

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

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TRISTAR PRODUCTS, INC. et al.,)	
)	CIVIL ACTION FILE NUMBER:
Plaintiffs,)	
)	13-cv-07752-ES-MAH
v.)	
)	
NATIONAL EXPRESS, INC. et al.,)	
)	
Defendants.)	JURY TRIAL DEMANDED
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**FOURTH AMENDED COMPLAINT FOR PATENT INFRINGEMENT
AND DEMAND FOR JURY TRIAL**

Plaintiffs Tristar Innovative Products, Inc. d/b/a Tristar Products, Inc. (“Tristar”) and Ragner Technology Corporation (“Ragner Corp.”) (collectively, “Plaintiffs”), by their undersigned attorneys, file this Fourth Amended Complaint for Patent Infringement and Demand for Jury Trial against Defendants National Express, Inc. (“National Express”), E. Mishan and Sons Inc. (“EMSON”), and DAP Products, Inc. (“DAP”) (collectively, “Defendants”), and allege as follows:

PRELIMINARY STATEMENT

1. This is an action brought by the patent owner and assignee, Ragner Corp., and exclusive patent licensee, Tristar, of U.S. Patent No. 7,549,448 (“the ’448 patent”), U.S. Patent No. 9,022,076 (“the ’076 patent”), and U.S. Patent No. 9,371,944 (“the ’944 patent”) (collectively, “Patents-In-Suit”), to recover for damages resulting from Defendants’ infringement of the Patents-In-Suit.

2. More particularly, Defendants, with knowledge that Ragner Corp. had patents covering their products and without a valid license to any of the Patents-In-Suit, have

manufactured and sold, and continue to manufacture and sell, at least the XHOSE products. *See infra*, ¶¶ 13-29).

3. Defendants' infringement and sales of at least the XHOSE products have caused Plaintiffs monetary injury including, but not limited to, damages resulting from lost profits and losses arising from price erosion. Accordingly, Plaintiffs bring this action seeking injunctive relief and monetary damages for infringement of the Patents-In-Suit.

THE PARTIES

4. Plaintiff Tristar is a Florida corporation with places of business at 720 Centre Avenue, Reading, Pennsylvania 19601 and 492 Route 46 East, Fairfield, New Jersey 07004.

5. Plaintiff Ragner Corp. is a Delaware corporation with a place of business at 4344 NW 34th Drive, Gainesville, FL 32605.

6. Upon information and belief, Defendant National Express is a Connecticut corporation having a principal place of business at 2 Morgan Avenue, Norwalk, Connecticut 06851.

7. Upon information and belief, Defendant EMSON is a New York corporation having its corporate headquarters at 230 Fifth Avenue, Suite 800, New York, New York 10001.

8. Upon information and belief, Defendant DAP is a Delaware corporation having its corporate headquarters at 2400 Boston Street, Suite 200, Baltimore, Maryland 21224.

JURISDICTION AND VENUE

9. This is a civil action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code. 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.

10. Upon information and belief, personal jurisdiction is proper in this Court as to Defendant National Express because National Express solicits business and conducts business within the State of New Jersey, including but not limited to maintaining a website that can be accessed in the State of New Jersey, marketing to customers in the State of New Jersey, and having commercial and residential sales in the State of New Jersey through its website and its authorized retailers. A printout from the website nationalexpresstv.com depicting a web-based offer for sale is attached as Exhibit A, and demonstrates that National Express's products are marketed to customers within the state of New Jersey. Therefore, the Court has personal jurisdiction over National Express pursuant to N.J. Ct. R. 4:4-4 and venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b), 28 U.S.C. § 1391(c), and 28 U.S.C. § 1400(b).

11. Upon information and belief, personal jurisdiction is proper in this Court as to Defendant EMSON because EMSON solicits business and conducts business within the State of New Jersey, including but not limited to maintaining a website that can be accessed in the State of New Jersey, marketing to customers in the State of New Jersey, and having commercial and residential sales in the State of New Jersey through its website and its authorized retailers. Printouts from an archival version of the website www.emsoninc.com and the current website www.dac5xhose.com depicting a web-based offer for sale are attached as Exhibits B and C, and demonstrate that EMSON's products are marketed to customers within the state of New Jersey. Therefore, the Court has personal jurisdiction over EMSON pursuant to N.J. Ct. R. 4:4-4 and venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b), 28 U.S.C. § 1391(c), and 28 U.S.C. § 1400(b).

12. Upon information and belief, personal jurisdiction is proper in this Court as to Defendant DAP because DAP solicits business and conducts business within the State of New

Jersey, including but not limited to maintaining a website that can be accessed in the State of New Jersey, marketing to customers in the State of New Jersey, and having commercial and residential sales in the State of New Jersey through its website and its authorized retailers. A printout from an archival version of the website www.xhose.com depicting a web-based offer for sale are attached as Exhibit D, and demonstrates that DAP's products have been marketed to customers within the state of New Jersey. Therefore, the Court has personal jurisdiction over DAP pursuant to N.J. Ct. R. 4:4-4 and venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b), 28 U.S.C. § 1391(c), and 28 U.S.C. § 1400(b).

FACTUAL ALLEGATIONS

13. On June 23, 2009, the United States Patent and Trademark Office issued U.S. Patent No. 7,549,448 ("the '448 patent"), titled "Linearly Retractable Pressure Hose," to Gary Dean Ragner. Ragner Corp. is the owner and assignee of all right, title, and interest in and to the '448 patent, subject only to an exclusive license to Tristar. Tristar has an exclusive license to make, have made, use, distribute, sell, offer for sale, and import into the United States certain products covered by the '448 patent. Together, Ragner Corp. and Tristar own all substantial rights in the '448 patent. A true and correct copy of the '448 patent is attached hereto as Exhibit E.

14. Upon information and belief, National Express, in conjunction with EMSON and DAP, makes, uses, sells, offers to sell, and/or induces others to make, use, sell, and/or offer to sell hoses, which embody and/or use the inventions claimed in the '448 patent. Such infringing hoses include at least the "XHOSE," "XHOSE PRO," "XHOSE DAC-5," and "XHOSE PRO EXTREME" (hereinafter "the XHOSE product(s)").

15. Upon information and belief, EMSON, in conjunction with National Express and DAP, makes, uses, sells, and/or offers to sell, and/or induces others to make, use, sell, offer to sell

hoses, which embody and/or use the inventions claimed in the '448 patent. Such infringing hoses include at least the XHOSE products.

16. Upon information and belief, DAP, in conjunction with National Express and EMSON, makes, uses, sells, and/or offers to sell, and/or induces others to make, use, sell, offer to sell hoses, which embody and/or use the inventions claimed in the '448 patent. Such infringing hoses include at least the XHOSE products.

17. On May 5, 2015, the United States Patent and Trademark Office issued U.S. Patent No. 9,022,076 ("the '076 patent"), titled "Linearly Retractable Pressure Hose Structure," to Gary Dean Ragner and Robert Daniel deRochemont, Jr. Ragner Corp. is the owner and assignee of all right, title, and interest in and to the '076 patent, subject only to an exclusive license to Tristar. Tristar has an exclusive license to make, have made, use, distribute, sell, offer for sale, and import in the United States certain products covered by the '076 patent. Together, Ragner Corp. and Tristar own all substantial rights in the '076 patent. A true and correct copy of the '076 patent is attached hereto as Exhibit F. On December 11, 2017, the United States Patent and Trademark Office issued an *Ex Parte* Reexamination Certificate for the '076 Patent confirming the patentability of all claims of the '076 Patent. Specifically, a three-judge panel of the USPTO's Patent Trial and Appeal Board found that claims 1-18 of the '076 Patent are entitled to at least January 30, 2006 priority date and, therefore, U.S. Patent No. 8,291,941 does not qualify as prior art with respect to those claims. The reexamination certificate for the '076 Patent is attached hereto as Exhibit G.

18. Upon information and belief, National Express, in conjunction with EMSON and DAP, makes, uses, sells, and/or offers to sell, and/or induces others to make, use, sell, offer to sell,

hoses, which embody and/or use the inventions claimed in the '076 patent. Such infringing hoses include at least the XHOSE products.

19. Upon information and belief, EMSON, in conjunction with National Express and DAP, makes, uses, sells, and/or offers to sell, and/or induces others to make, use, sell, offer to sell, hoses, which embody and/or use the inventions claimed in the '076 patent. Such infringing hoses include at least the XHOSE products.

20. Upon information and belief, DAP, in conjunction with National Express and EMSON, makes, uses, sells, and/or offers to sell, and/or induces others to make, use, sell, offer to sell hoses, which embody and/or use the inventions claimed in the '076 patent. Such infringing hoses include at least the XHOSE products.

21. On June 21, 2016, the United States Patent and Trademark Office issued U.S. Patent No. 9,371,944 ("the '944 patent"), titled "Multi-layer Pressure Actuated Extendable Hose," to Gary Dean Ragner and Robert Daniel deRochemont, Jr. Ragner Corp. is the owner and assignee of all right, title and interest in and to the '944 patent, subject only to an exclusive license to Tristar. A true and correct copy of the '944 patent is attached hereto as Exhibit H.

22. Upon information and belief, National Express, in conjunction with EMSON and DAP, makes, uses, sells, and/or offers to sell, and/or induces others to make, use, sell, offer to sell hoses, which embody and/or use the inventions claimed in the '944 patent. Such infringing hoses include at least the XHOSE products.

23. Upon information and belief, EMSON, in conjunction with National Express and DAP, makes, uses, sells, and/or offers to sell, and/or induces others to make, use, sell, offer to sell hoses, which embody and/or use the inventions claimed in the '944 patent. Such infringing hoses include at least the XHOSE products.

24. Upon information and belief, DAP, in conjunction with National Express and EMSON, makes, uses, sells, and/or offers to sell, and/or induces others to make, use, sell, offer to sell hoses, which embody and/or use the inventions claimed in the '944 patent. Such infringing hoses include at least the XHOSE products.

25. Upon information and belief, in a meeting on August 23, 2011, Ragner Corp. disclosed information regarding its technology embodying the '448 patent and the scope of the '448 patent to National Express. Thus, Defendants have had actual notice of the '448 patent and their infringement thereof at least as early as August 23, 2011.

26. Defendants have had actual notice of the '076 patent and their infringement thereof at least as early as June 12, 2015, when Plaintiffs filed their *Markman* response briefing in this action, which notified Defendants of the '076 patent.

27. Defendants have had actual notice of the '944 patent and their infringement thereof at least as early as October 28, 2016, when Telebrands Corp. filed its motion to consolidate this action with *Telebrands Corp. v. Ragner Tech. Corp. et al.*, No. 2:16-cv-03594-ES-SCM (D.N.J.), a declaratory judgment action over the '944 patent.

28. Nonetheless, Defendants ignored the high probability of patent infringement that would result by using the patented methods in their advertising, and by developing, testing, using, advertising, selling, and offering to sell, and actively inducing others to use, advertise, sell, offer to sell hoses that practice the apparatuses and methods claimed in the Patents-In-Suit, including at least the XHOSE products.

29. Defendants, through their advertising, demonstrate and have demonstrated the functionality of the XHOSE products and used the patented methods, including in certain videos distributed on television and the Internet. The videos, along with the detailed instructions, further

instruct users and consumers to use the XHOSE products in a manner that infringes claims of the Patents-In-Suit. In fact, unless Defendants' customers follow the instructions and perform the steps of the claimed methods, the XHOSE products cannot be used.

COUNT I
INFRINGEMENT OF THE '448 PATENT

30. Plaintiffs repeat and reallege each of the foregoing paragraphs by reference as if fully set forth herein.

31. The '448 patent remains valid, enforceable, and unexpired.

32. Upon information and belief, Defendants directly infringed and are still infringing, both literally and under the doctrine of equivalents, at least claims 1-3, 13-15, 18, 19, 26, and 27 of the '448 patent by performing the claimed methods in their advertising, testing the products practicing the claimed methods, offering for sale for use of the claimed methods, and offering for sale hoses that practice one or more methods claimed in the '448 patent. Such infringing hoses include at least the XHOSE products.

33. Upon information and belief, Defendants have induced and continue to actively induce their customers, including retail customers and wholesale customers, to directly infringe the '448 patent, both literally and under the doctrine of equivalents. Defendants knew and know of the '448 patent, and that their sale of the XHOSE products practicing the claimed methods constitutes infringement and would cause their customers to infringe at least claims 13-15, 18, and 26 of the '448 patent. Through Defendants' extensive advertising of and detailed instructions on how to use the XHOSE products, Defendants specifically encourage and instruct consumers and wholesale customers to engage in uses of the XHOSE products that infringe one or more claims of the '448 patent. Defendants have done so with specific intent to infringe the '448 patent. As a

result of Defendants' inducement, Defendants' customers did directly infringe and continue to infringe claims 13-15, 18, and 26 of the '448 patent.

34. Upon information and belief, Defendants, with knowledge of the '448 patent, have made, imported, tested, distributed, used, sold, and offered for sale the XHOSE products and components and continue to test, import, distribute, use, offer for sale, and sell to retail customers and wholesale customers XHOSE products and components that can only reasonably be used to infringe the claimed methods of the '448 patent, and such customers directly infringed at least claims 13-15, 18, and 26 of the '448 patent by using such XHOSE products and components. These XHOSE products can only reasonably be used by customers to directly infringe claims of the '448 patent and have no substantial non-infringing uses. XHOSE products are not staples of commerce. Defendants have committed and continue to commit contributory infringement of claims 13-15, 18, and 26 of the '448 patent.

35. For example, and without limitation, Defendants and/or their customers using a XHOSE product input water into the XHOSE product, which has an outer cover and a rubber tube inside the outer cover that are connected at each end. The rubber tube has a hollow interior through which water flows. The rubber tube generates a force tending to retract the outer cover longitudinally along its length. When Defendants and/or their customers use the XHOSE product, in normal operation, water flows into the rubber tube in the XHOSE product and the water flow out of the rubber tube is restricted. This restriction causes a pressure increase within the rubber tube above the ambient pressure outside the XHOSE product, which causes a force that tends to extend the XHOSE product and is directed in the opposite direction of the force generated by the rubber tube. This force from the restriction of the water flow can be adjusted in its magnitude less than or greater than the force caused by the rubber tube, by changing the pressure of the water

inside the rubber tube. The length of the XHOSE product changes based on the magnitude of this force.

36. Defendants' infringements of the '448 patent have injured Plaintiffs. Plaintiffs are entitled to recover damages adequate to compensate them for such infringement, including lost profits, lost conveyed sales, and losses resulting from price erosion, but in no event less than a reasonable royalty.

37. Defendants' commercial activities relating to the infringing hoses have continued and are continuing with knowledge of the '448 patent, and with knowledge of their infringement of the '448 patent. These commercial activities are, at a minimum, done with reckless disregard of Plaintiffs' rights under the '448 patent. Defendants' acts of infringement have therefore been intentional, deliberate, and willful.

38. This case is exceptional and, therefore, Plaintiffs are entitled to an award of attorneys' fees.

39. Plaintiffs have suffered irreparable harm as a result of lost market share, price erosion, consumer product confidence, and the direct competition between Plaintiffs and Defendants in this emerging market. Defendants further may be unable to satisfy money judgment. The public interest would not be harmed should an injunction be granted, as Plaintiffs have the manufacturing and marketing capacity to meet market demand.

COUNT II
INFRINGEMENT OF THE '076 PATENT

40. Plaintiffs repeat and reallege each of the foregoing paragraphs by reference as if fully set forth herein.

41. The '076 patent remains valid, enforceable, and unexpired.

42. Upon information and belief, Defendants directly infringed and are still infringing, both literally and under the doctrine of equivalents, at least claims 1, 2, 4, 5, 7, 12, 13, and 15-18 of the '076 patent by making, using, selling, and/or offering to sell, and/or importing into the United States hoses that embody or use the inventions embodied in at least claims 1, 2, 4, 5, 7, 12, 13, and 15-18 of the '076 patent, and/or performing the claimed methods in their advertising, testing the products practicing the claimed methods, offering for sale for use of the claimed methods, and offering for sale hoses that practice one or more claims of the '076 patent, and/or by directing or controlling their customers who need to perform the claimed methods as instructed by Defendants' advertisements and product instructions to use the XHOSE products. Such infringing hoses include at least the XHOSE products.

43. For example, and without limitation, Defendants and/or their customers use a XHOSE product to transport water by introducing water into the XHOSE product, which has a non-elastic but flexible outer cover with two ends and a substantially hollow interior. The XHOSE product also has an elastic rubber tube that can expand, with two ends and a substantially hollow interior. One end of the rubber tube and the outer cover are secured to a water valve coupler and the other ends of the rubber tube and the outer cover are secured to a fluid flow coupler, while the rubber tube and the outer cover are not connected between the couplers. Defendants and/or their customers, in normal operation, connect the water valve coupler to a water source and the fluid flow coupler to a fluid flow restrictor including, but not limited to, a flow adapter or a spray nozzle. In normal operation, Defendants and/or their customers, by turning on the water source and/or restricting the water flow, increase water pressure at the region between the water valve coupler and the fluid flow coupler. This increase in water pressure expands the rubber tube longitudinally and laterally, which results in extending the XHOSE product. The extended XHOSE product

automatically contracts to a decreased length and width when the water pressure at the region between the water valve coupler and the fluid flow coupler is removed, due to the rubber tube's tendency to retract. When there is no water pressure, the rubber tube, with its normal width and with no securing between the couplers, moves freely with respect to the outer tube.

44. Defendants' infringements of the '076 Patent have injured Plaintiffs. Plaintiffs are entitled to recover damages adequate to compensate them for such infringement, including lost profits, lost conveyed sales, and losses resulting from price erosion, but in no event less than a reasonable royalty.

45. Defendants' commercial activities relating to the infringing hoses have continued and are continuing with knowledge of the '076 patent, and with knowledge of their infringement of the '076 patent. These commercial activities are, at a minimum, done with reckless disregard of Plaintiffs' rights under the '076 patent. Defendants' acts of infringement have therefore been intentional, deliberate, and willful.

46. This case is exceptional and, therefore, Plaintiffs are entitled to an award of attorneys' fees.

47. Plaintiffs have suffered irreparable harm as a result of lost market share, price erosion, consumer product confidence, and the direct competition between Plaintiffs and Defendants in this emerging market. Defendants further may be unable to satisfy money judgment. The public interest would not be harmed should an injunction be granted, as Plaintiffs have the manufacturing and marketing capacity to meet market demand.

COUNT III
INFRINGEMENT OF THE '944 PATENT

48. Plaintiffs repeat and reallege each of the foregoing paragraphs by reference as if fully set forth herein.

49. The '944 patent remains valid, enforceable, and unexpired.

50. Upon information and belief, Defendants directly infringed and are still infringing, both literally and under the doctrine of equivalents, at least claims 12-17 of the '944 patent by making, using, selling, offering to sell, and/or importing into the United States hoses that embody or use the inventions embodied in at least claims 12-17 of the '944 patent, and/or performing the claimed methods in their advertising, testing the products practicing the claimed methods, offering for sale for use of the claimed methods, and offering for sale hoses that practice at least claims 12-17 the '944 patent, and/or by directing or controlling their customers who need to perform the claimed methods as instructed by Defendants' advertisements and product instructions to use the XHOSE products. Such infringing hoses include at least the XHOSE products.

51. For example, and without limitation, the XHOSE products are garden hoses without spring coils that have an outer cover and a rubber tube with two ends and a substantially hollow interior. One end of the rubber tube and the outer cover are secured to a water valve coupler and the other ends of the rubber tube and the outer cover are secured to a fluid flow coupler. The water valve coupler is adapted to connect to a water source and the fluid flow coupler is adapted to connect to a fluid flow restrictor, including but not limited to a flow adapter or a spray nozzle. The fluid flow restrictor, by restricting the water flow out of the rubber tube, creates a water pressure at the region between the water valve and fluid flow couplers, which expands the rubber tube both longitudinally and laterally and increases the length of the XHOSE product. When the water pressure at the region between the couplers is released, the XHOSE product retracts back due to the rubber tube's tendency to retract back to its original length and width.

52. Defendants' infringements of the '944 patent have injured Plaintiffs. Plaintiffs are entitled to recover damages adequate to compensate them for such infringement, including lost

profits, lost conveyed sales, and losses resulting from price erosion, but in no event less than a reasonable royalty.

53. Defendants' commercial activities relating to the infringing hoses have continued and are continuing with knowledge of the '944 patent, and with knowledge of its infringement of the '944 patent. These commercial activities are, at a minimum, done with reckless disregard of Plaintiffs' rights under the '944 patent. Defendants' acts of infringement have therefore been intentional, deliberate, and willful.

54. This case is exceptional and, therefore, Plaintiffs are entitled to an award of attorneys' fees.

55. Plaintiffs have suffered irreparable harm as a result of lost market share, price erosion, consumer product confidence, and the direct competition between Plaintiffs and Defendants in this emerging market. Defendants further may be unable to satisfy money judgment. The public interest would not be harmed should an injunction be granted, as Plaintiffs have the manufacturing and marketing capacity to meet market demand.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court enter judgment against Defendants National Express, EMSON, and DAP as follows:

- A. That Defendants have infringed and are infringing the Patents-In-Suit;
- B. 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 Patents-In-Suit;
- C. That Defendants be ordered to pay Plaintiffs damages sufficient to compensate for Defendants' infringement of the Patents-In-Suit, including lost profits, losses arising from price erosion, and/or a reasonable royalty for past sales, together with prejudgment interest;

D. A finding of willful infringement of the Patents-In-Suit by Defendants and an award to Plaintiffs of enhanced damages pursuant to 35 U.S.C. § 284;

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

F. A permanent injunction under 35 U.S.C. § 283 prohibiting further infringement of the Patents-In-Suit.

G. That Plaintiffs 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: July 6, 2018

Respectfully submitted,



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Counsel for Plaintiffs:

Tristar Products Inc. and

Ragner Technology Corporation

CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2

Plaintiffs, by their undersigned counsel, hereby certify pursuant to Local Civil Rule 11.2 that the matters in controversy are not the subject of any other action pending in any other court or of any other pending arbitration or administrative proceeding.

Dated: July 6, 2018

Respectfully submitted,



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Counsel for Plaintiffs:

Tristar Products, Inc. and

Ragner Technology Corporation

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 seek injunctive relief, and therefore this action is not appropriate for compulsory arbitration.

Dated: July 6, 2018

Respectfully submitted,



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