

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

DASSO INTERNATIONAL, INC.; and)	
EASOON USA, LLC,)	
)	
Plaintiffs,)	C.A. No. 17-1574-RGA-SRF
)	
v.)	
)	JURY TRIAL DEMANDED
MOSO NORTH AMERICA, INC.; and)	
MOSO INTERNATIONAL BV;)	
)	
Defendants.		

SECOND AMENDED COMPLAINT

Plaintiffs, Dasso International, Inc. and Easoon USA, LLC (jointly, “Plaintiffs”), by and through the undersigned counsel, file this Second Amended Complaint against the Defendants, MOSO North America, Inc. and MOSO International BV, showing this Court as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Dasso International, Inc. (“Dasso”) is a New York corporation. Plaintiff Easoon USA, LLC (“Easoon”) is a Georgia limited liability company.

2. Defendant MOSO North America, Inc. (“MOSO”) is a Delaware corporation, which may be served on its registered agent, Registered Office Service Company, at its registered office located at 203 NE Front St., Suite 101, Milford, DE 19963. Upon information and belief, MOSO has its principal place of business at 203 NE Front St., Suite 101, Milford, DE 19963.

3. Defendant MOSO International BV is a company located in the Netherlands with offices throughout the world, including headquarters at Adam Smithweg 2, 1689 ZW Zwaag, Netherlands.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action as Dasso has filed claims against the Defendants arising under the patent laws of the United States of America, Title 35, United States Code §§1, *et seq*, including 35 U.S.C. § 271. This Court has exclusive subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a). This Court has supplemental jurisdiction over the non-patent claims pursuant to 28 U.S.C. § 1367.

5. Plaintiffs bring this action to halt the Defendants' infringement of U.S. Patent No. 8,709,578 (the "'578 Patent"), to halt the Defendants' interference with Easoon's exclusive rights to market, sell and distribute Dasso's patented product in the United States, to halt the Defendants' deceptive and unfair trade practices and to bring claims against the Defendants based upon their intentional, deliberate and knowing actions as more fully set forth herein.

6. This Court has subject matter jurisdiction over these parties based upon complete diversity of the Plaintiffs and Defendants pursuant to 28 U.S.C. § 1332(a). Plaintiff Easoon USA, LLC is a Georgia limited liability company, wholly owned by HK Easoon Wood Technology Co., Ltd., a Hong Kong registered entity, which is owned by two Chinese citizens residing in mainland China. Plaintiff Dasso International, Inc.'s state of incorporation is New York. The Defendant, MOSO North America, Inc. filed its Articles of Incorporation in Delaware on June 7, 2017 and lists its headquarters in Delaware. MOSO International BV is the parent company of MOSO North America, Inc., is purchasing and distributing infringing product into the U.S. through its U.S. subsidiary, MOSO North America, Inc., and is jointly liable for the actions of MOSO North America, Inc. under theories of alter ego, agency and its direct conduct as set forth below. Plaintiffs have incurred damages in excess of \$100,000.00, exceeding the statutory threshold of monetary damage of at least \$75,000.00.

7. The claims asserted herein all arise from a common nucleus of operative facts and the proof of each of the claims will include overlapping facts.

8. MOSO North America, Inc. is subject to jurisdiction and venue in this Court by virtue of its incorporation in Delaware.

9. MOSO International BV is subject to jurisdiction in this Court due to at least its business conducted in this District, including transacting business within the State of Delaware, having placed its products into the stream of commerce throughout the United States and being actively engaged in transacting business in Delaware and having committed the complained of tortious acts in Delaware. MOSO International BV, directly and/or through subsidiaries and agents, imports, distributes, offers for sale and sells its products in the United States, including Delaware.

10. This Court's exercise of personal jurisdiction over MOSO International BV is consistent with the Delaware Long Arm Statute, 10 *Del. C.* § 3104, and traditional notions of fair play and substantial justice.

11. Venue is proper in this Court for the patent infringement claims under 28 U.S.C. §§ 1391(b) and (c), and § 1400(b) because MOSO North America Inc. is incorporated in Delaware and therefore resides in this District and MOSO International BV has committed acts of infringement in this District, including importing products into this District and has a regular and established place of business in this District, specifically naming MOSO North America Inc.'s location in Delaware as its location in North America.

12. Jurisdiction and venue are proper before this Court.

FACTUAL BACKGROUND

The '578 Patent and Exclusive Marketing and Distribution Rights in the United States

13. On April 29, 2014, the United States Patent and Trademark Office duly and legally issued the '578 Patent titled "Bamboo Scrimber and Manufacturing Method Thereof." A true and correct copy of the '578 Patent is attached as Exhibit 1. Dasso is the owner of all rights, title and interest in the '578 Patent.

14. This action relates to Dasso's ownership of the '578 Patent, and Easoon's exclusive marketing and distribution rights to the '578 Patent in the U.S. market. The '578 Patent's Field of Invention states, "The invention generally relates to a bamboo scrimber and a manufacturing method thereof and more specifically to a bamboo scrimber including a plurality of pressure-pressed bamboo strips impregnated with an adhesive and modified through heat-treatment and a method of manufacturing such bamboo scrimber." *See* Exhibit 1.

15. Pages 11, 12 and 13 of the '578 Patent identifies Dasso's protectable claims (hereafter "Claims"). *See* Exhibit 1. Dasso has been granted patent rights to Claims 1 through 19, which is the process and method used to manufacture an exterior bamboo decking product, in addition to other bamboo products manufactured in accordance with the Claims.

16. Products covered by the '578 Patent (the "Products") are marketed, sold and distributed in the U.S. under the brand Dasso.XTR through Easoon, Dasso's exclusive distributor of the Products in the U.S., Canada and Mexico.

17. Easoon is a distributor, wholesaler and marketer of wood flooring and bamboo products. In the United States, Easoon has been granted the exclusive rights to market, sell and distribute bamboo products covered by the '578 Patent and has, at all times, held that exclusive right in the U.S. market.

18. Easoon has invested heavily in the U.S. in marketing, selling and distributing the Products. Easoon has hired employees, established offices, leased and purchased warehouses,

established a large customer base and has expended substantial funds to introduce, import, market and sell the Products in the U.S. market as the patent owner's exclusive and only authorized distributor of products covered by the '578 Patent.

China Patent and Manufacturing

19. Hangzhou New Bamboo Culture Innovations Co., Ltd. ("New Bamboo") holds the rights to the foreign counterparts to the '578 Patent in China and several other countries around the world. New Bamboo granted the rights to manufacture in China to Hangzhou Dasuo Technology Co. Ltd. ("HDT"). HDT has contracted with factories in China to manufacture bamboo product according to the foreign counterparts to the '578 Patent for the sole use and benefit of HDT. Once product is manufactured by the factories, the factories return the product to HDT, who then distributes the product to various approved and authorized licensees, wholesalers and distributors in countries around the world.

20. In 2015, HDT expanded its manufacturing capabilities by partnering with a third party to build a factory in Jian Yang, China. The factory is owned by Fujian Zhuanghe Bamboo Industrial Co., Ltd. (the "Zhuanghe Factory").

21. A considerable amount of money was expended by HDT in building the Zhuanghe Factory in accordance with the specifications required to manufacture the '578 Product according to the process set forth in the '578 Patent.

22. The Zhuanghe Factory, which is a joint venture partnership created to build the factory in Jian Yang, China and manufacture the '578 Product, was established by and between Liu Hongzheng, a representative of HDT, and Fujian Yicheng Bamboo Products Co. Ltd. ("Fujian"). Fujian is wholly owned by He Pincai ("Mr. He").

23. The joint venture ownership percentage of the Zhuanghe Factory is as follows: 51% of the Zhuanghe Factory is owned by HDT's representative, Liu Hongzheng, and 49% of the Zhuanghe Factory is owned by Mr. He's company, Fujian.

24. As part of that manufacturing process, HDT contracted directly with the Zhuanghe Factory in 2015. The Zhuanghe Factory is required to manufacture the product in accordance with the '578 Patent and return the product to HDT for worldwide distribution.

25. From 2015 through 2017, The Zhuanghe Factory manufactured product according to the requirements of the '578 Patent on behalf of HDT.

26. On information and belief, the product continuing to be manufactured at the Zhuanghe Factory is the same '578 Product that the factory has been manufacturing since its inception in 2015.

MOSO International, BV – Bamboo X-treme

27. MOSO is a subsidiary of MOSO International BV ("MOSO BV").

28. Similar to Easoon, MOSO BV has been marketing, selling and distributing product manufactured and covered by the '578 Patent or its foreign counterparts under an exclusive distribution agreement with HDT since 2013. The products MOSO BV has been selling, marketing and distributing in limited territories granted to MOSO BV by HDT is product manufactured by the Zhuanghe Factory according to the '578 Patent. MOSO BV markets, distributes and sells its product under the brand name Bamboo X-Treme in certain territories outside of the U.S., Canada and Mexico.

29. Consistent with HDT granting Easoon the exclusive rights to market, sell and distribute the product covered by the '578 Patent in the U.S., HDT granted MOSO BV the exclusive rights to market, sell and distribute the product in the following countries and

territories, only: Netherlands; Belgium; Luxembourg; United Kingdom; Ireland; Germany; Austria; Switzerland; Italy; Spain; Portugal; France; Denmark; Norway; Sweden; Finland; and Poland (“MOSO Territories”). A copy of the exclusive distributor agreements between HDT and MOSO BV are attached hereto collectively as Exhibit 2.

30. Easoon’s Dasso.XTR bamboo decking and MOSO BV’s Bamboo X-Treme flooring has, at all times since 2013, been the same product manufactured in the same manner, which, beginning in 2015, was manufactured by the Zhuanghe Factory and purchased through HDT.¹

31. MOSO BV and MOSO have never been granted the rights to import, market, sell and/or distribute a product covered by the ’578 Patent in the United States.

Brett Kelly – Former President of Dasso.XTR

32. On May 15, 2013, Brett Kelly (“Kelly”) was appointed as President of Easoon’s Dasso.XTR Division, which included the 578 Product. Kelly also became Easoon’s Director of New Business Development in January, 2017.

33. Kelly’s major responsibilities and duties as President of Easoon’s Dasso.XTR Division included sales of the 578 Product, establishing and managing inside and outside sales representatives of the Dasso.XTR Division, developing a network of bamboo and wood flooring dealers and installers in the U.S. to market, selling and installing the Dasso.XTR 578 Product, developing private label programs of the Dasso.XTR 578 Product in the U.S. and developing new business opportunities for Easoon through its Dasso.XTR Division, which included the 578 Product.

¹ HDT owns or jointly owns several factories in China. The Zhuanghe Factory was built in 2015 to manufacture the product due to an increase of sales and expansion of facilities by HDT.

34. As President of Easoon's Dasso.XTR division of '578 Product, Kelly was intimately aware of, had numerous discussions concerning, and was otherwise knowledgeable about Easoon's exclusive distribution rights of '578 Product granted by HDT in the markets consisting of the United States, Canada and Mexico.

35. As President of Easoon's Dasso.XTR division, which included the ' Product, Kelly was aware of and was otherwise knowledgeable as to the MOSO Territories, which did not include the United States, Canada or Mexico.

36. As President of Easoon's Dasso.XTR division, which included the '578 Product, Kelly traveled on many occasions to China, met with the owners of HDT, visited manufacturing facilities, including the Zhuanghe Factory, met with the owners of the Zhuanghe Factory and otherwise had extensive knowledge of the '578 Patent, the '578 Product and Easoon's exclusivity to import, market, sell and distribute '578 Product in the U.S.

37. As shall be detailed below, Kelly resigned his position as President of Easoon's Dasso.XTR Division on June 11, 2017.

38. During the time that Kelly served as President of Easoon's Dasso.XTR division and Director of New Business Development, Kelly had authority to enter into agreements with customers, suppliers and third parties in furtherance of Easoon's business operations.

Mark Clifton – Former Vice President of Sales and Operations of Dasso.XTR

39. Clifton is Easoon's former Vice President of Sales and Operations of its Dasso.XTR Division, which included the '578 Product.

40. Clifton began his duties as Easoon's Vice President of Sales and Operations of Easoon's Dasso.XTR Division, which included the '578 Product, in or around December 2015.

41. Clifton was terminated as Easoon's Vice President of Sales and Operations of Easoon's Dasso.XTR Division on June 19, 2017 due to Easoon's concerns and confirmation of Clifton's involvement with Kelly, Osterman and MOSO BV, which shall be set forth below.

42. During the time that Clifton held the office of Easoon's Vice President of Sales and Operations of Easoon's Dasso.XTR Division, Clifton had authority to enter into agreements with customers, suppliers and third parties in furtherance of Easoon's business operations.

David S. Osterman, a/k/a Steve Osterman – Former West Coast Regional Manager of Dasso.XTR and Northwest Territory Manager of Dasso Group

43. Osterman is Easoon's former Northwest Territory Manager of the Dasso Group and held the office of West Coast Regional Manager of Easoon's Dasso.XTR Division, which included the '578 Product.

44. Osterman began his duties as Easoon's Northwest Territory Manager and as the West Coast Regional Manager of Easoon's Dasso.XTR Division in February 2013.

45. Osterman abruptly resigned on June 19, 2017, once he became aware of Easoon's knowledge concerning his involvement with Kelly, Clifton and MOSO BV as shall be set forth below.

46. During the time that Osterman served as Easoon's Northwest Territory Manager of Easoon's Dasso.XTR Division and West Coast Regional Manager of Easoon's Dasso.XTR Division, Osterman had authority to enter into agreements with customers, suppliers and third parties in furtherance of Easoon's business operations.

Kelly, Clifton and Osterman Scheme with MOSO BV

47. Prior to Kelly resigning as President of Dasso.XTR and Director of New Business Development on June 11, 2017, and prior to Clifton being terminated as the Vice President of Sales and Operations of Dasso.XTR on June 19, 2017, and prior to Osterman resigning on June

19, 2017 as Easoon's Northwest Territory Manager and West Coast Regional Manager of Easoon's Dasso.XTR Division, MOSO BV participated in discussions with Kelly, Clifton and Osterman and took actions in concert with Kelly, Clifton and Osterman to establish a MOSO BV subsidiary in the United States, to begin diverting Easoon's customers to MOSO BV, through its soon-to-be- created U.S. subsidiary, MOSO North America, Inc., to spread false rumors about Easoon to its customers, to knowingly infringe on the '578 Patent and, with the assistance of Kelly, Clifton and Osterman, to expand its distribution and sales outside of the MOSO BV Territories and into the U.S., Canada and Mexico markets without authority or consent.

48. On April 17, 2017, Kelly, using his Easoon - Dasso.XTR email, sent an email to Arjen Veltman ("Veltman"), MOSO BV's Director of Sales, thanking Veltman for sending "leads", asking Veltman if he could use some of MOSO BV's videos and inquired whether Veltman could share some of MOSO BV's documents with him at that time. In response, Veltman informed Kelly, *"Don't you think it is wise to wait until after the mr. He meeting before we make such plans? Once we start this, there is much more to do!"* (emphasis supplied).

49. At the time of the April 17, 2017 email exchange between Kelly, who, at the time, was Easoon's President of its Dasso.XTR division and Director of New Business Development, and Veltman, MOSO BV's Director of Sales, there were no joint collaborations between Easoon and MOSO BV, nor were there any meetings set up between Easoon and MOSO BV, especially any meetings that involved Mr. He, the owner of the company that owns 49% of the Zhaunghe Factory.

50. At the time of the April 17, 2017 email exchange between Kelly, who, at the time, was Easoon's President of the Dasso.XTR Division and Director of New Business Development,

Easoon and MOSO BV were and always have been competitors, but with different authorized territories of the '578 Product.

51. From May 7, 2017 through May 12, 2017, Easoon organized and sponsored a factory visit and Dasso.XTR project trip to China for its customers (hereafter "China Trip"). Kelly attended on behalf of Easoon, along with Easoon's Managing Member, Avery Chua ("Chua").

52. Easoon paid for all of Kelly's expenses to fly over to China on behalf of Easoon, where Kelly met with, interacted with and accompanied Easoon's customers to the Zhuanghe Factory and HDT headquarters.

53. At the time of the China Trip, Kelly still held the position of Easoon's President of the Dasso.XTR division and Director of New Business Development. Easoon expended considerable funds on the China Trip on its customers and Kelly, including airfare, hotels, travel, etc., and in furtherance of Easoon's efforts to expand its sales, customers and business opportunities of its Dasso.XTR brand under the direction of Kelly, Easoon's Dasso.XTR Division President.

54. Easoon later discovered that Kelly made an initial and intentional stop at MOSO BV's headquarters in the Netherlands on his way to China, and met with executives and leadership of MOSO BV. To cover his tracks, Kelly represented to Easoon that most of the flights to China were already booked and Kelly could only find a connecting flight through Europe. At the time Kelly made this statement, Easoon had no reason to believe that Kelly was actually meeting with a major competitor, MOSO BV, in Europe, on a trip that was being paid for by Easoon and while Kelly was still its President of its Dasso.XTR Division.

55. MOSO BV is headquartered in Zwaag, Netherlands.

56. On May 5, 2017, two days before the China Trip was to begin in China with Easoon, Kelly and Easoon's customers, Kelly extended birthday greetings to a friend on his Facebook page. According to Kelly's Facebook post on May 5, 2017, Kelly identified and designated his location on May 5, 2017 as being physically located in Zwaag, Netherlands.

57. Easoon would have never consented to, authorized or paid for Kelly to make an intentional stop at MOSO BV's headquarters in the Netherlands and meet with the leadership team and executives of MOSO BV, a competitor, and to conspire to cause Easoon and Dasso harm and damage.

58. There is no other explanation for Kelly being physically present in Zwaag, Netherlands, where MOSO BV is headquartered, two days before Kelly, Easoon, HDT and Easoon's customers were to meet in Hangzhou, China to visit the headquarters of HDT, tour the manufacturing factories, including the Zhuanghe Factory, and to further develop business, business opportunities and expand sales and revenue of Easoon's Dasso.XTR brand.

59. Upon the conclusion of the May, 2017 China Trip, Kelly informed Easoon that he was staying a few extra days to go sightseeing.

60. Instead of sightseeing as represented by Kelly to Easoon, Kelly participated in visits, meetings and/or calls with MOSO BV and representatives of the Zhuanghe Factory, including Mr. He, the owner of the company that owns 49% of the Zhuanghe Factory that manufactures the '578 Product for HDT, and, most shockingly, personally met with the same customers of Easoon that had accompanied Easoon and Kelly during the China Trip.

61. On May 13, 2017, *almost a month prior to resigning*, and while still in China purportedly sightseeing, Kelly informed Easoon's customers that he would soon be resigning his position with Easoon as President of the Dasso.XTR Division and Director of New Business

Development, that he was partnering up with MOSO BV to sell the same product as the Dasso.XTR '578 Product, but under the MOSO Bamboo X-Treme brand, and that MOSO BV was entering the U.S. market and he would be heading up MOSO BV's new division in the U.S. market. Kelly further confirmed to several of Easoon's customers while still in China and while still holding the position of President of Easoon's Dasso.XTR Division, that he had flown to Europe on his way to China, personally met with the leadership and executives of MOSO BV and that everything had already been arranged for Kelly to head up MOSO BV's new subsidiary in the U.S., MOSO North America, Inc.

62. At the time Kelly was informing Easoon's customers at the end of the China Trip that he had finalized everything with MOSO BV to enter the U.S. market and compete against Easoon under a soon-to-be-formed subsidiary, MOSO BV was conspiring with Kelly, Clifton and Osterman to divert customers away from Easoon, to learn proprietary information belonging to Easoon, such as pricing, shipping and distribution details, taking actions against Easoon and Easoon's interests and began taking steps to launch MOSO in the U.S. while Kelly, Clifton and Osterman still held managerial and executive level positions with Easoon.

63. From May 31, 2017 to June 2, 2017, at MOSO BV's direction, Kelly traveled to Toronto and met with one of Easoon's largest customers. This customer was also in China with Easoon and Kelly during the China Trip and was one of the customers that Kelly discussed his departure as President of Easoon's Dasso.XTR Division, that Kelly had already made arrangements with MOSO BV to head up MOSO BV's U.S. subsidiary, and to whom Kelly falsely claimed that Easoon and HDT were in bankruptcy and would soon be out of business.

64. At MOSO BV's direction, the purpose of Kelly's trip from New Jersey to Toronto between May 31, 2017 and June 2, 2017 was to convince one of Easoon's largest customers to

no longer purchase Dasso.XTR product from Easoon and to begin purchasing MOSO BV's Bamboo X-Treme through Kelly once he resigned as President of Dasso.XTR and Plaintiff's Director of New Business Development and once MOSO BV established its U.S. based subsidiary, MOSO North America, Inc.

65. On June 7, 2017, MOSO BV launched its U.S. subsidiary, MOSO North America, Inc., by filing its Articles of Incorporation with the Delaware Secretary of State.

66. At the time MOSO's Articles of Incorporation were filed with the Delaware Secretary of State on June 7, 2017, Kelly held the position of President of Easoon's Dasso.XTR Division and Dasso.XTR's Director of New Business Development, Clifton held the position of Vice President of Sales and Operations of Easoon's Dasso.XTR Division and Osterman held the position of Northwest Territory Manager and West Coast Regional Manager of Easoon's Dasso.XTR Division.

67. On June 11, 2017, the President and Director of MOSO BV, Rene Zaal ("Zaal"), met with representatives of HDT in China, including Xu Jiang, CEO of HDT, Lin Hai, Policy and Technical Advisor of HDT, and Wang Jianmin, International Sales Director of HDT ("HDT Reps"). During the meeting, Zaal informed the HDT Reps that, if HDT did not agree to allow MOSO BV to expand outside of the MOSO Territories and into the U.S., Canada and Mexico markets, MOSO BV would bypass HDT and buy directly from the Zhuanghe Factory. The HDT Reps informed Zaal that MOSO BV did not have any rights or authority to sell the '578 Product outside of the MOSO Territories and in the U.S., Canada and Mexico markets, that any unauthorized distribution of the '578 Product outside of the MOSO Territories would be in violation of several patents related to the '578 Patent, including in China and the U.S., and

warned Zaal and MOSO BV not to infringe on Dasso's '578 Patent or Easoon's exclusive distribution rights of '578 Product in the U.S., Canada and Mexico.

68. Immediately following the meeting on June 11, 2017 between Zaal and the HDT Reps, Zaal informed Tony Wong, who drove Zaal back to his hotel in China after the meeting with the HDT Reps, *that MOSO BV already had a sales team working for MOSO BV in the U.S.*, and specifically named Kelly and Osterman as MOSO BV's sales team in the U.S., despite Kelly still holding the position of President of Easoon's Dasso.XTR Division and Director of New Business Development and Osterman holding the position of Northwest Territory Manager and West Coast Regional Manager of Easoon's Dasso.XTR Division.

69. Shortly after Zaal was dropped off at his hotel after being informed by the HDT Reps that it would not authorize MOSO BV's distribution expansion into the U.S., Canada and Mexico of the '578 Product, Easoon received a resignation letter from Kelly on June 11, 2017. This was on the same day and shortly after MOSO BV's Zaal was dropped off at the hotel by Tony Wong.

70. On June 14, 2017, Kelly announced on his Facebook page that he "Left Job at Dasso USA" which he indicated began in "2013 in Atlanta, Georgia." Kelly's Facebook post on June 14, 2017 also stated that Kelly "Started Working at MOSO Bamboo Products" and that, "MOSO North America is a subsidiary of MOSO Bamboo Products."

71. Just one day later, on June 15, 2017, MOSO BV posted on its Facebook page, "MOSO Bamboo Products proudly announces MOSO North America, Inc." On June 18, 2017, Kelly shared MOSO BV's June 15, 2017 post on his own Facebook page.

72. Also on June 15, 2017, the Vice President of HDT, Steve Shen ("Shen"), visited the Zhuanghe Factory to meet with Mr. He to personally inquire as to whether the Zhuanghe

Factory were in discussions to sell the '578 Product directly to MOSO BV in violation of the manufacturing agreement between the Zhuanghe Factory and HDT. Upon arrival, Shen saw the President of MOSO BV, Rene Zaal, who, clearly stunned to see Shen at the Zhuanghe Factory, quickly exited out the back in a car without speaking with Shen. The next day, Shen met Zaal at a hotel and, once again, MOSO BV was advised that buying directly from the Zhuanghe Factory and selling to MOSO BV for entry into the U.S. market without authority violated Dasso's '578 Patent, the manufacturing agreement between HDT and the Zhuanghe Factory and the exclusive distributorship agreement between HDT and Easoon. Once again, Zaal, on behalf of MOSO BV, advised Shen that MOSO BV had no choice but to enter the U.S. market in violation of Dasso's U.S. patent rights and Easoon's exclusive distribution rights of '578 Product in the U.S.

73. On June 19, 2017, Steve Osterman, who was the West Coast and Northwest Regional Manager for Easoon's Dasso.XTR Division, resigned his employment with Easoon and, according to his LinkedIn page, is now the Vice President of Sales of MOSO North America, Inc.

74. Shortly after resigning his position as President of Easoon's Dasso.XTR Division and Director of New Business Development on June 11, 2017 and announcing his employment with MOSO on June 14, 2017, Kelly again traveled to one of Easoon's largest customers in Toronto, and this time, Kelly was accompanied by Arjen Veltman, MOSO BV's Director of Sales, who was the same Director of MOSO BV that instructed Kelly on April 17, 2017, "Don't you think it is wise to wait until after the mr. He meeting before we make such plans? Once we start this, there is much more to do!"

75. On June 20, 2017, Kelly posted on his Facebook page, "The inaugural MOSO Bamboo Products North America has begun!" Kelly's Facebook post also identifies that Kelly

was traveling with Arjen Veltman, MOSO BV's Director of Sales and was traveling from New Jersey to Toronto, Canada.

76. Kelly and Arjen Veltman, MOSO BV's Director of Sales, then flew from Toronto, Canada to Portland, Oregon to meet up with Osterman who, just one day prior, resigned from his employment with Easoon on June 19, 2017. Easoon has since learned that Osterman, prior to his resignation as Easoon's Northwest Territory Manager and West Coast Regional Manager, set up meetings for Kelly and Arjen Veltman for the sole purpose of and in furtherance of Kelly, Osterman, Clifton and MOSO BV's scheme to steal customers of Easoon, using Kelly, Osterman and Clifton's executive and managerial positions with Easoon and their intimate knowledge of Easoon's proprietary information, including customer lists, pricing, contact information, etc.

77. On June 22, 2017, Kelly posted on his Facebook page, "The world wind is almost over. Thank you Steve Osterman your hospitality is always appreciated."

78. At the same time that Kelly, Osterman, Clifton and Arjen Veltman, MOSO BV's Director of Sales, were on a "world wind" tour in pursuit of Easoon's customers, the owner of MOSO BV, Zaal, was meeting with one of the executives of HDT in China on June 22, 2017. At that meeting, Zaal acknowledged that MOSO BV's distributorship agreement only allowed MOSO BV to sell the '578 Product under MOSO BV's Bamboo X-treme brand in the MOSO Territories, which did not include the U.S., Canada or Mexico. The HDT representative strongly expressed his displeasure with Zaal for MOSO BV setting up operations in the U.S. behind HDT's back and for stealing employees of Easoon. Zaal informed the HDT representative that MOSO BV needed to expand its sales of the '578 Product because MOSO BV's investors were not happy with the growth of MOSO BV. Zaal informed the HDT representative at this meeting

that MOSO BV had no other choice but to focus on expanding to other markets, even if that meant violating its agreements, Easoon's exclusive distribution agreement with HDT for the U.S., Canada and Mexico, or any patent rights, including Dasso's '578 Patent. Zaal informed the HDT representative at this meeting that MOSO BV was going to do what it had to do and it would live with the consequences at a later date if it came to that.

79. On June 26, 2017, Easoon began being notified and informed by customers that Kelly and Osterman, both prior to and after resigning their positions with Easoon, were contacting Easoon's customers and telling them that Easoon, Dasso and HDT were "going out of business," in the process of shutting down operations and that Easoon's customers, and instead of purchasing the Dasso.XTR product from Easoon, should begin purchasing the exact same product, except through MOSO's Bamboo X-treme brand and through its newly formed U.S. subsidiary, MOSO North America, Inc.

80. On July 19, 2017, Easoon was informed by other customers that Kelly, who by then was acting as the President of MOSO North America, Inc., told them that Easoon and HDT were in bankruptcy and the customers could order the same '578 Product from now on through MOSO under MOSO BV's Bamboo X-treme brand.

81. Despite the statements by Kelly and Osterman acting on behalf of MOSO North America, Inc. and in conspiracy with MOSO, Easoon and HDT have never filed bankruptcy and have never been at risk for filing for bankruptcy. The statements were clearly intended to mislead customers of Easoon, drive business away from Easoon and to MOSO BV, through its U.S. subsidiary, MOSO North America, Inc., while also acknowledging to customers that the MOSO Bamboo X-treme product is the exact same product as Dasso's '578 Product, exclusively distributed by Easoon.

82. Toward the end of September, first of October, 2017, Easoon and Dasso learned that MOSO BV, through its subsidiary MOSO North America, Inc., which is being run by Kelly, Clifton and Osterman, began importing '578 Product into the U.S. market beginning in August, 2017 under MOSO's Bamboo X-treme brand.

83. MOSO BV, including its U.S. subsidiary, MOSO North America, Inc., have never been granted distribution rights to sell the patented '578 Product in the U.S., Canada or Mexico.

84. Easoon remains the only authorized distributor of Dasso's '578 Product in the U.S., Canada and Mexico.

85. Dasso has never granted MOSO BV or MOSO North America, Inc. any rights, licenses or consent to import, distribute and sell product in the U.S., Canada and Mexico that infringes on its '578 Patent or Easoon's exclusive distribution agreement to import, distribute and sell product covered by the '578 Patent.

86. MOSO BV has also been actively marketing MOSO's entry into the U.S. market through its subsidiary, MOSO North America.

MOSO BV Conspires with the Zhuanghe Factory

87. As part of HDT's expansion efforts, HDT built the Zhuanghe Factory and, through one of HDT's representatives, Liu Hongzheng, entered into a joint venture partnership to own 51% of the Zhuanghe Factory, with Mr. He's company, Fujian, owning 49% of the factory.

88. A considerable amount of money was expended by HDT in building the Zhuanghe Factory in accordance with the specifications required to manufacture the '578 Product according to the '578 Patent.

89. From 2015 through 2017, The Zhuanghe Factory manufactured product according to the requirements of the '578 Patent on behalf of HDT.

90. As set forth above, MOSO BV, through its President, Rene Zaal, personally met on several occasions with HDT's management to request an expansion of the MOSO Territories, including into the U.S. and Canada markets.

91. On each occasion, HDT denied the request of MOSO BV and Mr. Zaal.

92. During this same time, Mr. Zaal, on behalf of MOSO BV and its soon-to-be launched U.S. subsidiary, MOSO North America, Inc., was seen at various times at the Zhuanghe Factory meeting with Mr. He and representatives of his company, Fujian.

93. When confronted, Mr. Zaal, on behalf of MOSO BV and its soon-to-be launched U.S. subsidiary, MOSO North America, Inc., informed representatives of HDT that, as HDT refused to expand the MOSO Territories, MOSO BV had struck an agreement directly with the Zhuanghe Factory to sell the '578 Product directly to MOSO BV, who would then distribute it to the U.S. and Canada via a U.S. based subsidiary, MOSO North America, Inc.

94. Mr. Zaal knew and had been informed on many occasions by HDT that MOSO BV did not have the rights, permission or consent to enter the U.S. and Canada markets and Mr. Zaal was further informed of Easoon's exclusivity of distribution of the '578 Product in the U.S., Canada and Mexico markets, as well as the existence of, not only the '578 Patent counterpart in China and other countries around the world, but also of Dasso's '578 Patent.

95. Additionally, it was clear by the email exchange between MOSO BV's Director of Sales, Veltman, and Easoon's then-President, Kelly, that efforts were underway as early as April 17, 2017 to strike a deal directly with Mr. He and his company Fujian to bypass HDT and buy directly from the Zhuanghe Factory, when Veltman emailed the following to Kelly, "Don't you think it is wise to wait until after the mr. He meeting before we make such plans? Once we start this, there is much more to do!"

96. Despite this knowledge and over the protest of HDT, Rene Zaal, Arjen Veltman and MOSO BV finalized an agreement with the 49% owner of the Zhuanghe Factory to manufacture the '578 Product and to sell the '578 Product directly to MOSO BV, who would then distribute the product through MOSO North America, Inc.

97. Mr. He's company, Fujian, has never been granted any rights to the '578 Patent or its counterparts in various countries around the world, other than Fujian owning a minority interest in a factory in China that manufactures the '578 Product for distribution by Easoon in the U.S., Canada and Mexico markets.

98. The Zhuanghe Factory, through the hostile takeover by Mr. He and Fujian, in conspiracy with and in concert with MOSO BV, Rene Zaal, Arjen Veltman, MOSO North America, Inc. and the former officers and managers of Easoon's Dasso.XTR Division, Kelly, Clifton and Osterman, continues to manufacture and sell the '578 Product using the patented process directly to MOSO BV, who then distributes the '578 Product into the U.S. via MOSO North America, Inc.

99. Easoon and Dasso have been harmed as a result of the Defendants' conduct in an amount to be proven at trial, which is no less than \$100,000.00.

COUNT I

INFRINGEMENT OF U.S. PATENT 8,709,578

100. Plaintiffs restate and incorporate by reference Paragraphs 1 through 99 of the Amended Complaint, as though the same were fully stated herein.

101. The '578 Patent issued on April 29, 2014 and is valid and enforceable.

102. Dasso is the owner of all rights, title and interest in the '578 Patent, through assignment.

103. Defendants have infringed and are willfully infringing the '578 Patent in violation of 35 U.S.C. § 271 *et seq.*, by importing, marketing, selling and distributing the Products in the U.S. in violation of Dasso's protected U.S. patent rights and without any expansion of its Territory to include the United States, Canada and Mexico.

104. Defendants' infringement is intentional and deliberate. MOSO BV has been distributing and selling the '578 Product since 2008 in limited territories, which have never included the U.S., Canada or Mexico. Further, MOSO BV's President Rene Zaal, met with the HDT Reps in June, 2017 and sought permission to sell the Products in the U.S. market. After the HDT Reps refused MOSO BV's request, the President of MOSO BV, Rene Zaal, met with the Vice President of HDT, Steve Shen, after Zaal was spotted at the Zhuanghe Factory in June, 2017. Again, MOSO BV, through its President, Rene Zaal, requested HDT reconsider and allow MOSO BV to market, sell and distribute the Products in the U.S. market. At that meeting on June 15, 2017, Rene Zaal, on behalf of MOSO BV, informed Steve Shen that MOSO BV had struck a deal directly with the Zhuanghe Factory and, after admitting it had no legal right or authority, Zaal informed Steve Shen that, due to pressure from MOSO BV's investors, it had no choice but to enter the U.S. market to expand its sales of the Product, even if that meant it was infringing on Dasso's U.S. patent rights and Easoon's exclusive distribution rights in the U.S.

105. Dasso has learned that MOSO BV has been purchasing '578 Product directly from the Zhuanghe Factory, and has begun importing '578 Product into the U.S. market through MOSO North America, Inc.

106. MOSO BV's purchases directly from Zhuanghe Factory are not licensed purchases. In addition, the Zhuanghe Factory sales to MOSO BV are not authorized sales for patent exhaustion purposes.

107. The product being marketed by MOSO under MOSO BV's Bamboo X-treme brand is the same Product that MOSO BV has been marketing and selling in the MOSO Territories outside the U.S., Canada and Mexico since 2013 under a distribution agreement with HDT. It is also the exact same Product that Easoon has been selling, marketing and distributing in the U.S., Canada and Mexico markets under the dasso.XTR brand since 2013.

108. The product being imported, distributed and sold by MOSO BV, through its U.S. subsidiary, MOSO North America, Inc., infringes one or more claims of the '578 Patent, including claim 1. A claim chart demonstrating such infringement is attached hereto as Exhibit 3.

109. In 2015, the Zhuanghe Factory was built with specifications, equipment, machinery and capacity to manufacture the '578 Product under an exclusive manufacturing agreement with HDT.

110. From 2015 through 2017, the Zhuanghe Factory was manufacturing the '578 Product according to the '578 Patent. Upon information and belief, the Zhuanghe Factory is still manufacturing the same '578 Product according to the '578 Patent.

111. Plaintiffs have confirmed that the product being imported and distributed into the U.S. is the same product that MOSO BV has been distributing in the MOSO Territories since 2013 under the MOSO Bamboo X-treme brand and is the same '578 Product that has been manufactured by the Zhuange Factory since 2015.

112. The Defendants' infringement of the '578 Patent has injured Dasso. Dasso is entitled to recover from Defendants the damages suffered by Dasso as a result of the Defendants' wrongful acts in an amount to be proven at trial, including lost profits and an amount not less than a reasonable royalty, together with interest and costs.

113. The Defendants' infringement of the '578 Patent will continue to cause Dasso irreparable injury and damage for which there is no adequate remedy at law unless and until the Defendants are enjoined from infringing the '578 Patent.

COUNT II

TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

114. Plaintiffs restate and incorporate by reference Paragraphs 1 through 113 of the Amended Complaint, as though the same were fully stated herein.

115. Easoon has spent considerable money, time and expenses in developing and acquiring customers and opportunities since it secured its exclusive distribution agreement with HDT and Dasso to import, distribute and sell the '578 Product in the United States, Canada and Mexico.

116. MOSO BV and MOSO North America, Inc. are aware of Easoon's exclusive distribution agreement of '578 Product and were further aware that MOSO BV's distribution agreement with HDT did not give MOSO BV or MOSO North America, Inc. the right to import, distribute and/or sell '578 Product in the U.S., Canada or Mexico.

117. MOSO BV, prior to and after the time that MOSO North America, Inc. was formed, requested that HDT expand its territories to include the U.S., Canada and Mexico. Each time, HDT denied this request, as Easoon was the only entity authorized to import, distribute and sell the '578 Product in the U.S.

118. Even prior to MOSO BV requesting an expansion of its distribution rights to the '578 Product, MOSO BV was already engaged in discussions and setting up meetings with Mr.

He's company, Fujian, to bypass HDT and to strike a deal with Mr. He's company, Fujian, to buy the '578 Product directly from the Zhuanghe Factory.

119. In addition to discussions with Mr. He's company, Fujian, MOSO BV entered into discussions and agreements with Easoon's then President of Dasso.XTR and Director of New Business Development, Brett Kelly, Easoon's then Vice President of Sales and Operations of Easoon's Dasso.XTR Division, Mark Clifton, and Easoon's then Northwest Territory Manager and West Coast Regional Manager of its Dasso.XTR Division, Steve Osterman, in order to persuade them to share Easoon's proprietary customer information, pricing, shippers, etc.

120. Even prior to resigning as President of Easoon's Dasso.XTR Division, Kelly, at the direction of MOSO BV, began informing Easoon's customers that he would be heading up MOSO BV's new subsidiary in the U.S., MOSO North America, Inc., and that Easoon's customers could purchase the exact same '578 Product, but to purchase that product through MOSO North America, Inc. under the MOSO Bamboo X-treme brand.

121. At the direction of MOSO BV, Kelly and Osterman began telling and have been telling customers and prospective customers of Easoon that HDT, Easoon and the Dasso Group are in bankruptcy and closing their doors.

122. MOSO BV has directed Kelly, Clifton and Osterman to inform customers that Easoon's Dasso.XTR Division is now sold through MOSO BV's Bamboo X-treme Division.

123. Prior to and after Kelly, Clifton and Osterman departed their executive and managerial positions with Easoon, MOSO BV and, thereafter MOSO North America, Inc., acquired customer lists, contact information and began efforts to divert customers, many of them long-term customers, away from Easoon.

124. Plaintiffs have lost prospective business opportunities in at least the following ways. First, Plaintiffs routinely collected information on customers and prospective customers that includes, but is not limited to, prospects met at trade shows, architects who are in a position to recommend use of Plaintiffs' products, and prospective customers who contact Plaintiffs' via the internet. Upon information and belief, at least Kelly had access to this confidential information and wrongfully took it with him to MOSO. Upon information and belief, Kelly has used this information while at MOSO to secure sales that otherwise would have gone to Plaintiffs. Kelly's actions on behalf of MOSO were intentional and caused Plaintiffs harm.

125. Second, the MOSO entities acting either jointly or separately contacted Plaintiffs existing customers after Kelly joined MOSO. Plaintiffs have lost business to several customers including, but not limited to, Weston Premium Woods, Boise Cascade, and Disdero Lumber. In addition, Plaintiffs suffered price erosion damages to at least Disdero Lumber because of MOSO's actions. Upon information and belief, but for MOSO's wrongful contacts, Plaintiffs would have made additional sales to these customers.

126. MOSO BV and MOSO North America, Inc.'s actions are without justification.

127. As a result of MOSO BV and MOSO North America, Inc.'s improper and deceptive efforts, Easoon has lost customers and has incurred damages in excess \$100,000.00 and in an amount to be proven at trial.

COUNT III

VIOLATION OF DELAWARE'S DECEPTIVE TRADE PRACTICES ACT

128. Plaintiffs restate and incorporate by reference Paragraphs 1 through 127 of the Complaint, as though the same were fully stated herein.

129. By its conduct described above, MOSO has engaged in deceptive trade practices in violation of 6 Del. C. § 2532(a)(8), *inter alia*, because, in the course of its business, MOSO has disparaged the goods, services and business of Easoon by false or misleading representations

130. Even prior to resigning as President of Easoon's Dasso.XTR Division, Kelly, at the direction of MOSO BV, began informing Easoon's customers that he would be heading up MOSO BV's new subsidiary in the U.S., MOSO North America, Inc., and that Easoon's customers could purchase the exact same '578 Product, but to purchase that product through MOSO North America, Inc. under the MOSO Bamboo X-treme brand.

131. At the direction of MOSO BV, Kelly and Osterman began telling and have been telling customers and prospective customers of Easoon that HDT, Easoon and the Dasso Group are in bankruptcy and closing their doors.

132. MOSO BV has directed Kelly, Clifton and Osterman to inform customers that Easoon's Dasso.XTR Division is now sold through MOSO BV's Bamboo X-treme Division.

133. Even after Kelly joined MOSO, the MOSO entities acting either jointly or separately contacted Plaintiffs' existing customers and disparaged Plaintiffs' business by claiming, *inter alia*, that HDT, Easoon and the Dasso Group are in bankruptcy and closing their doors. Upon information and belief, the MOSO entities made disparaging statements to Plaintiffs' customers. These customers include, but are not limited to, Weston Premium Woods, Boise Cascade, and Disdero Lumber.

134. As a result of the actions of the MOSO entities, Plaintiffs have lost business to these customers after Kelly joined MOSO NA.

135. MOSO BV and MOSO North America Inc.'s unfair and deceptive trade practices interfered with, and continue to interfere with the promotion and conduct of Easoon's business.

136. MOSO BV and MOSO North America Inc.'s deceptive trade practices have caused irreparable harm to Easoon, and absent injunctive relief, are likely to continue to cause irreparable harm to Easoon. There is no adequate remedy at law for the harm caused by the deceptive trade practices alleged herein.

137. MOSO BV and MOSO North America Inc.'s deceptive trade practices have also caused Easoon monetary damage, loss, and injury, in an amount to be determined at trial.

138. Easoon has been damaged by MOSO BV and MOSO North America Inc.'s willful deceptive trade practices, entitling it to relief for actual losses, treble damages, and attorneys' fees pursuant to 6 *Del. C.* § 2533(b), (c).

COUNT IV

AIDING AND ABETTING BREACH OF FIDUCIARY DUTY

139. Plaintiffs restate and incorporate by reference Paragraphs 1 through 138 of the Complaint, as though the same were fully stated herein.

140. Prior to and after MOSO North America Inc. was formed on June 7, 2017, Kelly was the President of Easoon's Dasso.XTR Division and Director of New Business Development, Clifton was the Vice President of Sales and Operations of Easoon's Dasso.XTR Division and Osterman was the Northwest Territory Manager and West Coast Regional Manager of Easoon's Dasso.XTR Division.

141. MOSO BV and MOSO North America, Inc. knew, at the time, that Kelly was the President of Easoon's Dasso.XTR Division and Director of New Business Development, Clifton was the Vice President of Sales and Operations of Easoon's Dasso.XTR Division and Osterman was the Northwest Territory Manager and West Coast Regional Manager of Easoon's Dasso.XTR Division.

142. Despite this knowledge, MOSO BV and MOSO North America, Inc. approached, discussed and conspired with Kelly, Clifton and Osterman, while each of them still held those positions with Easoon, to provide them with customer lists, to divert customers and business opportunities away from Easoon, and to set up meetings with customers in which to steal customers away from Easoon.

143. At the time that Kelly was the President of Easoon's Dasso.XTR Division and Director of New Business Development, Clifton was the Vice President of Sales and Operations of Easoon's Dasso.XTR Division and Osterman was the Northwest Territory Manager and West Coast Regional Manager of Easoon's Dasso.XTR Division. Kelly, Clifton and Osterman owed Easoon a fiduciary duty to protect the interests of Easoon.

144. MOSO BV and MOSO North America's actions were in disregard of and aided and abetted the violation of Kelly, Clifton and Osterman's fiduciary duties owed to Easoon.

145. In addition to the foregoing, MOSO further aided and abetted the breach of the fiduciary duties of Kelly, Clifton and Osterman. By way of example and without limitation, each of these employees knew sensitive confidential business information including information relating to Plaintiffs' pricing, distributors, and shipping. Each of Kelly, Clifton and Osterman have a fiduciary obligation to Plaintiffs not to use this confidential information to the detriment

of Plaintiffs after they joined MOSO. Said fiduciary relationship existed by virtue of their positions at Easoon.

146. Nevertheless, upon information and belief, Kelly, Clifton and Osterman wrongfully used this information to harm Plaintiffs' business. These actions constitute a breach of the fiduciary obligation of Kelly, Clifton and Osterman.

147. The MOSO entities knowingly participated in that breach by; (1) conspiring with Kelly, Clifton, and Osterman before they departed from Easoon; and (2) continuing to encourage Kelly, Clifton and Osterman to misuse information they acquired at Easoon after they joined MOSO North America.

148. Upon information and believe, Plaintiffs have lost sales and prospective sales and suffered price erosion as a result of Defendants' conduct including sales to Weston Premium Woods, Boise Cascade, and Disdero Lumber.

149. Easoon has been harmed as a result of MOSO BV and MOSO North America, Inc.'s conduct of aiding and abetting the fiduciary duties owed to Easoon in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests that this Court enter judgment in its favor as follows:

A. Declaring that Defendants have infringed, literally and/or under the doctrine of equivalents, the '578 Patent and that the infringement is willful;

B. Granting Plaintiffs preliminary and/or permanent injunctive relief, including, but not limited to, a preliminary and permanent injunction that enjoins MOSO and MOSO BV, their officers, directors, partners, agents, servants, employees, parents, subsidiaries, affiliated

corporations or companies, other related business entities, and all other persons acting in concert, participation, or in privity with them and/or their successors and assigns from infringing the '578 Patent, or contributing to or inducing anyone to do the same, by acts including manufacture, use, offer to sell, sale, or distribution within the United States, or importation into the United States, or any current or future versions of the Products, the use or manufacturing of which infringes on the '578 Patent.

C. Awarding Plaintiffs damages which they are entitled to under 35 U.S.C. § 284 for Defendants' infringement, including compensatory damages, and the trebling of such damages due to the willful nature of the infringement;

D. Granting Plaintiffs preliminary and/or permanent injunctive relief, including, but not limited to, a preliminary and permanent injunction that enjoins Defendants, their officers, directors, partners, agents, servants, employees, parents, subsidiaries, affiliated corporations or companies, other related business entities, and all other persons acting in concert, participation, or in privity with them and/or their successors and assigns from interfering with Easoon's exclusive distribution agreement, misrepresenting Defendants' rights to sell the Products, or misrepresenting Easoon's status;

E. Awarding Plaintiffs punitive damages for Defendants' willful acts of unfair competition under 6 *Del. C.* § 2531 et seq. and for their tortious conduct and actions set forth above;

F. Awarding Plaintiffs punitive damages for Defendants' wanton, reckless, intentional and knowing conduct;

G. Awarding Plaintiffs all costs (including all disbursements), attorneys' fees and expenses incurred in this action;

H. Awarding Plaintiffs pre- and post-judgment interest on its damages;

I. Declaring that this case is exceptional pursuant to 35 U.S.C. § 285 and awarding Plaintiffs all of their attorney's fees and costs; and

J. Awarding Plaintiffs such other and further relief in law or equity as this Court deems just and proper.

JURY DEMAND

Plaintiffs, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any and all issues so triable by right.

O'KELLY ERNST & JOYCE, LLC

/s/ Sean T. O'Kelly

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