

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

EDGEWELL PERSONAL CARE BRANDS,)	
LLC,)	
)	
Plaintiff,)	
)	C.A. No. _____
v.)	
)	JURY TRIAL DEMANDED
ALBAAD MASSUOT YITZHAK, LTD.)	
and ALBAAD USA, INC.,)	
)	
Defendants.)	

PLAINTIFF'S COMPLAINT

Edgewell Personal Care Brands, LLC ("Edgewell"), by its attorneys, files this Complaint against Albaad Massuot Yitzhak, Ltd. ("Albaad Ltd.") and Albaad USA, Inc. ("Albaad USA") (collectively, "Defendants"), and states and alleges as follows:

1. This is an action for patent infringement, copyright infringement, and trade dress and trademark infringement. Edgewell seeks permanent injunctive relief prohibiting Defendants from future infringement, along with an award of Edgewell's damages, and, based on Defendants' willful misconduct, recovery of its attorneys' fees.

THE PARTIES

2. Plaintiff Edgewell is a Delaware limited liability company with a registered office at 1209 Orange Street, Wilmington, Delaware 19801.

3. Defendant Albaad Ltd. is a company based in Israel. Albaad Fem Israel, the Tampons Division of Albaad Ltd., is located at Caesarea Industrial Park 39900, P.O. Box 3541, Caesarea, Israel.

4. Defendant Albaad USA is a North Carolina corporation with its principal place of business at 129 Technology Drive South, Reidsville, North Carolina 27320.

5. On information and belief, Albaad Ltd. and Albaad USA are related legal entities.

6. The parties are currently involved in the following proceeding that alleges infringement of another U.S. patent licensed to Plaintiff by the same Accused Products (as defined herein): *Edgewell Personal Care Brands, LLC v. Albaad Massuot Yitzhak, LTD. and Albaad USA, Inc.*, No. 1:15-cv-01188-RGA (D. Del.).

JURISDICTION AND VENUE

7. This is an action for patent infringement pursuant to the Patent Laws of the United States, in particular 35 U.S.C. §§ 271, 281, 283, 284, and 285; copyright infringement pursuant to the Copyright Act, 17 U.S.C. §§ 501 et seq.; and trademark infringement, trade dress infringement and unfair competition pursuant to the Lanham Act, 15 U.S.C. §§ 1051 et seq. Subject matter jurisdiction over the federal claims is conferred upon this Court by 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338(a).

8. Upon information and belief, Defendants have, through at least their manufacture, sale, importation, and/or distribution of the Accused Products, as defined herein, transacted business in this District and/or contracted to supply items in this District, and have therefore engaged in substantial activity within this District. Defendants, therefore, are subject to jurisdiction within this District pursuant to the Delaware Long-Arm Statute, Del. Code Ann. tit. 10 § 3104(c)(1–2).

9. Defendants have sufficient minimum contacts with this District, through at least the importation, distribution, offer and/or sale of infringing goods within this District, such that this Court has personal jurisdiction over Defendants.

10. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400. Defendant Albaad Ltd., as a foreign corporation, is deemed to reside in this District. On information and belief, both Defendant Albaad Ltd. and Defendant Albaad USA maintain a regular and established place of business in this District through their related entity, Albaad Holdings, Inc., a Delaware corporation. Additionally, on information and belief, acts of infringement of the '249 patent, the '389 patent, and the '443 patent, trademark and trade dress infringement have been committed by Defendants in this District.

BACKGROUND

11. Edgewell is a leader in the personal care products industry. Edgewell's family of affiliated companies develop, manufacture, and market a diversified range of personal care products in the wet shave, skin care, feminine care and infant care categories with a portfolio of over twenty-five brands, including feminine products marketed under the Playtex® brand.

12. Edgewell is the exclusive licensee of the Playtex® trademark with respect to feminine care products in the United States, and Edgewell owns a number of associated trademarks, including Sport®, as well as the distinctive pink and green trade dress of Playtex® Sport® products.

13. Edgewell and its predecessors-in-interest have invested millions of dollars developing new technologies related to tampons that have been sold under the distinctive Playtex® brand and trade dress. Edgewell owns over 100 patents on tampon-related technology.

14. Playtex® brand tampons are manufactured in the state of Delaware and sold throughout the United States and the world. One such product is the Playtex® Sport® tampon, which is directed to women with an active lifestyle.

15. The Playtex® Sport® tampon is sold in light, regular, super, and super plus absorbencies. Examples of images of the front and back of the packaging for the Playtex® Sport® tampon with regular absorbency are depicted below:



16. The Playtex® Sport® tampon incorporates various aspects of Edgewell’s patented tampon technologies.

17. Each Playtex® Sport® tampon also is individually encased in a plastic wrapper. Currently, the wrapper contains the original design depicted below and as described more fully in paragraphs 35–37 *infra*:



18. In 2010, Albaad Ltd. acquired Rostam Ltd., a manufacturer of private label tampons for Target, Wal-Mart, Kroger, CVS, Walgreens, and other retailers in the United States (*see* Ex. D).

19. At least since this 2010 acquisition, Albaad Ltd. has manufactured private label tampons in Israel that are intended to be marketed and sold in the United States.

20. On information and belief, the private label tampons that are manufactured by Albaad Ltd. in Israel are imported into the United States through ports on the Eastern seaboard.

21. On information and belief, Albaad Ltd.'s private label tampons that arrive from Israel in United States are then distributed within the United States through both the efforts of itself and of Albaad USA.

22. According to a LinkedIn page for Albaad USA (Ex. E), Albaad USA produces tampons for the North American market, and offers contract and manufacturing services that extend to its global operation.

INFRINGEMENT OF EDGEWELL'S ASSERTED PATENTS

23. Edgewell owns the following patents relating to tampons (collectively, the "Asserted Patents"):

- a. U.S. Patent No. 9,662,249 to LeMay et al., titled "Ergonomic Tampon Applicator" (the '249 Patent) (Ex. A);
- b. U.S. Patent No. 9,687,389 to Jorgensen et al., titled "Tampon Pledget for Increased Bypass Leakage Protection" (the '389 Patent) (Ex. B); and
- c. U.S. Patent No. 9,737,443 to LeMay et al., titled "Ergonomic Tampon Applicator" (the '443 Patent) (Ex. C).

24. At least as early as 2011, Albaad Ltd. began developing a plastic applicator for a private label tampon that was intended to compete directly with the Playtex® Sport® tampon. That private label tampon is now marketed to retailers, in both regular and super absorbency, as the “G3 Premium Plastic Applicator (Compare with Playtex Sport®),”¹ hereinafter the “Albaad G3” or the “Accused Product.”

25. The '249 Patent and the '443 patent are directed to the details of the applicator barrel, pledget, and plunger used in the Playtex® Sport® tampon.

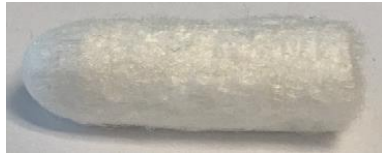
26. Images of the plastic applicators used in the Playtex® Sport® tampon and the Accused Products are shown below:



27. The '389 Patent is directed to details of the Super absorbency pledget used in the Playtex® Sport® tampon.

¹ See <http://www.albaad.com/products/feminine-hygiene/tampons/plastic-tampon-applicator/> (Last accessed November 30, 2017).

28. Examples of images of the Super absorbency pledgets used in the Playtex® Sport® tampon and the Accused Products are shown below:



**Playtex® Sport®
Super absorbency pledget**



**Accused Product
Super absorbency pledget**

29. Defendants' Accused Products that include the Super absorbency pledgets are marketed to consumers in the United States with the phrase "Compare to Playtex® Sport®." *See* Ex. F.

30. Collectively, Defendants at least manufacture, import, offer for sale, and sell the Accused Products that are ultimately sold at retail outlets within the United States under various store brands. Examples of the Accused Products are pictured (in packaging) in Exhibit F, which is provided for illustrative purposes,² and include products sold at retail as identified in (a)–(f) below:

- a. CVS Shape tampons in Regular and/or Super Absorbency;
- b. Target up & up athletic tampons in Regular and/or Super Absorbency;
- c. Kroger tampons in Regular and/or Super Absorbency;
- d. Walgreens Perfection Active tampons in Regular and/or Super Absorbency;
- e. Wal-Mart Equate Tampons for Active Women in Regular and/or Super Absorbency;
- f. Supervalu Equaline Active Tampons in Regular and/or Super Absorbency.

² Exhibit F shall not be interpreted as limiting the Accused Products solely to the particular packaging options shown. For example, the Accused Products may be offered in other product-counts than the illustrated examples, in combination packages (*e.g.*, combining regular and super absorbency tampons in a single package), etc.

31. Each of the Accused Products states on its packaging that it is “Made in Israel.” Albaad Ltd. makes the Accused Products in its facilities in Israel.

32. Albaad Ltd. has submitted one or more 510(k) applications to the United States Food and Drug Administration (“FDA”) to gain regulatory approval to market the Accused Products to consumers in the United States.

33. Each of the Accused Products infringes at least one claim of each of the Asserted Patents, as shown in the chart attached hereto as Exhibit G. Moreover, on information and belief, Defendants have knowledge of the Asserted Patents and their infringement, therefore, is willful.

34. Upon information and belief, through their actions, Defendants also have (i) induced third parties to directly infringe at least one claim of each of the Asserted Patents and/or (ii) contributed to the direct infringement of at least one claim of each of the Asserted Patents by third parties, in that those third parties have at least used, offered for sale, and/or sold the Accused Products in the United States.

INFRINGEMENT OF EDGEWELL’S COPYRIGHTS

35. Defendants not only have infringed the Asserted Patents, but also have copied Edgewell’s copyrighted Playtex® Sport® designs without Edgewell’s authorization. For its Playtex® Sport® wrapper design, shown below in Figure 1, Edgewell received from the Registrar of Copyrights U.S. Copyright Registration No. VA 2-020-458, Supplemental VA 1-431-729, which was registered on October 20, 2016 and November 29, 2016, as well as U.S. Copyright Registration No. VA 2-022-301, which was registered on November 15, 2016. Edgewell’s copyrighted designs are referred to herein as the Copyrighted Works. True and correct copies of the registration records for the Copyrighted Works are attached hereto as Ex. H and Ex. I.

36. Edgewell's Playtex® Sport® tampons that include the Copyrighted Works have been sold throughout the United States since 2014. On information and belief, Defendants had access to Edgewell's Copyrighted Works before designing its infringing packaging.

37. The wrapper that Defendants use on the Accused Products (the "Accused Wrapper"), depicted below in Figure 2, includes many elements that are substantially similar, and indeed nearly identical, to elements of Edgewell's Copyrighted Works, as depicted below in Figure 1. These similarities are the result of intentional copying, as illustrated by Defendants' history of using wrapper designs that are substantially similar to the Playtex® Sport® wrapper design:



Fig. 1.
Playtex® Sport® wrapper design (2014)



Fig. 2.
Albaad wrapper design (Aug. 2016)

**INFRINGEMENT OF THE PLAYTEX® SPORT®
TRADE DRESS AND SILHOUETTE TRADEMARKS**

38. Edgewell has cultivated the distinctive overall appearance of its Playtex® Sport® applicator, packaging and wrappers, such that consumers are easily able to identify such products as Playtex® Sport® products. The design elements that make the iconic and inherently distinctive overall appearance of the Playtex® Sport® packaging recognizable to consumers include: the pink and green colors on the exterior packaging and the wrapper for the individual tampons, the images of active women in silhouette on the exterior packaging and the wrapper for the individual tampons, the specific pattern of the active women on both the exterior packaging

and the wrappers, the swirling designs of the wrapper, and the distinctive green color of the applicator, as demonstrated by the images in paragraphs 15, 17, 26, and 38. These design features of the Playtex® Sport® packaging are referred to herein as the “Playtex® Sport® Trade Dress.”

39. All of the features that constitute the Playtex® Sport® Trade Dress, as well as the combination of these features, are nonfunctional, in that they are not required to exist in this design in order for the tampon to be used for its intended purpose, and they do not affect the cost or quality of the Playtex® Sport® products. This nonfunctionality is further demonstrated by the existence in the marketplace of numerous tampons with completely different designs than the Playtex® Sport® Trade Dress. The Playtex® Sport® Trade Dress serves a purely decorative and source-identifying purpose.

40. Edgewell has used the below repeating silhouette design shown below (the “Playtex® Sport® Multi-Silhouette Mark”) since 2014 to identify and promote the Playtex® Sport® products.



41. Edgewell owns a federal trademark application for the Playtex® Sport® Multi-Silhouette Mark (Serial No. 87,252,599) that is currently pending before the U.S. Patent and Trademark Office.

42. Edgewell also has used individual silhouettes of active women (the “Playtex® Sport® Silhouette Marks”) to identify and promote the Playtex® Sport® products. In addition to

its common law rights in the Playtex® Sport® Silhouette Marks, Edgewell owns federal trademark registrations from the U.S. Patent and Trademark Office for its Playtex® Sport® Silhouette Marks, including the “Playtex Sport Hurdler Silhouette Design,” pictured below (Registration No. 5,320,901) and the “Playtex Sport Runner Silhouette Design,” also pictured below (Registration No. 5,320,963).



**Playtex Sport Hurdler Silhouette Design,
Registration No. 5,320,901**



**Playtex Sport Runner Silhouette Design,
Reg. No. 5,320,963**

True and accurate copies of the registration certificates for the Playtex® Sport® Silhouette Marks described above are attached hereto as Exhibits J and K.

43. Long prior to the infringing acts of Defendants described in this Complaint, Edgewell and its predecessors have extensively advertised and promoted the Playtex® Sport® Trade Dress, the Playtex® Sport® Multi-Silhouette Mark and the Playtex® Sport® Silhouette Marks. As a result of Edgewell’s longstanding use of the Playtex® Sport® Trade Dress, the Playtex® Sport® Multi-Silhouette Mark and the Playtex® Sport® Silhouette Marks and Edgewell’s extensive advertising, promotion, and sale of products featuring the Playtex® Sport® Trade Dress, the Playtex® Sport® Multi-Silhouette Mark and the Playtex® Sport® Silhouette Marks, the public recognizes the Playtex® Sport® Trade Dress, the Playtex® Sport® Multi-Silhouette Mark and the Playtex® Sport® Silhouette Marks as source identifiers for Playtex® Sport® tampons. The Playtex® Sport® Trade Dress, the Playtex® Sport® Multi-Silhouette Mark and the Playtex® Sport® Silhouette Marks therefore symbolize the strong reputation and goodwill that Edgewell has created in the market for feminine hygiene products. Accordingly,

the Playtex® Sport® Trade Dress, the Playtex® Sport® Multi-Silhouette Mark and the Playtex® Sport® Silhouette Marks have acquired secondary meaning.

44. The various designs Defendants use on the packaging for the Accused Products (the “Accused Packaging”) are colorable imitations of the Playtex® Sport® Trade Dress. True and correct copies of pictures of the Accused Packaging are featured in paragraphs 26, 38, and 49, and also in Exhibit F.

45. The look and overall appearance of the Accused Packaging is confusingly similar to the Playtex® Sport® Trade Dress.

46. Defendants would not have copied key features of the Playtex® Sport® Trade Dress if the Playtex® Sport® Trade Dress had not acquired strong consumer recognition in the market for feminine hygiene products.

47. Defendants included images in the Accused Packaging and the Accused Wrapper that are intended by Defendants to be, and are, confusingly similar to the Playtex® Sport® Multi-Silhouette Mark and the Playtex® Sport® Silhouette Marks.

48. An example of Defendants’ uses of images of active women in silhouette on the Accused Packaging that are confusingly similar to the Playtex® Sport® Silhouette Marks appears on the packaging of Defendants’ Active Tampons product sold in Supervalu stores, as depicted below:



49. The Accused Packaging and the Accused Wrapper are used in advertisements and in connection with products promoted and marketed in the same channels of trade as the Playtex® Sport® products in the United States, including this District.

50. Defendants have been aware of the Playtex® Sport® Trade Dress, the Playtex® Sport® Multi-Silhouette Mark and the Playtex® Sport® Silhouette Marks, as well as Edgewell's hard-earned goodwill, at all pertinent times prior to and subsequent to their adoption and use of the Accused Packaging and the Accused Wrapper.

51. Defendants deliberately adopted an appearance for the Accused Packaging and the Accused Wrapper seeking to trade upon the hard-earned goodwill associated with the Playtex® Sport® Trade Dress, the Playtex® Sport® Multi-Silhouette Mark and the Playtex® Sport® Silhouette Marks and they are deliberately attempting to capitalize on the Playtex® Sport® Trade Dress, the Playtex® Sport® Multi-Silhouette Mark and the Playtex® Sport® Silhouette Marks without authorization. Accordingly, their infringement is willful and this action constitutes an "exceptional case."

52. Consumers are likely to be confused as a result of Defendants' conduct unless enjoined by this Court.

53. Edgewell has been and will continue to be seriously and irreparably injured unless Defendants' conduct is enjoined by this Court.

COUNT I
PATENT INFRINGEMENT OF U.S. PATENT NO. 9,662,249

54. Edgewell incorporates the above paragraphs herein by reference.

55. On May 30, 2017, United States Patent No. 9,662,249 was duly and legally issued.

56. The '249 Patent discloses, *inter alia*, a tampon assembly having an applicator barrel, a pledget, and a plunger. The applicator barrel includes a finger grip section for easier insertion. A true and correct copy of the '249 Patent is attached hereto as Ex. A.

57. Edgewell is the owner of the '249 Patent by virtue of assignments that have been duly and properly recorded with the U.S. Patent and Trademark Office on or about March 22, 2017.

58. Upon information and belief, Defendants have manufactured, made, marketed, sold, imported, and/or used the Accused Products, comprising all of the elements and limitations of one or more of the claims of the '249 Patent, and therefore Defendants have directly infringed one or more claims of the '249 Patent, and/or have induced and/or contributed to the infringement of one or more of the claims of the '249 Patent by others.

59. Consequently, Defendants have infringed and currently infringe the '249 Patent, literally and/or under the doctrine of equivalents by making, using, selling, offering for sale, and/or importing the Accused Products without permission or license from Edgewell.

60. Edgewell is entitled to recover damages as a result of Defendants' infringing conduct, as well as interest and costs as fixed by this Court pursuant to 35 U.S.C. § 284. Edgewell reserves the right to seek treble damages and recovery of attorneys' fees as a result of

Defendants' willful infringement of the '249 Patent, or other conduct, as further investigation and discovery so indicates.

61. Upon information and belief, Defendants will continue their infringement of one or more claims of the '249 Patent unless enjoined by the Court. Defendants' infringing conduct thus causes Edgewell irreparable harm and will continue to cause such harm without the issuance of an injunction.

COUNT II
PATENT INFRINGEMENT OF U.S. PATENT NO. 9,687,389

62. Edgewell incorporates the above paragraphs herein by reference.

63. On June 27, 2017, United States Patent No. 9,687,389 was duly and legally issued.

64. The '389 Patent discloses, *inter alia*, a tampon pledget for a super absorbency tampon having a top pad and a bottom pad formed in a cross-pad configuration. A true and correct copy of the '389 Patent is attached hereto as Ex. B.

65. Edgewell is the owner of the '389 Patent by virtue of assignments that have been duly and properly recorded with the U.S. Patent and Trademark Office on or about March 27, 2017.

66. Upon information and belief, Defendants have manufactured, made, marketed, sold, imported, and/or used the Accused Products, comprising all of the elements and limitations of one or more of the claims of the '389 Patent, and therefore Defendants have infringed one or more claims of the '389 Patent; and/or have induced and/or contributed to the infringement of one or more of the claims of the '389 Patent by others.

67. Consequently, Defendants have infringed and currently infringe the '389 Patent, literally and/or under the doctrine of equivalents by making, using, selling, offering for sale, and/or importing the Accused Products without permission or license from Edgewell.

68. Edgewell is entitled to recover damages as a result of Defendants' infringing conduct, as well as interest and costs as fixed by this Court pursuant to 35 U.S.C. § 284. Edgewell reserves the right to seek treble damages and recovery of attorneys' fees as a result of Defendants' willful infringement of the '389 Patent, or other conduct, as further investigation and discovery so indicates.

69. Upon information and belief, Defendants will continue their infringement of one or more claims of the '389 Patent unless enjoined by the Court. Defendants' infringing conduct thus causes Edgewell irreparable harm and will continue to cause such harm without the issuance of an injunction.

COUNT III
PATENT INFRINGEMENT OF U.S. PATENT NO. 9,737,443

70. Edgewell incorporates the above paragraphs herein by reference.

71. On August 22, 2017, United States Patent No. 9,737,443 was duly and legally issued.

72. The '443 Patent discloses, *inter alia*, a tampon assembly having an applicator barrel, a pledget, and a plunger. The applicator barrel includes a finger grip section for easier insertion. A true and correct copy of the '443 Patent is attached hereto as Ex. C.

73. Edgewell is the owner of the '443 Patent by virtue of assignments that have been duly and properly recorded with the U.S. Patent and Trademark Office on or about July 29, 2015 and August 17, 2015.

74. Upon information and belief, Defendants have manufactured, made, marketed, sold, imported, and/or used the Accused Products, comprising all of the elements and limitations of one or more of the claims of the '443 Patent, and therefore Defendants have infringed one or more claims of the '443 Patent; and/or have induced and/or contributed to the infringement of one or more of the claims of the '443 Patent by others.

75. Consequently, Defendants have infringed and currently infringe the '443 Patent, literally and/or under the doctrine of equivalents by making, using, selling, offering for sale, and/or importing the Accused Products without permission or license from Edgewell.

76. Edgewell is entitled to recover damages as a result of Defendants' infringing conduct, as well as interest and costs as fixed by this Court pursuant to 35 U.S.C. § 284. Edgewell reserves the right to seek treble damages and recovery of attorneys' fees as a result of Defendants' willful infringement of the '443 Patent, or other conduct, as further investigation and discovery so indicates.

77. Upon information and belief, Defendants will continue their infringement of one or more claims of the '443 Patent unless enjoined by the Court. Defendants' infringing conduct thus causes Edgewell irreparable harm and will continue to cause such harm without the issuance of an injunction.

COUNT IV
COPYRIGHT INFRINGEMENT

78. Edgewell incorporates the above paragraphs herein by reference.

79. Edgewell's Copyrighted Works are original works of authorship and comprise copyrightable subject matter under the copyright laws of the United States, 17 U.S.C. §§ 101 *et seq.*

80. Edgewell has registered the copyrights in the Copyrighted Works.

81. As the owner of the copyrights in the Copyrighted Works, Edgewell enjoys the exclusive right to, among other things, reproduce the Copyrighted Works, prepare derivative works based on the Copyrighted Works, and distribute copies of the Copyrighted Works. *See* 17 U.S.C. §§ 101, 106.

82. Defendants have no rights in the Copyrighted Works.

83. The Accused Wrapper contains designs that are substantially similar to the Copyrighted Works.

84. Defendants have infringed and continue to infringe Edgewell's Copyrighted Works by reproducing, distributing, displaying, and making derivative works of Edgewell's Copyrighted Works without Edgewell's permission.

85. On information and belief, Defendants had access to the Copyrighted Works prior to creating the Accused Wrapper.

86. At all times relevant hereto, Defendants have been aware or should have been aware of the existence of Edgewell's exclusive rights in and to the Copyrighted Works, and therefore, Defendants are willful infringers of Edgewell's copyrights.

87. Edgewell has been or is likely to be damaged by the acts of Defendants.

88. Edgewell is entitled to recover from Defendants damages suffered by Edgewell as a result of Defendants' infringement as well as Defendants' profits resulting from their infringement.

89. Unless enjoined by this Court, Defendants will continue to infringe Edgewell's copyrights.

90. The infringement of Edgewell's copyrights by Defendants has caused, and will continue to cause, irreparable harm to Edgewell. Accordingly, Edgewell is entitled to injunctive relief.

COUNT V
FEDERAL TRADE DRESS AND TRADEMARK INFRINGEMENT

91. Edgewell incorporates the above paragraphs herein by reference.

92. Defendants intentionally have adopted and are using in commerce in connection with the advertising, promotion and sale of products featuring the Accused Packaging, which has an overall appearance that is confusingly similar to, and a colorable imitation of, the distinctive Playtex® Sport® Trade Dress.

93. Defendants intentionally have adopted and are using in commerce the Accused Wrapper in connection with the advertising, promotion and sale of the Accused Products. The Accused Wrapper include images that are confusingly similar to, and are colorable imitations of, the Playtex® Sport® Multi-Silhouette Mark.

94. Defendants' unlawful adoption and use in commerce of such colorable imitations of the Playtex® Sport® Trade Dress and the Playtex® Sport® Multi-Silhouette Mark without the authorization of Edgewell is likely to cause confusion, to cause mistake and/or to deceive consumers as to the affiliation, connection or association of Defendants with Edgewell or as to the origin, sponsorship or approval of Defendants' goods by Edgewell.

95. Through the promotion, advertising and sale of identical products using the Accused Packaging and the Accused Wrapper, Defendants have unlawfully simulated, appropriated and infringed Edgewell's rights in Edgewell's Playtex® Sport® Trade Dress and the Playtex® Sport® Multi-Silhouette Mark in violation of 15 U.S.C. § 1125(a).

96. Edgewell is entitled to recover from Defendants damages suffered by Edgewell as a result of Defendants' infringement or Defendants' profits resulting from their infringement.

97. Unless enjoined by this Court, Defendants will continue to infringe Edgewell's Playtex® Sport® Trade Dress and Playtex® Sport® Multi-Silhouette Mark.

98. The infringement of Edgewell's trade dress by Defendants has caused, and will continue to cause, irreparable harm to Edgewell. Accordingly, Edgewell is entitled to injunctive relief.

COUNT VI
TRADEMARK INFRINGEMENT OF FEDERALLY REGISTERED MARKS

99. Edgewell incorporates the above paragraphs herein by reference.

100. Defendants intentionally have adopted and are using in commerce the Accused Packaging and the Accused Wrapper in connection with the advertising, promotion and sale of the Accused Products. The Accused Packaging and the Accused Wrapper include images that are confusingly similar to, and are colorable imitations of, the Playtex® Sport® Silhouette Marks.

101. Defendants' unlawful adoption and use in commerce of such colorable imitations of the Playtex® Sport® Silhouette Marks without the authorization of Edgewell is likely to cause confusion, to cause mistake and/or to deceive consumers as to the affiliation, connection or association of Defendants with Edgewell or as to the origin, sponsorship or approval of Defendants' goods by Edgewell.

102. Through the promotion, advertising and sale of identical products featuring the Accused Packaging, Defendants have unlawfully simulated, appropriated and infringed Edgewell's rights in the Playtex® Sport® Silhouette Marks. Such conduct violates 15 U.S.C. §§ 1114(1) and 1125(a).

103. Edgewell is entitled to recover from Defendants damages suffered by Edgewell as a result of Defendants' infringement as well as Defendants' profits resulting from their infringement.

104. Unless enjoined by this Court, Defendants will continue to infringe the Playtex® Sport® Silhouette Marks.

105. The infringement of Edgewell's trademarks by Defendants has caused, and will continue to cause, irreparable harm to Edgewell. Accordingly, Edgewell is entitled to injunctive relief.

JURY DEMAND

Edgewell hereby requests a jury trial on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Edgewell prays for the following relief:

a. Judgment that one or more claims of each of United States Patent Nos. 9,662,249, 9,687,389 and 9,737,443 have been infringed, either literally and/or under the doctrine of equivalents, by Defendants and/or by others to whose infringement Defendants have contributed and/or by others whose infringement has been induced by Defendants;

b. Judgment that Defendants, Defendants' respective officers, agents, servants, employees, contractors, and attorneys, and all those in active concert and participation with the foregoing persons and entities be enjoined permanently from further infringement of the Asserted Patents;

c. An award in Edgewell's favor of damages, together with prejudgment interest and costs, to compensate Edgewell for infringement of the Asserted Patents;

d. Judgment that Defendants' infringements of the Asserted Patents has been knowing and willful, and that this is an exceptional case;

e. An award in Edgewell's favor of its costs, disbursements, attorneys' fees, and reasonable expenses pursuant to 35 U.S.C. § 285 and/or 15 U.S.C. § 1117(a)–(b);

f. Judgment that Defendants infringed Edgewell's copyrights in the Copyrighted Works and that Defendants' copyright infringement was knowing and willful;

g. An order permanently enjoining Defendants, including their partners, officers, agents, servants, employees, parent, subsidiaries, sister companies, and all those persons and entities in active concert or participation with them, from further infringement of the copyrights in and to the Edgewell works, pursuant to 17 U.S.C. § 502;

h. An order compelling the destruction of all works, or copies thereof, made or used in violation of Edgewell's exclusive rights, pursuant to 17 U.S.C. § 503;

i. Judgment that Defendants be ordered to pay costs, including a reasonable attorney's fee and expenses, pursuant to 17 U.S.C. § 505;

j. Judgment that Defendants infringed Edgewell's rights in the Playtex® Sport® Trade Dress and competed unfairly with Edgewell by use of a trade dress that is confusingly similar to the Playtex® Sport® Trade Dress in the use of the Accused Packaging in connection with the promotion and sale of the Accused Products;

k. Judgment that Defendants infringed Edgewell's rights in the Playtex® Sport® Silhouette Marks by use of images that are confusingly similar to the Playtex® Sport® Silhouette Marks in the use, promotion, and sale of the Accused Products;

l. Judgment that Defendants infringed Edgewell's rights in the Playtex® Sport® Multi-Silhouette Mark and the Playtex® Sport® Silhouette Marks, by use of silhouette designs

that are confusingly similar to the Playtex® Sport® Multi-Silhouette Mark and the Playtex® Sport® Silhouette Marks in the use of the Accused Packaging and the Accused Wrapper in connection with the promotion and sale of the Accused Products;

m. Judgment in Edgewell's favor awarding damages, together with prejudgment interest and costs, to compensate Edgewell for Defendants' infringement of Edgewell's Playtex® Sport® Trade Dress and its Playtex® Sport® Silhouette Marks;

n. An order permanently enjoining Defendants, including their partners, officers, agents, servants, employees, parent, subsidiaries, sister companies, and all those persons and entities in active concert or participation with them, from further infringement, including but not limited to advertising, marketing, offering for sale or selling the Accused Products and related products utilizing the Accused Packaging, the Playtex® Sport® Trade Dress or any trade dress confusingly similar thereto;

o. An order permanently enjoining Defendants, including their partners, officers, agents, servants, employees, parent, subsidiaries, sister companies, and all those persons and entities in active concert or participation with them, from further infringement, including but not limited to advertising, marketing, offering for sale or selling the Accused Products and related products utilizing the Accused Wrapper or the Accused Packaging, the Playtex® Sport® Multi-Silhouette Mark, the Playtex® Sport® Silhouette Marks or any images confusingly similar thereto;

p. Judgment in Edgewell's favor awarding treble damages as a result of Defendants' willful infringement;

q. Judgment in Edgewell's favor awarding pre-judgment and post-judgment interest on the damages caused by Defendants' infringing activities and other conduct complained of herein; and

r. Judgment in Edgewell's favor awarding such other and further relief, at law or in equity, as the Court may deem just and proper.

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