>.



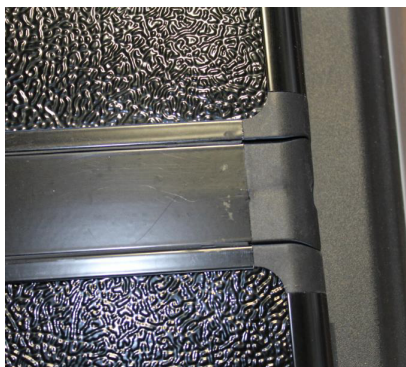
34. As noted at AutoAnything's website, <http://www.autoanything.com>, TruXmart offers to sell and sells its TruXmart Forte throughout the U.S.

35. Photographs depicting the, as taken from the AutoAnything website, are as follows:



36. TruXmart, as noted in its website and on AutoAnything's website, offers to sell and sells the TruXmart Forte throughout the U.S., and including in this District.

37. A TruXmart Forte product was purchased and is otherwise identified as Model 41-2716. Photos depicting various attributes are as follows:



38. TruXmart Smart Roll, TruXmart Quattro and TruXmart Forte generally work by covering a truck bed with a tonneau cover.

#### **TRUXMART'S KNOWLEDGE OF THE PATENT IN SUIT**

39. TruXmart has known of the Patent in Suit since at least November 2014. More specifically, on or about November 2014, at the SEMA show TruXmart representative, Steve Rossi was advised by Kelly Kneifl, COO THI (now Truck Hero, parent company of Extang), that its product that was displayed infringed TruXedo's patent. Emails chronicling the exchange followed the discussion.

40. On or about November 2015, at the SEMA show TruXmart representative, Steve Rossi was again advised by Kelly Kneifl that the product displayed and based on information and belief sold as of 2015 infringed the TruXedo patent. Kelly Kneifl further advised SEMA's counsel of the issue

41. Consequently, TruXmart has known since at least November 2014 that it infringed and based on sales in 2015 would be infringing TruXedo's Patent by making, using, selling, or offer to sale TruXmart Smart Roll.

42. Because TruXmart Smart Roll meets each limitation of the Asserted Claim in the manner alleged *infra*, and because TruXmart has had actual



knowledge of the Patent in Suit, and constructive knowledge through TruXedo's marking, TruXmart's infringement has been willful.

## **FIRST CLAIM FOR RELIEF**

### **Infringement of the '264 Patent [35 U.S.C. § 271(a)]**

43. TruXedo re-alleges each and every allegation set forth in the preceding paragraphs.

44. As detailed in the following paragraphs, TruXmart has infringed, and continues its infringement under 35 U.S.C. § 271(a) of at least claims 1 and 9 of the '264 Patent (the "Asserted Claims"), either literally or under the doctrine of equivalents, by making, using, selling, or offering to sell the TruXmart Smart Roll in the United States without license or authority.

#### ***TruXmart Infringes Claim 1 with TruXmart Smart Roll***

45. TruXmart's Smart Roll meets the limitations of – and thus infringe – claim 1 because each includes:

- a. An improved cover system for an open top container or truck box, the open top container or truck box having a front wall, a rear wall, and two side walls, wherein at least one of the walls has a top edge, the system having a flexible cover material with dimensions approximately the same as the dimensions of the open top and an

upwardly facing and a downwardly facing surface, a first fastening means disposed along at least a portion of at least one side edge of the downwardly facing surface of the flexible cover material, and a rail capable of being mounted adjacent the edge of the wall and having an outwardly facing portion defining an elongated channel portion, wherein the improvement comprises:

b. an elongated, substantially rigid second fastening means having an integrally formed fastening surface positioned to engage the first fastening means, the second fastening means being dimensioned to be capable of longitudinal slideable engagement with the channel and also dimensioned to be incapable of lateral movement from the channel, wherein the second fastening means is prevented from longitudinal escape from the channel by a rivet.

46. As depicted in the photos at paragraphs 23, 25 and 27, each and every element of claim 1 is found in their infringing product.

47. TruXmart's infringement of the '264 Patent has damaged TruXedo, both by violating TruXedo's right to exclude others from making, using, selling or offering to sell tonneau cover systems in the U.S. and importing them into the U.S., but also because TruXedo and TruXmart compete head-to-head in the U.S. in the field of tonneau cover systems.

48. TruXmart's continuing infringement of the '264 Patent irreparably harms TruXedo. TruXedo will continue to suffer irreparable harm absent entry of a permanent injunction enjoining TruXmart and its agents, servants, employees, representatives, affiliates, and all others acting with them, from infringing the '264 Patent

### **SECOND CLAIM FOR RELIEF**

(15 U.S.C. § 1114)

*Trademark Infringement in Violation of the Lanham Act*

49. TruXedo re-alleges each and every allegation set forth in the preceding paragraphs.

50. **TRUXEDO®**, **TRUXEDO®**, **TRUXPORT®** are collectively referred herein as the TRUXEDO Registered marks.

51. TruXmart has infringed the TRUXEDO Registered Marks by using a colorable imitation of TRUXEDO Registered Marks in TruXmart's product name, in TruXmart's advertising, on TruXmart's website and with the Accused Products.

52. TruXmart's unauthorized use of the infringing TruXmart name is likely to cause confusion, mistake, or deception under 15 U.S.C. § 1114 as to the affiliation, connection, or association of TruXmart with the TRUXEDO Registered Marks, or as to the origin sponsorship, or approval by TruXedo of TruXmart's goods or commercial activities.

53. Upon information and belief, the Defendant's use of the infringing TruXmart name on and in connection with goods that are identical or substantially identical to TruXedo's is part of a deliberate scheme to trade on the valuable goodwill that has been established in the marks.

54. Upon information and belief, Defendant has persuaded customers, retailers, and/or distributors to unlawfully use TruXedo's registered marks without TruXedo's permission and to identify the Accused Products.

55. Defendant's use of the infringing TruXmart name enables Defendant to benefit unfairly from TruXedo's reputation and success, thereby giving the Accused Product sales and commercial value it would not have otherwise.

56. Upon information and belief, prior to Defendant's first use of the infringing TruXmart name, Defendant was aware of TruXedo's business and had either actual notice and knowledge, or constructive notice of, TRUXEDO's Registered Marks.

57. Defendant's use of the infringing TruXmart name is likely, if not certain, to deceive or to cause confusion or mistake among consumers as to the origin, sponsorship, or approval of the Accused Products and/or to cause confusion or mistake as to any affiliation, connection, or association between TruXedo and Defendant, in violation of 15 U.S.C. § 1114(a).

58. On information and belief, Defendant's conduct has been willful, wanton, reckless, and without regard to TruXedo's rights.

59. On information and belief, Defendant has gained profits by virtue of Defendant's infringement of TRUXEDO's Registered Marks.

60. TruXedo will suffer and is suffering irreparable harm from Defendant's infringement of TRUXEDO's Registered Marks. TruXedo has no adequate remedy at law to compensate it for the loss of business reputation, customers, market position, confusion of potential customers, and good will flowing from Defendant's infringing activities. Pursuant to 15 U.S.C. § 1116, TruXedo is entitled to an injunction against Defendant's continuing infringement of TRUXEDO's Registered Marks. Unless enjoined, Defendant will continue the infringing conduct.

61. As a result of Defendant's acts, TruXedo is entitled to damages in an amount to be proven at trial, and injunctive relief.

### **THIRD CLAIM FOR RELIEF**

#### *Common Law Trademark Infringement*

62. TruXedo incorporates by reference all previous allegations as if specifically set forth herein.

63. **TRUXEDO**®, **TRUXEDO**®, **TRUXPORT**® and **TruXedo** are collectively referred to as the TRUXEDO Common Law Marks.

64. TruXedo owns common law rights for the marks used for TruXedo's fitted covers for pickup truck beds, through TruXedo's actual and continuous use of its marks in commerce in Michigan.

65. Through TruXedo's direct or indirect use of TruXedo's Michigan Common Law Marks in association with TruXedo's fitted covers for pickup truck beds, TruXedo's Michigan Common Law Marks have acquired a special significance in the tonneau cover field.

66. TruXedo's Michigan Common Law Marks are inherently distinctive and have, by actual usage, acquired in the tonneau cover field, a meaning indicating, describing, and identifying TruXedo as the source of TruXedo's fitted covers for pickup truck beds.

67. Defendant's TruXmart name has infringed TruXedo's Michigan Common Law Marks by using a confusingly similar variation in Defendant's product name and in advertising for the TruXmart name in Michigan.

68. Defendant's unauthorized use of the infringing TruXmart name is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association of Defendant with TruXedo, or as to the origin, sponsorship, or

approval by TruXedo or Defendant's goods or commercial activities and constitutes trademark infringement under Michigan common law.

69. Defendant's use of the infringing TruXmart name enables Defendant to benefit unfairly from TruXedo's reputation and success, thereby giving Defendant's Accused Products' sales and commercial value they would not have otherwise.

70. On information and belief, prior to Defendant's first use of the infringing TruXmart name, Defendant was aware of TruXedo's business and had either actual notice and knowledge, or constructive notice, of TruXedo's Michigan Common Law Marks.

71. Defendant's unauthorized use of the infringing TruXmart name is likely, if not certain, to deceive or to cause confusion or mistake among consumers as to the origin, sponsorship or approval of Defendant's products and/or to cause confusion or mistake as to any affiliation, connection or association between TruXedo and Defendant, in violation of common law principles of Michigan.

72. On information and belief, Defendant's conduct has been willful, wanton, reckless, and without regard to TruXedo's rights in TruXedo's Michigan Common Law Marks.

73. On information and belief, Defendant has gained profits by virtue of Defendant's infringement of TruXedo's Michigan Common Law Marks.

74. TruXedo will suffer and is suffering irreparable harm from Defendant's infringement of TruXedo's Michigan Common Law Marks. TruXedo has no adequate remedy at law to compensate it for the loss of business reputation, customers, market position, confusion of potential customers, and good will flowing from Defendant's infringing activities. TruXedo is entitled to an injunction against Defendant's continuing infringement of TruXedo's Michigan Common Law Marks. Unless enjoined, Defendant will continue the infringing conduct.

75. As a result of Defendant's acts, TruXedo is entitled to damages in an amount to be proven at trial, and injunctive relief.

### **RELIEF REQUESTED**

WHEREFORE, TruXedo respectfully requests that the Court enter judgment in favor of TruXedo and against TruXmart as follows:

- A. Finding that TruXmart is and has been infringing the Patent in Suit;
- B. Permanently enjoining TruXmart and its affiliates, employees, agents, officers, directors, attorneys, successors, and assigns, and all those acting on behalf of or in active concert or participation with any of them, from infringing the Patent in Suit;



C. Requiring that TruXmart render a full and complete accounting to TruXedo for TruXmart's profits, gains, advantages or the value of business opportunities received from its acts of infringement;

D. Requiring that TruXmart pay TruXedo damages, together with interest and costs as fixed by the court, to compensate TruXedo for TruXmart's infringement of the Patent in Suit;

E. Determining that Defendant is liable, jointly and severally, to TruXedo for trademark infringement in violation of 15 U.S.C. 1114;

F. Determining that Defendant is liable, jointly and severally, to TruXedo for Michigan Common Law Trademark Infringement;

G. Determining that Counterclaim Defendant's conduct has been willful and deliberate;

H. The TRUXEDO Registered Marks are valid, enforceable, and incontestable; that Defendant has infringed such registration under 15 U.S.C. § 1114(1); and that such infringement has been willful under 15 U.S.C. § 1117;

I. TruXedo owns the exclusive right to use the TRUXEDO Registered and Common Law Marks in connection with fitted covers for pickup trucks;

J. TruXedo owns all rights to the TRUXEDO Common Law Marks and Defendant has infringed TruXedo's trademark rights under Michigan Common Law;

K. Defendant has unfairly competed with TruXedo in violation of

Michigan common law;

L. Defendant has unjustly enriched itself in violation of Michigan common law;

M. Defendant, its agents, servants, employees, attorneys and all persons acting in concert or participation with it who receive actual notice of the Order be permanently enjoined from:

i. Advertising, promoting, offering for sale, selling, or providing any fitted covers for pickup truck beds under or bearing the name “TruXmart” or any other marks that are confusingly similar to TRUXEDO’s Registered and Common Law Marks;

ii. Committing any acts likely to cause the public to believe that any of Defendant’s fitted covers for pickup trucks are TruXedo’s, or are authorized, sponsored by, or in any way associated with TruXedo, in whole in part;

iii. Using any words, styles, titles or marks which create a likelihood of injury to the business reputation of TruXedo; and

iv. Attempting, causing or assisting any of the above-described acts.

N. Defendant be ordered to pay TruXedo damages for violations of TruXedo’s trademark rights under 15 U.S.C. §§ 1114(1) and that those damages be trebled as provided by 15 U.S.C. § 1117(a) on the grounds that Defendant’s acts have

been willful and wanton;

O. Defendant be ordered to deliver up for destruction or other disposition, within thirty (30) days of the entry of final judgment herein any and all products, displays, signs, circulars, packaging, labels, advertising or other materials in Defendant's possession that bear the TruXmart name or any other designation that would violate the injunction entered herein;

P. Defendant be ordered to: (a) use its best efforts to recall from any and all channels of distribution any product, packaging, labeling, advertising and/or promotional material bearing the TruXmart name; and (b) send written notice, approved by TruXedo, to each party who has received such from Defendant (i) requesting that such recipient return all such materials to Defendant; and (ii) advising such recipient of the pendency of this action, that Defendant has been enjoined from using the infringing materials, and that any use of the infringing materials thereafter will be in violation of said Order;

Q. Upon ten (10) days' notice for the next five (5) years, TruXedo be permitted to inspect and audit Defendant's inventory and all business records to determine compliance with the injunction issued by the Court;

R. Enhancing by three-fold the damages that TruXmart must pay TruXedo pursuant to 35 U.S.C. § 284;

S. Finding the case exceptional under 35 U.S.C. § 285 and requiring that TruXmart pay to TruXedo all of its attorneys' fees and costs and expenses in this action;

T. Such other and further relief as the Court may deem appropriate.

### **JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands a trial by jury for each and every issue so permitted by law and statute.

Dated: March 2, 2016

s/George D. Moustakas/  
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