

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

Edward P. Bakos (ebakos@bakoskritzer.com)

Noam J. Kritzer (nkritzer@bakoskritzer.com)

Bakos & Kritzer

147 Columbia Turnpike

Florham Park, New Jersey 07932

Telephone: 908-273-0770

Facsimile: 973-520-8260

Attorneys for the Plaintiffs:

Tristar Products, Inc. and

KE M.O. House Co., Ltd.

TRISTAR PRODUCTS, INC.

(a Pennsylvania corporation) and

KE M.O. HOUSE CO., LTD.

(a Chinese corporation),

Plaintiffs,

v.

TELEBRANDS CORP.

(a New Jersey corporation) and

BULBHEAD.COM, LLC

(a Delaware limited liability company),

Defendants.

**CIVIL ACTION FILE NUMBER:
1:17-cv-01206-RMB-JS**

Document filed Electronically

**SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT AND
DEMAND FOR JURY TRIAL**

Plaintiff, Tristar Products, Inc., a Pennsylvania corporation (hereinafter “Tristar Products”) and Plaintiff, KE M.O. House Co., Ltd., (hereinafter “KEMO”) (collectively, “Plaintiffs”) by their undersigned attorneys, for their Complaint against Telebrands Corp., a New Jersey corporation (“Telebrands”) and Bulbhead.Com, LLC (“Bulbhead”) (collectively, “Defendants”), upon actual knowledge with respect to themselves and their own acts, and upon information and belief as to all other matters, allege as follows:

THE PARTIES

1. Plaintiff Tristar Products is a Pennsylvania corporation having its corporate headquarters at 492 Route 46 East, Fairfield, New Jersey 07004.
2. Plaintiff KEMO is a Chinese corporation having its corporate headquarters at Jidali Industrial Park, Gonghe Village, Shajing County, Baoan District, Shenzhen City, Guangdong Province, 518104 China.
3. Upon information and belief, Defendant Telebrands is a New Jersey corporation having its corporate headquarters at One Telebrands Plaza, Fairfield, New Jersey 07004.
4. Upon information and belief, Defendant Bulbhead is a Delaware limited liability company having its corporate headquarters at 79 Two Bridges Road, Fairfield, New Jersey 07004.

JURISDICTION AND VENUE

5. This is a civil action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code and for trade dress infringement arising under the Lanham Act, Title 15 of the United States Code.
6. The Court has subject matter jurisdiction over the action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a), as it involves substantial claims arising under the Patent Laws of the United States with related claims for patent infringement and substantial claims arising under the Lanham Act with related claims for unfair competition. The Court has supplemental jurisdiction over the related state law claims pursuant to 28 U.S.C. § 1338(b) and 28 U.S.C. § 1367.
7. This Court has personal jurisdiction over Defendant Telebrands and venue is proper under 28 U.S.C. § 1391(b) and (c) and § 1400(b). Telebrands is a resident of New Jersey, has regularly engaged in business in this State and District and purposefully availed itself of the privilege of conducting business in this District. In addition, upon information and belief, Telebrands has committed acts of infringement in this District, and this action arises from those acts.

8. This Court has personal jurisdiction over Defendant Bulbhead and venue is proper under 28 U.S.C. § 1391(b) and (c) and § 1400(b). Bulbhead is a resident of New Jersey, has regularly engaged in business in this State and District and purposefully availed itself of the privilege of conducting business in this District. In addition, upon information and belief, Bulbhead has committed acts of infringement in this District, and this action arises from those acts.

BACKGROUND

A. The Copper Chef Design Patents

9. On February 14, 2017, U.S. Patent No. D778,664 (the “‘664 patent”) entitled “Pan” duly and legally issued to Keith Mirchandani and Mo-Tsan Tsai. The ‘664 patent was assigned to Tristar Products and KEMO on May 23, 2016 by Mo-Tsan Tsai and June 20, 2016 by Keith Mirchandani. The assignment was duly recorded with the United States Trademark and Patent Office on December 21, 2016. Plaintiffs maintain the exclusive right to make, have made, use, distribute, sell, offer for sale, and import in the United States certain products covered by the ‘664 patent. A true and correct copy of the ‘664 patent is attached hereto as Exhibit A.

10. On February 7, 2017, U.S. Patent No. D778,103 (the “‘103 patent”) entitled “Pan” duly and legally issued to Keith Mirchandani and Mo-Tsan Tsai. The ‘103 patent was assigned to Tristar Products and KEMO on May 23, 2016 by Mo-Tsan Tsai and June 20, 2016 by Keith Mirchandani. The assignment was duly recorded with the United States Trademark and Patent Office on December 19, 2016. Plaintiffs maintain the exclusive right to make, have made, use, distribute, sell, offer for sale, and import in the United States certain products covered by the ‘103 patent. A true and correct copy of the ‘103 patent is attached hereto as Exhibit B.

11. On November 29, 2016, U.S. Patent No. D772,641 (the “‘641 patent”) entitled “Pan” duly and legally issued to Keith Mirchandani and Mo-Tsan Tsai. The ‘641 patent was assigned to Tristar Products and KEMO on May 23, 2016 by Mo-Tsan Tsai and June 20, 2016 by Keith

Mirchandani. The assignment was duly recorded with the United States Trademark and Patent Office on October 12, 2016. Plaintiffs maintain the exclusive right to make, have made, use, distribute, sell, offer for sale, and import in the United States certain products covered by the ‘641 patent. A true and correct copy of the ‘641 patent is attached hereto as Exhibit C.

12. On April 11, 2017, U.S. Patent No. D783,352 (the “‘352 patent”) entitled “Fry Basket” was duly and legally issued. The ‘352 patent was assigned to Tristar Products by the inventor, Paul McGrath. Tristar Products maintains the exclusive right to make, have made, use, distribute, sell, offer for sale, and import in the United States certain products covered by the ‘352 patent. A true and correct copy of the ‘352 patent is attached hereto as Exhibit D.

13. The ‘664 patent, ‘103 patent and the ‘641 patent each protects the design of a pan for use in cooking. Tristar utilizes the designs that are protected by the ‘664 patent, ‘103 patent and the ‘641 patent in its highly successful “COPPER CHEF” square pan (“COPPER CHEF pan”). The COPPER CHEF pan has been the subject of extensive promotion and has attained immense success in the marketplace including sales in excess of \$100 million in 2016 alone.

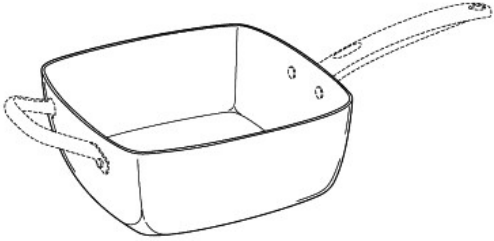

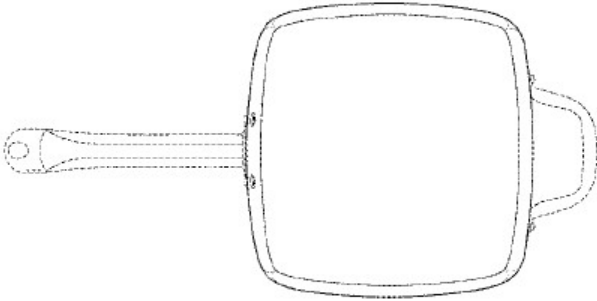

14. Upon information and belief, Defendants make, use, sell, and/or offer to sell and induce others to make, use, sell, and/or offer to sell, pans that embody and/or use the inventions claimed in the ‘664 patent, ‘103 patent and the ‘641 patent, including at least under the brand name “RED COPPER.”

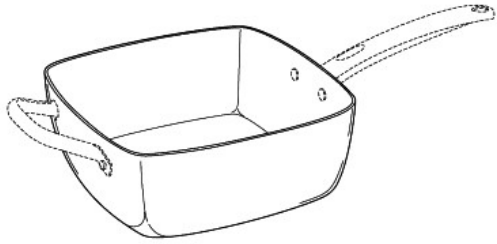

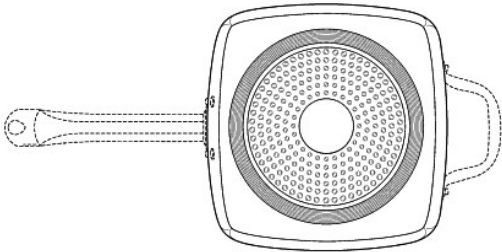

15. The ‘352 patent protects the design of a fry basket for use in cooking. Tristar utilizes the design that is protected by the ‘352 patent in its basket which is included in sales of the COPPER CHEF pan and also sold separately (the “COPPER CHEF basket”).

16. Upon information and belief, Defendants make, use, sell, and/or offer to sell and induce others to make, use, sell, and/or offer to sell, baskets that embody and/or use the invention



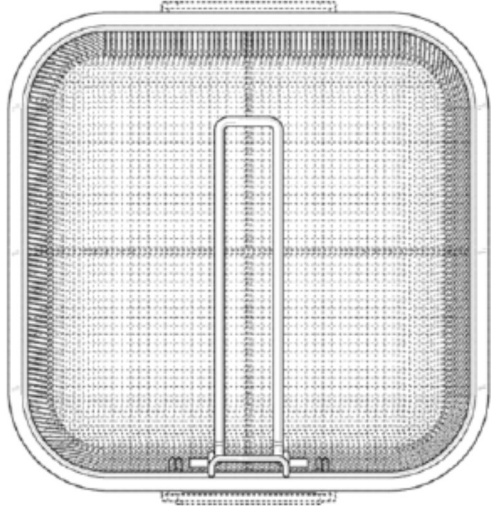

claimed in the '352 patent, including at least in connection with the RED COPPER pan (the "RED COPPER basket").

17. A side-by-side comparison of the products reveals the infringing nature of the RED COPPER products:

Design of '664 Patent	Defendants' "RED COPPER" Pan
	
	

Design of '103 Patent	Defendants' "RED COPPER" Pan
	
	

Design of the '641 Patent	Defendants' "RED COPPER" Product
	
	

Design of the '352 Patent	Defendants' "RED COPPER" Basket
	
	

B. The Copper Chef Trade Dress

18. On or about November 14, 2015, Tristar Products introduced the COPPER CHEF pan. The COPPER CHEF pan is a famous pan featuring a distinctive appearance, including a unique and non-functional combination of a copper colored square pan with rounded corners featuring silver-colored handles and hardware, a clear glass lid featuring silver-colored handles and trim, and a distinct circular pattern on the bottom of the COPPER CHEF pan. The COPPER CHEF pan is pictured below:



19. All the features that make up the COPPER CHEF pan trade dress are nonfunctional, in that they serve a decorative and aesthetic purpose and are not necessary to exist in this design in order for the COPPER CHEF pan to be used for its intended purpose. The nonfunctionality of the COPPER CHEF pan trade dress is further demonstrated by evidence in the marketplace of

countless cookware pans with completely different designs than the COPPER CHEF pan trade dress.

20. Tristar Products has invested more than forty million dollars to heavily advertise and promote the COPPER CHEF pan trade dress. The COPPER CHEF pan has acquired a respected reputation and has been the recipient of press coverage and industry recognition and praise. As a result of these efforts and Tristar's continuous use of the COPPER CHEF pan trade dress, the public recognizes and understands the design of the COPPER CHEF pan to distinguish and identify the product and its source.

21. As a result of Tristar's extensive promotion and use of its COPPER CHEF pan trade dress, Tristar has developed and acquired significant goodwill in the COPPER CHEF pan trade dress. Consumers associate the COPPER CHEF pan trade dress with a single source. The COPPER CHEF pan trade dress is distinctive and non-functional and has acquired secondary meaning.

22. Defendants' RED COPPER pan copies the look and feel of the COPPER CHEF pan trade dress and is confusingly similar to the COPPER CHEF trade dress.

23. On information and belief, Defendants knew of the COPPER CHEF pan trade dress prior to the first promotion and sale of the RED COPPER pan.

24. Defendants purposefully adopted an appearance for their competing RED COPPER pan with the intent to trade upon the goodwill earned by Plaintiff.

25. Upon information and belief, as a result of Defendants' trade dress infringement, consumers are likely to be confused.

26. At least as early as November 14, 2015, Tristar Products introduced the COPPER CHEF basket. The COPPER CHEF basket has a distinctive appearance, including a unique and non-functional combination of a wire mesh silver-colored basket with the appearance of four sections

or quadrants, a wire mesh of a unique diameter, a wire mesh construction of a unique size, and a top lip of a certain thickness and curvature. The COPPER CHEF basket is pictured below:



27. All the features that make up the COPPER CHEF basket trade dress are nonfunctional, in that they serve a decorative and aesthetic purpose and are not necessary to exist in this design in order for the fry basket to be used for its intended purpose. The nonfunctionality of the COPPER CHEF basket trade dress is further demonstrated by evidence in the marketplace of countless cookware items with completely different designs than the COPPER CHEF basket trade dress.

28. Tristar Products has invested more than forty million dollars to heavily advertise and promote the COPPER CHEF product line, including the COPPER CHEF basket trade dress. As a result of these efforts and Tristar's continuous use of the COPPER CHEF basket trade dress, the public recognizes and understands the design of the COPPER CHEF basket to distinguish and identify the product and its source.

29. As a result of Tristar's extensive promotion and use of its COPPER CHEF basket trade dress, Tristar has developed and acquired significant goodwill in the COPPER CHEF basket trade

dress. Consumers associate the COPPER CHEF basket trade dress with a single source. The COPPER CHEF pan trade dress is distinctive and non-functional and has acquired secondary meaning.

30. Defendants' RED COPPER basket copies the look and feel of the COPPER CHEF basket trade dress and is confusingly similar to the COPPER CHEF basket trade dress.

31. On information and belief, Defendants knew of the COPPER CHEF basket trade dress prior to the first promotion and sale of the RED COPPER basket.

32. Defendants purposefully adopted an appearance for their competing basket with the intent to trade upon the goodwill earned by Tristar.

33. Upon information and belief, as a result of Defendants' trade dress infringement, consumers are likely to be confused.

34. The packaging of the COPPER CHEF pan and COPPER CHEF basket ("COPPER CHEF packaging") was introduced at least as early as November 14, 2015. The COPPER CHEF packaging includes a unique and non-functional combination of a rectangular box featuring a prominent gold or yellowish band across the top of the box, images of the products included in the box shown against a white or off-white background with the product handle pointing to the right, a bottom banner comprised of photographs of various foods with text identifying the various uses including "Bake", "Fry", and "Steam", the placement of the product spokesperson in a circular frame in the upper corner of the rectangular box, and the sale of a combination of products within the packaging including the COPPER CHEF product, COPPER CHEF basket, and steamer tray. The COPPER CHEF packaging is shown below side-by-side with Defendants' product packaging.



35. All the features that make up the COPPER CHEF packaging trade dress are nonfunctional, in that they serve a decorative and aesthetic purpose and are not necessary to exist in this design in order for the COPPER CHEF packaging to be used for its intended purpose. The nonfunctionality of the COPPER CHEF packaging trade dress is further demonstrated by evidence in the marketplace of countless cookware packaging with completely different designs than the COPPER CHEF packaging trade dress.

36. Tristar Products has invested more than forty million dollars to heavily advertise and promote the COPPER CHEF product trade dress, including the COPPER CHEF packaging trade dress. The COPPER CHEF packaging has acquired a respected reputation and has been the recipient of press coverage and industry recognition and praise. As a result of these efforts and Tristar's continuous use of the COPPER CHEF packaging trade dress, the public recognizes and understands the design of the COPPER CHEF packaging to distinguish and identify the products and their source.

37. As a result of Tristar's extensive promotion and use of its COPPER CHEF packaging trade dress, Tristar has developed and acquired significant goodwill in the COPPER CHEF packaging trade dress. Consumers associate the COPPER CHEF packaging trade dress with a single source.

The COPPER CHEF packaging trade dress is distinctive and non-functional and has acquired secondary meaning.

38. Defendants' RED COPPER packaging copies the look and feel of the COPPER CHEF packaging trade dress and is confusingly similar to the COPPER CHEF packaging trade dress.

39. On information and belief, Defendants knew of the COPPER CHEF packaging trade dress prior to the first promotion and use of the RED COPPER packaging.

40. Defendants purposefully adopted an appearance for their competing RED COPPER packaging with the intent to trade upon the goodwill earned by Plaintiff.

41. Upon information and belief, as a result of Defendants' trade dress infringement, consumers are likely to be confused.

42. Since introduction of the COPPER CHEF product line, Tristar Products has invested over forty million dollars (\$40,000,000) promoting the COPPER CHEF product line and the appearance of the COPPER CHEF pan, COPPER CHEF basket, and COPPER CHEF packaging. Sales of the COPPER CHEF pan exceeded \$100 million in 2016 alone.

43. The COPPER CHEF product line has received industry praise and recognition, including QVC's 2016 Merchandising Excellence award.

44. The popularity and success of the COPPER CHEF trade dress is demonstrated in the following press and consumer statements and reviews attached as Exhibit E:

- "This is a highly versatile aluminum (supposedly copper painted) pan/pot hybrid. With the accompanying accessories I've been able to use it for sautéing, poaching, boiling, deep frying, and steaming. Because of its versatility, it has quickly become my go-to in the kitchen. The square shape is great for pouring as well as venting; I'm surprised more manufacturers haven't adopted this (or a similar) design. All in all, I'm very happy with my purchase and consider it money well spent." Consumer Review, Amazon.com

- “I have used other copper chef products and I love them all.” Consumer Review, Kohls.com
- “To find the cookware that will suit my needs I’ve talked with many of my friends who are cooking freaks like me, and they were all mentioning one brand – Copper Chef. As I trust them, I’ve decided to order Copper Chef Pan, and I didn’t regret. To find the cookware that will suit my needs I’ve talked with many of my friends who are cooking freaks like me, and they were all mentioning one brand – Copper Chef. As I trust them, I’ve decided to order Copper Chef Pan, and I didn’t regret.” *Copper Chef Pan Review 2017: The Truth About Copper Chef Cookware*, KITCHENBYTE.COM, <https://kitchenbyte.com/copper-chef-pan-reviews/>.
- “We’re working with @copper_chef this morning to showcase the color that everyone is emulating! #IHHS2017 #copperchef.” Daily Lounge (@DailyLounge), TWITTER (March 20, 2017), <https://twitter.com/DailyLounge/status/843830071500652544>.
- “One thing that sets the Copper Chef pans apart from other pans is that these have a unique square design.” *The Only Pan You Will Ever Need*, LIFE WITH HEIDI (September 16, 2016), <http://www.lifewithheidi.com/the-only-pan-you-will-ever-need/>.
- “We’ve been preparing for #NationalFrenchFryDay with the fabulous Copper Chef square pan! See, the thing about As Seen On TV infomercials is: the products are eye-popping and ear-catching. So when we heard about Copper Chef, we wanted to try it out for our foodie readers. What is it? A square pan made with cerami-tech non-stick technology.” Pamela Price, *Copper Chef Delights On National French Fry Day!*, LATFUSA.COM (July 13, 2016 10:09 am), <http://www.latfusa.com/article/2016/7/copper-chef-delights-on-national-french-fry-day/>.

- “So easy to cook and prepare and clean up is amazing. The copper color is awesome! I love it! I am going to order a second one. Can’t wait to try a wok recipe in it!”
Customer Review, CopperChef.com

COUNT I
INFRINGEMENT OF THE ‘664 PATENT BY DEFENDANTS

45. Plaintiffs reallege and incorporate the allegations set forth in Paragraph 1 through Paragraph 44 herein.

46. Upon information and belief, Defendants directly infringe, infringe under the doctrine of equivalents, contributorily infringe, and/or actively induce infringement of one or more claims of the ‘664 patent by making, using, selling, and/or offering to sell, or inducing others to make, use, sell, or offer to sell pans that embody or use the ornamental design claimed in the ‘664 patent. Such infringing pans include at least the RED COPPER square pan depicted in Paragraph 17, above.

47. An ordinary observer, giving as much attention typical of a purchaser, would find the design of Defendants’ RED COPPER square pan to be substantially the same as Plaintiffs’ patented design.

48. Defendants’ acts of infringement of the ‘664 patent have caused and will continue to cause Plaintiffs damages for which Plaintiffs are entitled to compensation pursuant to 35 U.S.C. §§ 284 and 289.

49. Defendants’ acts of infringement of the ‘664 patent have caused and will continue to cause Plaintiffs damages for which Plaintiffs lack an adequate remedy at law.

50. Defendants’ acts of infringement of the ‘664 patent have caused and will continue to cause Plaintiffs irreparable harm unless such infringing activities are enjoined by this Court pursuant to 35 U.S.C. § 283.

51. Defendants' adoption and use of a colorable imitation of Plaintiffs' patented design has caused and is causing substantial irreparable harm to Plaintiffs and will continue to damage Plaintiffs unless enjoined by this Court.

52. This case is exceptional and, therefore Plaintiffs are entitled to an award of attorneys' fees pursuant to 35 U.S.C. § 285.

53. Upon information and belief, Defendants' commercial activities relating to the making, using, offering for sale, selling, and/or importing into the United States pans that embody the ornamental design protected by the '664 patent have continued and are continuing with knowledge of the '664 patent, in spite of the fact that Defendants' actions constitute infringement of the '664 patent. These commercial activities are, at a minimum, in reckless disregard of Plaintiffs' rights under the '664 patent. Such acts of infringement have therefore been intentional, deliberate and willful. Defendants' acts constitute violations of 35 U.S.C. § 271.

COUNT II
INFRINGEMENT OF THE '103 PATENT BY DEFENDANTS

54. Plaintiffs reallege and incorporate the allegations set forth in Paragraph 1 through Paragraph 53 herein.

55. Upon information and belief, Defendants directly infringe, infringe under the doctrine of equivalents, contributorily infringe, and/or actively induce infringement of the '103 patent by making, using, selling, and/or offering to sell, or inducing others to make, use, sell, or offer to sell pans that embody or use the ornamental design claimed in the '103 patent. Such infringing pans include at least the RED COPPER square pan depicted in Paragraph 17, above.

56. An ordinary observer, giving as much attention typical of a purchaser, would find the design of Defendants' RED COPPER square pan to be substantially the same as Plaintiffs' patented design.

57. Defendants' acts of infringement of the '103 patent have caused and will continue to cause Plaintiffs damages for which Plaintiffs are entitled to compensation pursuant to 35 U.S.C. §§ 284 and 289.

58. Defendants' acts of infringement of the '103 patent have caused and will continue to cause Plaintiffs damages for which Plaintiffs lack an adequate remedy at law.

59. Defendants' adoption and use of a colorable imitation of Plaintiffs' patented design has caused and is causing substantial irreparable harm to Plaintiffs and will continue to damage Plaintiffs unless enjoined by this Court.

60. Defendants' acts of infringement of the '103 patent have caused and will continue to cause Plaintiffs irreparable harm unless such infringing activities are enjoined by this Court pursuant to 35 U.S.C. § 283.

61. This case is exceptional and, therefore Plaintiffs are entitled to an award of attorneys' fees pursuant to 35 U.S.C. § 285.

62. Upon information and belief, Defendants' commercial activities relating to the making, using, offering for sale, selling, and/or importing into the United States pans that embody the ornamental design protected by the '103 patent have continued and are continuing with knowledge of the '103 patent, in spite of the fact that Defendants' actions constitute infringement of the '103 patent. These commercial activities are, at a minimum, in reckless disregard of Plaintiffs' rights under the '103 patent. Such acts of infringement have therefore been intentional, deliberate and willful. Defendants' acts constitute violations of 35 U.S.C. § 271.

COUNT III
INFRINGEMENT OF THE '641 PATENT BY DEFENDANTS

63. Plaintiffs reallege and incorporate the allegations set forth in Paragraph 1 through Paragraph 62 herein.

64. Upon information and belief, Defendants directly infringe, infringe under the doctrine of equivalents, contributorily infringe, and/or actively induce infringement of the '641 patent by making, using, selling, and/or offering to sell, or inducing others to make, use, sell, or offer to sell pans that embody or use the ornamental design claimed in the '641 patent. Such infringing pans include at least the RED COPPER square pan depicted in Paragraph 15, above.

65. An ordinary observer, giving as much attention typical of a purchaser, would find the design of Defendants' RED COPPER square pan to be substantially the same as Plaintiffs' patented design.

66. Defendants' acts of infringement of the '641 patent have caused and will continue to cause Plaintiffs damages for which Plaintiffs are entitled to compensation pursuant to 35 U.S.C. §§ 284 and 289.

67. Defendants' acts of infringement of the '641 patent have caused and will continue to cause Plaintiffs damages for which Plaintiffs lack an adequate remedy at law.

68. Defendants' adoption and use of a colorable imitation of Plaintiffs' patented design has caused and is causing substantial irreparable harm to Plaintiffs and will continue to damage Plaintiffs unless enjoined by this Court.

69. Defendants' acts of infringement of the '641 patent have caused and will continue to cause Plaintiffs irreparable harm unless such infringing activities are enjoined by this Court pursuant to 35 U.S.C. § 283.

70. This case is exceptional and, therefore Plaintiffs are entitled to an award of attorneys' fees pursuant to 35 U.S.C. § 285.

71. Upon information and belief, Defendants' commercial activities relating to the making, using, offering for sale, selling, and/or importing into the United States pans that embody the ornamental design protected by the '641 patent have continued and are continuing with knowledge of the '641 patent, in spite of the fact that Defendants' actions constitute infringement of the '641 patent. These commercial activities are, at a minimum, in reckless disregard of Plaintiffs' rights under the '641 patent. Such acts of infringement have therefore been intentional, deliberate and willful. Defendants' acts constitute violations of 35 U.S.C. § 271.

COUNT IV
INFRINGEMENT OF THE '352 PATENT BY DEFENDANTS

72. Plaintiffs reallege and incorporate the allegations set forth in Paragraph 1 through Paragraph 71 herein.

73. Upon information and belief, Defendants directly infringe, infringe under the doctrine of equivalents, contributorily infringe, and/or actively induce infringement of the '352 patent by making, using, selling, and/or offering to sell, or inducing others to make, use, sell, or offer to sell baskets that embody or use the ornamental design claimed in the '352 patent. Such infringing baskets include at least the basket sold in connection with the RED COPPER square pan and depicted in Paragraph 17, above.

74. An ordinary observer, giving as much attention typical of a purchaser, would find the design of Defendants' RED COPPER basket to be substantially the same as Plaintiff's patented design.

75. Defendants' acts of infringement of the '352 patent have caused and will continue to cause Tristar Products damages for which Tristar Products is entitled to compensation pursuant to 35 U.S.C. §§ 284 and 289.

76. Defendants' acts of infringement of the '352 patent have caused and will continue to cause Tristar Products damages for which Tristar Products lacks an adequate remedy at law.

77. Defendants' acts of infringement of the '352 patent have caused and will continue to cause Tristar Products irreparable harm unless such infringing activities are enjoined by this Court pursuant to 35 U.S.C. § 283.

78. Defendants' adoption and use of a colorable imitation of Plaintiff's patented design has caused and is causing substantial irreparable harm to Plaintiff and will continue to damage Plaintiff unless enjoined by this Court.

79. This case is exceptional and, therefore Tristar Products is entitled to an award of attorneys' fees pursuant to 35 U.S.C. § 285.

80. Upon information and belief, Defendants' commercial activities relating to the making, using, offering for sale, selling, and/or importing into the United States baskets that embody the ornamental design protected by the '352 patent have continued and are continuing with knowledge of the '352 patent, in spite of the fact that Defendants' actions constitute infringement of the '352 patent. These commercial activities are, at a minimum, in reckless disregard of Plaintiffs' rights under the 352 patent. Such acts of infringement have therefore been intentional, deliberate and willful. Defendants' acts constitute violations of 35 U.S.C. § 271.

COUNT V
FEDERAL TRADE DRESS INFRINGEMENT AND
UNFAIR COMPETITION BY DEFENDANTS
(RED COPPER Pan)

81. Tristar Products realleges and incorporates the allegations set forth in Paragraph 1 through Paragraph 80 herein.

82. This claim arises under Section 43(a) of the Lanham Act, 15. U.S.C. § 1125(a).

83. Upon information and belief, Defendants' unauthorized use in interstate commerce of Tristar Products' trade dress has caused and is likely to cause confusion, mistake or deception as to the (a) characteristics, qualities or origin of the RED COPPER pan, (b) an affiliation, connection or association between Tristar Products and Defendants, and/or (c) sponsorship or approval of the RED COPPER pan by Tristar Products.

84. Such actions, as used in commercial advertising, have misrepresented and continue to misrepresent the nature, characteristics or qualities of Defendants' RED COPPER pan.

85. Upon information and belief, Defendants have intentionally adopted and used trade dress that is substantially the same as Tristar Products' trade dress for Defendants' RED COPPER pan so as to profit from Tristar Products' reputation by confusing the public as to the source, origin, sponsorship or approval of Defendants' RED COPPER pan, with the intent of deceiving and misleading the public, and to wrongfully trading on the goodwill and reputation of Tristar Products.

86. Defendants' acts of infringement of Tristar Products' trade dress and unfair competition have caused and will continue to cause Tristar Products damages for which Tristar Products is entitled to compensation.

87. Defendants' acts of infringement of Tristar Products' trade dress and unfair competition have caused and will continue to cause Tristar Products damages for which Tristar Products lacks an adequate remedy at law.

88. Defendants' conduct has caused and will continue to cause substantial and irreparable harm to Plaintiff unless such actions are enjoined by this Court pursuant to 15 U.S.C. § 1116(a).

COUNT VI
FEDERAL TRADE DRESS INFRINGEMENT AND
UNFAIR COMPETITION BY DEFENDANTS
(RED COPPER Basket)

89. Tristar Products realleges and incorporates the allegations set forth in Paragraph 1 through Paragraph 88 herein.

90. This claim arises under Section 43(a) of the Lanham Act, 15. U.S.C. § 1125(a).

91. Upon information and belief, Defendants' unauthorized use in interstate commerce of Tristar Products' trade dress has caused and is likely to cause confusion, mistake or deception as to the (a) characteristics, qualities or origin of the RED COPPER basket, (b) an affiliation, connection or association between Tristar Products and Defendants, and/or (c) sponsorship or approval of the RED COPPER basket by Tristar Products.

92. Such actions, as used in commercial advertising, have misrepresented and continue to misrepresent the nature, characteristics or qualities of Defendants' RED COPPER basket.

93. Upon information and belief, Defendants have intentionally adopted and used trade dress that is substantially the same as Tristar Products' trade dress for Defendants' RED COPPER basket so as to profit from Tristar Products' reputation by confusing the public as to the source, origin, sponsorship or approval of Defendants' RED COPPER basket, with the intent of deceiving and misleading the public, and to wrongfully trading on the goodwill and reputation of Tristar Products.

94. Defendants' acts of infringement of Tristar Products' trade dress and unfair competition have caused and will continue to cause Tristar Products damages for which Tristar Products is entitled to compensation.

95. Defendants' acts of infringement of Tristar Products' trade dress and unfair competition have caused and will continue to cause Tristar Products damages for which Tristar Products lacks an adequate remedy at law.

96. Defendants' conduct has caused and will continue to cause substantial and irreparable harm to Tristar Products unless such actions are enjoined by this Court pursuant to 15 U.S.C. § 1116(a).

COUNT VII
FEDERAL TRADE DRESS INFRINGEMENT AND
UNFAIR COMPETITION BY DEFENDANTS
(RED COPPER Packaging)

97. Tristar Products realleges and incorporates the allegations set forth in Paragraph 1 through Paragraph 96 herein.

98. This claim arises under Section 43(a) of the Lanham Act, 15. U.S.C. § 1125(a).

99. Upon information and belief, Defendants' unauthorized use in interstate commerce of Tristar Products' trade dress has caused and is likely to cause confusion, mistake or deception as to the (a) characteristics, qualities or origin of the RED COPPER packaging, (b) an affiliation, connection or association between Tristar Products and Defendants, and/or (c) sponsorship or approval of the RED COPPER packaging by Tristar Products.

100. Such actions, as used in commercial advertising, have misrepresented and continue to misrepresent the nature, characteristics or qualities of Defendants' RED COPPER products sold in the RED COPPER packaging.

101. Upon information and belief, Defendants have intentionally adopted and used trade dress that is substantially the same as Tristar Products' trade dress for Defendants' RED COPPER

packaging so as to profit from Tristar Products' reputation by confusing the public as to the source, origin, sponsorship or approval of Defendants' RED COPPER products, with the intent of deceiving and misleading the public, and to wrongfully trading on the goodwill and reputation of Tristar Products.

102. Defendants' acts of infringement of Tristar Products' trade dress and unfair competition have caused and will continue to cause Tristar Products damages for which Tristar Products is entitled to compensation.

103. Defendants' acts of infringement of Tristar Products' trade dress and unfair competition have caused and will continue to cause Tristar Products damages for which Tristar Products lacks an adequate remedy at law.

104. Defendants' conduct has caused and will continue to cause substantial and irreparable harm to Tristar Products unless such actions are enjoined by this Court pursuant to 15 U.S.C. § 1116(a).

COUNT VIII
COMMON LAW UNFAIR COMPETITION BY DEFENDANTS
(RED COPPER Pan)

105. Tristar Products realleges and incorporates the allegations set forth in Paragraph 1 through Paragraph 104 herein.

106. This claim arises under New Jersey common law.

107. Defendants have acted unfairly through their unauthorized use of Tristar Products' trade dress. Defendants' conduct has and will mislead and deceive consumers as to the identity and source of the RED COPPER pan.

108. Defendants' unfair competition has caused and will continue to cause Tristar Products damages for which Tristar Products is entitled to compensation.

109. Defendants' unfair competition has caused and will continue to cause Tristar Products damages for which Tristar Products lacks an adequate remedy at law.

110. Defendants' conduct has caused and will continue to cause substantial and irreparable harm to Tristar Products unless such actions are enjoined by this Court.

COUNT IX
COMMON LAW UNFAIR COMPETITION BY DEFENDANTS
(RED COPPER Basket)

111. Tristar Products realleges and incorporates the allegations set forth in Paragraph 1 through Paragraph 110 herein.

112. This claim arises under New Jersey common law.

113. Defendants have acted unfairly through their unauthorized use of Tristar Products' trade dress and will mislead and deceive consumers as to the identity and source of the RED COPPER basket.

114. Defendants' unfair competition has caused and will continue to cause Tristar Products damages for which Tristar Products is entitled to compensation.

115. Defendants' unfair competition has caused and will continue to cause Tristar Products damages for which Tristar Products lacks an adequate remedy at law.

116. Defendants' conduct has caused and will continue to cause substantial and irreparable harm to Tristar Products unless such actions are enjoined by this Court.

COUNT X
COMMON LAW UNFAIR COMPETITION BY DEFENDANTS
(RED COPPER Packaging)

117. Tristar Products realleges and incorporates the allegations set forth in Paragraph 1 through Paragraph 116 herein.

118. This claim arises under New Jersey common law.

119. Defendants have acted unfairly through their unauthorized use of Tristar Products' trade dress and will mislead and deceive consumers as to the identity and source of the RED COPPER packaging.

120. Defendants' unfair competition has caused and will continue to cause Tristar Products damages for which Tristar Products is entitled to compensation.

121. Defendants' unfair competition has caused and will continue to cause Tristar Products damages for which Tristar Products lacks an adequate remedy at law.

122. Defendants' conduct has caused and will continue to cause substantial and irreparable harm to Plaintiff unless such actions are enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court enter judgment against Defendants as follows:

- A. That Defendants have infringed and are infringing the '664 patent;
- B. That Defendants have infringed and are infringing the '103 patent;
- C. That Defendants have infringed and are infringing the '641 patent;
- D. That Defendants have infringed and are infringing the '352 patent;
- E. That Defendants have infringed and are infringing Tristar Products' trade dress;
- F. That Defendants have engaged in unfair competition;
- G. That Defendants and their officers, directors, agents, employees, attorneys, and those persons in active concert or participation with any of them, be preliminarily and permanently enjoined from further acts of infringement of the '664 patent;
- H. That Defendants and their officers, directors, agents, employees, attorneys, and those persons in active concert or participation with any of them, be preliminarily and permanently enjoined from further acts of infringement of the '103 patent;
- I. That Defendants and their officers, directors, agents, employees, attorneys, and those persons in active concert or participation with any of them, be preliminarily and permanently enjoined from further acts of infringement of the '641 patent;

J. That Defendants and their officers, directors, agents, employees, attorneys, and those persons in active concert or participation with any of them, be preliminarily and permanently enjoined from further acts of infringement of the ‘352 patent;

K. That Defendants and their officers, directors, agents, employees, attorneys, and those persons in active concert or participation with any of them, be preliminarily and permanently enjoined by from further acts of trade dress infringement;

L. That Defendants and their officers, directors, agents, employees, attorneys, and those persons in active concert or participation with any of them, be preliminarily and permanently enjoined by from further acts of unfair competition;

M. That Defendants be ordered to pay Plaintiffs damages sufficient to compensate for said Defendants’ infringement of the ‘664 patent, with pre-judgment and post-judgment interest, including profits lost as a result of infringement of the ‘664 patent, and enhancing such damages due to the willfulness of the infringement, in accordance with 35 U.S.C. §§ 284 and 289;

N. That Defendants be ordered to pay Plaintiffs damages sufficient to compensate for said Defendants’ infringement of the ‘103 patent, with pre-judgment and post-judgment interest, including profits lost as a result of infringement of the ‘103 patent, and enhancing such damages due to the willfulness of the infringement, in accordance with 35 U.S.C. §§ 284 and 289;

O. That Defendants be ordered to pay Plaintiffs damages sufficient to compensate for said Defendants’ infringement of the ‘641 patent, with pre-judgment and post-judgment interest, including profits lost as a result of infringement of the ‘641 patent, and enhancing such damages due to the willfulness of the infringement, in accordance with 35 U.S.C. §§ 284 and 289;

P. That Defendants be ordered to pay Tristar Products damages sufficient to compensate for said Defendants’ infringement of the ‘352 patent, with pre-judgment and post-judgment interest, including profits lost as a result of infringement of the ‘352 patent, and

enhancing such damages due to the willfulness of the infringement, in accordance with 35 U.S.C. §§ 284 and 289;

Q. That Defendants be ordered to pay Tristar Products damages sufficient to compensate for said Defendants' infringement of Tristar Products' trade dress, with pre-judgment and post-judgment interest;

R. That Defendants be ordered to pay Tristar Products damages sufficient to compensate for said Defendants' unfair competition, with pre-judgment and post-judgment interest;

S. That this action be declared as exceptional under 35 U.S.C. § 285 and that Tristar Products be awarded its attorneys' fees, costs, and expenses; and

T. That Tristar Products be awarded such other and further relief as this Court deems proper and just.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury of all issues properly triable to a jury in this case.

Dated: May 26, 2017

Respectfully submitted,



Edward P. Bakos (ebakos@bakoskritzer.com)

Noam J. Kritzer (nkritzer@bakoskritzer.com)

Bakos & Kritzer

147 Columbia Turnpike

Florham Park, New Jersey 07932

Telephone: 908-273-0770

*Attorneys for the Plaintiffs:
Tristar Products, Inc. and
KE M.O. House Co., Ltd.*

CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2

Plaintiffs, by their undersigned counsel, hereby certify pursuant to Local Civil Rule 11.2 that the matter in controversy in the present action is the subject of district court cases styled *Tristar Products, Inc. v. Tekno Products, Inc.*, Civil Action No. 1:16-cv-00681 and *Tristar Products, Inc. v. Novel Brands LLC*, Civil Action No. 1:17-cv-00043 in the United States District Court for the District of Rhode Island and *Tristar Products, Inc. v. E. Mishan and Sons Inc.*, Civil Action No. 1:17-cv-01204, filed on February 21, 2017 in the United States District Court for the District of New Jersey.

Dated: May 26, 2017

Respectfully submitted,



Edward P. Bakos (ebakos@bakoskritzer.com)

Noam J. Kritzer (nkritzer@bakoskritzer.com)

Bakos & Kritzer

147 Columbia Turnpike

Florham Park, New Jersey 07932

Telephone: 908-273-0770

Attorneys for the Plaintiffs:

Tristar Products, Inc. and

KE M.O. House Co., Ltd.

CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 201.1

Plaintiffs, by their undersigned counsel, hereby certify pursuant to Local Civil Rule 201.1 that, in addition to monetary damages greater than \$150,000, Plaintiffs seeks injunctive relief, and therefore this action is not appropriate for compulsory arbitration.

Dated: May 26, 2017

Respectfully submitted,



Edward P. Bakos (ebakos@bakoskritzer.com)

Noam J. Kritzer (nkritzer@bakoskritzer.com)

Bakos & Kritzer

147 Columbia Turnpike

Florham Park, New Jersey 07932

Telephone: 908-273-0770

Attorneys for the Plaintiffs:

Tristar Products, Inc. and

KE M.O. House Co., Ltd.