

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

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**TRISTAR PRODUCTS, INC.** )  
**(a Florida corporation), and** )  
**KE M.O. HOUSE CO., LTD. (a Chinese** )  
**Corporation),** )

Plaintiff,

v.

**OCEAN STATE JOBBERS, INC.** )  
**(a Rhode Island corporation), and** )  
**ZHEJIANG COOKER KING COOKER** )  
**CO., LTD,** )  
**(a Chinese corporation),** )

Defendants.

**CIVIL ACTION FILE NUMBER:  
1:17-cv-01767-RMB-JS**

*Document filed Electronically*

**JURY TRIAL DEMANDED**

**SECOND AMENDED COMPLAINT FOR INTELLECTUAL PROPERTY  
INFRINGEMENT AND DEMAND FOR JURY TRIAL**

Plaintiff, Tristar Products, Inc., a Florida corporation (hereinafter “Tristar Products”) and KE M.O. House Co., Ltd. (hereinafter “KEMO”) (collectively, “Plaintiffs”), by their undersigned attorneys, for their Complaint against Ocean State Jobbers, Inc., a Rhode Island corporation (“Ocean State”) and Zhejiang Cooker King Cooker Co., Ltd., a Chinese corporation (“Cooker King”) (collectively, “Defendants”), upon actual knowledge with respect to themselves and their own acts, and upon information and belief as to all other matters, allege as follows:

**THE PARTIES**

1. Plaintiff Tristar Products is a Florida corporation having its corporate headquarters at 492 Route 46 East, Fairfield, New Jersey 07004.

2. KEMO is a Chinese corporation having its corporate headquarters at Jidali Industrial Park, Gonghe Village, Shajing County, Baoan District, Shenzhen City, Guangdong Province, 518104 China.

3. Tristar and KEMO are the assignees of U.S. Patent No. D772,641 (the “’641 Patent”), protecting the design of a pan for use in cooking. Tristar utilizes the design protected by the ’641 Patent in its highly successful “COPPER CHEF” square pan. The COPPER CHEF square pan has been the subject of extensive promotion and has attained immense success in the marketplace. A true and correct copy of the ’641 Patent is attached as Exhibit A.

4. Upon information and belief, Defendant Ocean State is a Rhode Island corporation having its corporate headquarters at 375 Commerce Park, North Kingstown, Rhode Island 02852.

5. Upon information and belief, Defendant Cooker King is a Chinese corporation having its corporate headquarters at No. 6 Yongdong West Road, Changcheng Industrial Zone, Yongkang, Zhejiang, China 321300.

**JURISDICTION AND VENUE**

6. This is a civil action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code and for trade dress infringement arising under the Lanham Act, Title 15 of the United States Code.

7. 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 together with related claims for patent infringement and unfair competition. The

Court has supplemental jurisdiction over the related state law claims pursuant to 28 U.S.C. § 1338(b) and 28 U.S.C. § 1367.

8. Upon information and belief, personal jurisdiction is proper in this Court as Ocean State solicits business and conducts business within the State of New Jersey, including but not limited to sales through its three New Jersey stores located in Sparta Township, Clinton, and Shrewsbury. A copy of a printout from the website [www.oceanstatejob.com/locate/](http://www.oceanstatejob.com/locate/) identifies the three New Jersey store locations (attached as Exhibit B) and demonstrates that Ocean State markets and sells to customers within the State of New Jersey. Furthermore, at least one Ocean State New Jersey retail location offers the accused product for sale. This is evidenced by several photographs (attached Exhibit C) and a receipt for the purchase of an accused product (attached as Exhibit D). Therefore, the Court has personal jurisdiction over Ocean State 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).

9. Upon information and belief, personal jurisdiction is proper in this Court as Cooker King solicits business and conducts business within the State of New Jersey, including but not limited to sales through at least Defendant Ocean State's three New Jersey retail locations. A copy of an email from Cooker King admitting manufacture, importation, and sales of the accused product to at least one retailer (attached as Exhibit E) demonstrates commercial sales to at least Ocean State as shown in several invoices (attached as Exhibit F). Therefore, the Court has personal jurisdiction over Cooker King 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).

## **BACKGROUND**

### **A. The Copper Chef Design Patent**

10. On November 29, 2016, U.S. Patent No. D772,641 (the “‘641 patent”) entitled “Pan” duly and legally issued to Keith Mirchandani and Mo-Tsan Tsai. The ‘641 patent was assigned to Tristar Products and KE M.O. House Co., Ltd. on May 23, 2016 by Mo-Tsan Tsai and June 20, 2016 by Keith Mirchandani. The assignment was duly recorded with the United States Trademark and Patent Office on October 12, 2016. Plaintiffs maintain the exclusive right to make, have made, use, distribute, sell, offer for sale, and import in the United States certain products covered by the ‘641 patent.

11. The ‘641 patent protects the design of a pan for use in cooking. Tristar utilizes the design that is protected by the ‘641 patent in its highly successful “COPPER CHEF” square pan. The COPPER CHEF pan has been the subject of extensive promotion and has attained immense success in the marketplace.

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

13. A side-by-side comparison of the products reveals the infringing nature of the COPPER SQUARE PAN product:

Design of the '641 Patent	Defendants' COPPER SQUARE PAN Product
	
	

**B. The Copper Chef Trademarks**

14. On September 6, 2016, the United States Patent and Trademark Office issued to Tristar Products U.S. Trademark Reg. No. 5037596 for “COPPER CHEF” in International Class 021 for “Cookware, namely, copper pots and pans” (the “COPPER CHEF word mark”). A true and correct copy of the registration certificate is attached hereto as Exhibit G.

15. On September 13, 2016, the United States Patent and Trademark office issued to Tristar Products U.S. Trademark Reg. No. 5042933 for the following stylized mark:



in International Class 021 for “Cookware, namely, copper pots and pans” (the “COPPER CHEF stylized mark”). A true and correct copy of the registration certificate is attached hereto as Exhibit H.

16. The COPPER CHEF word mark and the COPPER CHEF stylized mark (collectively, the “COPPER CHEF marks”) are arbitrary and fanciful marks entitled to the highest level of protection afforded by law. The COPPER CHEF marks are valid and subsisting and in full force and effect.

17. The COPPER CHEF marks are associated with Tristar in the minds of consumers, the public, and the industry.

18. Based on Tristar Products’ extensive advertising, sales, and the wide popularity of the COPPER CHEF products, the COPPER CHEF marks have acquired secondary meaning so that the products bearing such marks are associated by consumers, the public, and the industry as a product of Tristar Products.

19. Defendants, without authorization, have placed the COPPER CHEF stylized mark on the bottom of the COPPER SQUARE PAN as pictured below:



20. Defendants have manufactured, imported into the United States, offered for sale, and sold counterfeit copper-colored square pans bearing fake COPPER CHEF labels.

21. Upon information and belief, Defendants began using the COPPER CHEF marks well after Tristar Products' COPPER CHEF products gained public recognition.

22. Upon information and belief, Defendants' sell and offer for sale the COPPER SQUARE PAN in at least three New Jersey retail locations and in New York.

23. Defendants' are using, without authorization, consent, or approval the COPPER CHEF marks.

24. Defendants purposefully used the COPPER CHEF marks with the intent to trade upon the goodwill earned by Tristar Products and to improperly benefit from Tristar Products' advertising campaigns.

25. Upon information and belief, as a result of Defendants' use of the COPPER CHEF marks, consumers are likely to be confused and the public is likely to be deceived.

26. Defendants' use of the COPPER CHEF word mark, the COPPER CHEF stylized mark, and the COPPER CHEF design constitute false or misleading statements intended to and having a tendency to deceive a substantial portion of consumers.

27. Defendants' false or misleading statements are intended to influence consumers' decisions to purchase the COPPER SQUARE PAN product rather than the genuine COPPER CHEF products.

28. As a result of Defendants' false or misleading statements, Tristar Products' goodwill and reputation associated with the COPPER CHEF products will be damaged as consumers will affiliate the counterfeit COPPER SQUARE PAN products with Tristar Products and the COPPER CHEF products.

**C. The Copper Chef Pan Trade Dress**

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





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

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

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

33. Defendants' COPPER SQUARE PAN product copies the look and feel of the COPPER CHEF pan trade dress and is confusingly similar to the COPPER CHEF pan trade dress.

34. On information and belief, Defendants knew of the COPPER CHEF pan trade dress prior to the first promotion and sale of the COPPER SQUARE PAN product.

35. Defendants purposefully adopted an appearance for their competing COPPER SQUARE PAN product with the intent to trade upon the goodwill earned by Plaintiff.

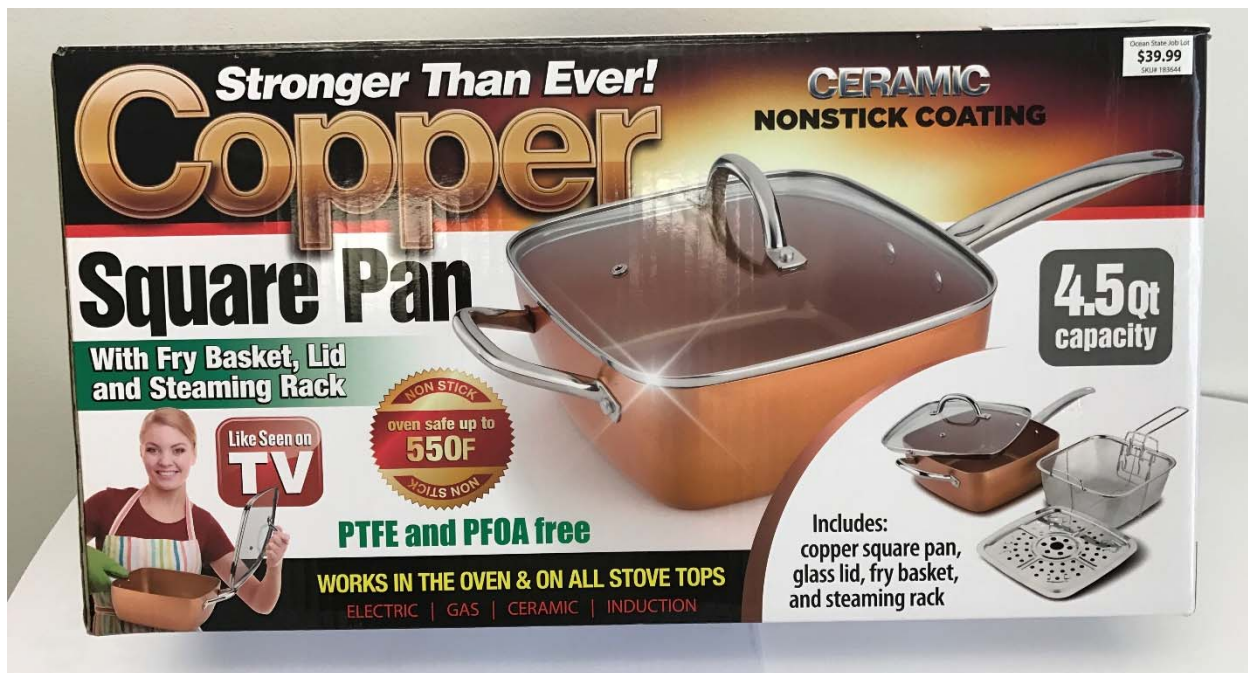
36. Upon information and belief, as a result of Defendants' trade dress infringement, consumers are likely to be confused.

**E. Defendants' False Advertising**

37. The "AS SEEN ON TV" logo identifies products sold and advertised through national direct response television commercial campaigns. Consumers recognize the "AS SEEN ON TV" logo on a product as signifying that the product is and was extensively and nationally advertised on television. The "AS SEEN ON TV" logo is a significant and important marketing tool for the sale of consumer products.

38. Tristar Products prominently markets the COPPER CHEF products with the "AS SEEN ON TV" logo.

39. Defendants have affixed the following "LIKE SEEN ON TV" logo to the packaging for the COPPER SQUARE PAN:



40. Upon information and belief, Defendants do not advertise the COPPER SQUARE PAN product on television.

41. Defendants' use of the "LIKE SEEN ON TV" logo was adopted to confuse consumers and to improperly benefit from Tristar's extensive television advertising.

42. Upon information and belief, as a result of Defendants' use of the "LIKE SEEN ON TV" logo, consumers are likely to be confused and the public is likely to be deceived.

43. Defendants' use of the "LIKE SEEN ON TV" logo constitutes a false or misleading statement intended to and having a tendency to deceive a substantial portion of consumers.

44. Defendants' false or misleading statements are intended to influence consumers' decisions to purchase the COPPER SQUARE PAN product rather than the genuine COPPER CHEF products.

### **COUNT I**

#### **INFRINGEMENT OF THE '641 PATENT BY DEFENDANTS**

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

46. Upon information and belief, Defendants directly infringe, infringe under the doctrine of equivalents, contributorily infringe, and/or actively induce infringement of the '641 patent by making, using, selling, and/or offering to sell, or inducing others to make, use, sell, or offer to sell pans that embody or use the ornamental design claimed in the '641 patent. Such infringing pans include at least the COPPER SQUARE PAN product depicted in Paragraph 19, above.

47. An ordinary observer, giving as much attention typical of a purchaser, would find the design of Defendants' COPPER SQUARE PAN product to be substantially the same as Plaintiff's patented design.

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

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

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

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

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

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

## **COUNT II**

### **FEDERAL TRADEMARK INFRINGEMENT BY DEFENDANTS**

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

55. This claim arises under 15. U.S.C. § 1114.

56. Upon information and belief, Defendants' unauthorized use in interstate commerce of the COPPER CHEF word mark has caused and is likely to cause confusion, mistake, or deception as to the (a) characteristics, qualities, or origin of the COPPER SQUARE PAN product, (b) an affiliation, connection, or association between Plaintiff and Defendants, and/or (c) sponsorship or approval of the COPPER SQUARE PAN product by Plaintiff.

57. Upon information and belief, Defendants have intentionally adopted and used the COPPER CHEF word mark so as to profit from Plaintiff's reputation by confusing the public as to the source, origin, sponsorship, or approval of Defendants' COPPER SQUARE PAN product, with the intent of deceiving and misleading the public, and to wrongfully trade on the goodwill and reputation of Plaintiff.

58. Defendants' acts of trademark infringement have caused and will continue to cause Tristar Products damages for which Tristar Products is entitled to compensation.

59. Defendants' acts of trademark infringement caused and will continue to cause Tristar Products damages for which Tristar Products lacks an adequate remedy at law.

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

### **COUNT III**

#### **FEDERAL TRADEMARK INFRINGEMENT BY DEFENDANTS**

61. Plaintiffs reallege and incorporate the allegations set forth in Paragraph 1 through Paragraph 60 herein.

62. This claim arises under 15. U.S.C. § 1114.

63. Upon information and belief, Defendants' unauthorized use in interstate commerce of the COPPER CHEF stylized mark has caused and is likely to cause confusion, mistake, or

deception as to the (a) characteristics, qualities, or origin of the COPPER SQUARE PAN product, (b) an affiliation, connection, or association between Plaintiff and Defendants, and/or (c) sponsorship or approval of the COPPER SQUARE PAN product by Plaintiff.

64. Upon information and belief, Defendants have intentionally adopted and used the COPPER CHEF stylized mark so as to profit from Plaintiff's reputation by confusing the public as to the source, origin, sponsorship, or approval of Defendants' COPPER SQUARE PAN product, with the intent of deceiving and misleading the public, and to wrongfully trade on the goodwill and reputation of Plaintiff.

65. Defendants' acts of trademark infringement have caused and will continue to cause Tristar Products damages for which Tristar Products is entitled to compensation.

66. Defendants' acts of trademark infringement caused and will continue to cause Tristar Products damages for which Tristar Products lacks an adequate remedy at law.

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

#### **COUNT IV**

#### **FEDERAL UNFAIR COMPETITION, FALSE DESIGNATION OF ORIGIN, AND FALSE ADVERTISING BY DEFENDANTS**

68. Plaintiffs reallege and incorporate the allegations set forth in Paragraph 1 through Paragraph 67 herein.

69. This claim arises under 15. U.S.C. § 1125.

70. Upon information and belief, Defendants' unauthorized use in interstate commerce of the COPPER CHEF word mark has caused and is likely to cause confusion, mistake, or deception as to the (a) characteristics, qualities, or origin of the COPPER SQUARE PAN product,

(b) an affiliation, connection, or association between Plaintiff and Defendants, and/or (c) sponsorship or approval of the COPPER SQUARE PAN product by Plaintiff.

71. Such actions, as used in commercial advertising, have misrepresented and continue to misrepresent the nature, characteristics, or qualities of Defendants' COPPER SQUARE PAN product.

72. Upon information and belief, Defendants have intentionally adopted and used the COPPER CHEF word mark so as to profit from Plaintiff's reputation by confusing the public as to the source, origin, sponsorship, or approval of Defendants' COPPER SQUARE PAN product, with the intent of deceiving and misleading the public, and to wrongfully trade on the goodwill and reputation of Plaintiff.

73. Defendants' use of the COPPER CHEF word mark constitutes false or misleading statements.

74. Defendants' false or misleading statements are intended to influence consumers' decisions to purchase the COPPER SQUARE PAN product.

75. As a result of Defendants' false or misleading statements, Tristar Products' goodwill and reputation associated with the COPPER CHEF products will be damaged.

76. Defendants' acts of trademark infringement, unfair competition, and false designation of origin have caused and will continue to cause Tristar Products damages for which Tristar Products is entitled to compensation.

77. Defendants' acts of trademark infringement, unfair competition, and false designation of origin have caused and will continue to cause Tristar Products damages for which Tristar Products lacks an adequate remedy at law.



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

**COUNT V**

**FEDERAL UNFAIR COMPETITION, FALSE DESIGNATION OF ORIGIN, AND  
FALSE ADVERTISING BY DEFENDANTS**

79. Plaintiffs reallege and incorporate the allegations set forth in Paragraph 1 through Paragraph 78 herein.

80. This claim arises under 15. U.S.C. § 1125.

81. Upon information and belief, Defendants' unauthorized use in interstate commerce of the COPPER CHEF stylized mark has caused and is likely to cause confusion, mistake, or deception as to the (a) characteristics, qualities, or origin of the COPPER SQUARE PAN product, (b) an affiliation, connection, or association between Plaintiff and Defendants, and/or (c) sponsorship or approval of the COPPER SQUARE PAN product by Plaintiff.

82. Such actions, as used in commercial advertising, have misrepresented and continue to misrepresent the nature, characteristics, or qualities of Defendants' COPPER SQUARE PAN product.

83. Upon information and belief, Defendants have intentionally adopted and used the COPPER CHEF stylized mark so as to profit from Plaintiff's reputation by confusing the public as to the source, origin, sponsorship, or approval of Defendants' COPPER SQUARE PAN product, with the intent of deceiving and misleading the public, and to wrongfully trade on the goodwill and reputation of Plaintiff.

84. Defendants' use of the COPPER CHEF word mark constitutes false or misleading statements.

85. Defendants' false or misleading statements are intended to influence consumers' decisions to purchase the COPPER SQUARE PAN product.

86. As a result of Defendants' false or misleading statements, Tristar Products' goodwill and reputation associated with the COPPER CHEF products will be damaged.

87. Defendants' acts of trademark infringement, unfair competition, and false designation of origin have caused and will continue to cause Tristar Products damages for which Tristar Products is entitled to compensation.

88. Defendants' acts of trademark infringement, unfair competition, and false designation of origin have caused and will continue to cause Tristar Products damages for which Tristar Products lacks an adequate remedy at law.

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

## **COUNT VI**

### **FEDERAL TRADEMARK COUNTERFEITING BY DEFENDANTS**

90. Plaintiffs reallege and incorporate the allegations set forth in Paragraph 1 through Paragraph 89 herein.

91. This claim arises under 15 U.S.C. § 1114.

92. Defendants have used spurious designations that are identical to, or substantially indistinguishable from, the COPPER CHEF marks on goods covered by the registrations for the COPPER CHEF marks.

93. Defendants have used these spurious designations knowing they are counterfeit in connection with the advertisement, promotion, sale, offering for sale, and distribution of goods.

94. Defendants' use of the COPPER CHEF marks to advertise, promote, sell, offer for sale, and distribute Defendants' COPPER SQUARE PAN product was and is without the consent of Tristar Products.

95. Defendants' unauthorized use of the COPPER CHEF marks on and in connection with the advertisement, promotion, sale, offering for sale, and distribution of cookware in retail stores constitutes use of the COPPER CHEF marks in commerce.

96. Defendants' unauthorized use of the COPPER CHEF marks is likely to cause confusion, mistake, and deception among consumers as to the (a) characteristics, qualities or origin of the COPPER SQUARE PAN product, (b) an affiliation, connection or association between Plaintiff and Defendants, and/or (c) sponsorship or approval of the COPPER SQUARE PAN product by Tristar Products.

97. Defendants' unauthorized use of the COPPER CHEF marks is likely to cause the public to believe that Defendants' COPPER SQUARE PAN product is the same as Tristar Products' COPPER CHEF pan or that Defendants are affiliated, connected, or associated with Tristar or that Defendants are sponsored or approved by Tristar Products.

98. Defendants' unauthorized use of the COPPER CHEF marks is likely to result in Defendants unfairly benefiting from Tristar Products' advertising and promotion and profiting from the reputation of Tristar Products and its COPPER CHEF marks.

99. Defendants' use of the COPPER CHEF marks constitute trademark counterfeiting in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

100. Defendant's act of trademark counterfeiting are willful and malicious.

101. Defendants are liable to Tristar Products for (a) statutory damages in the amount of up to \$1,000,000 for each mark counterfeiting as provided in 15 U.S.C. § 1117(c) of the Lanham Act, or at Tristar Products' election, an amount representing three (3) times Tristar Products'

damages or Defendants' illicit profits; and (b) reasonable attorney's fees, investigative fees, and pre-judgment interest pursuant to 15 U.S.C. § 1117(b).

**COUNT VII**

**TRAFFICKING IN COUNTERFEIT MARKS**

102. Plaintiffs reallege and incorporate the allegations set forth in Paragraph 1 through Paragraph 101 herein.

103. This claim arises under N.J.S.A. § 56:3-13.16.

104. Defendants' deliberately and intentionally used a reproduction of the COPPER CHEF marks without Tristar's consent, authorization, or permission Tristar Products' COPPER CHEF marks in connection with the sale and advertisement of cookware within the State of New Jersey, with the intention to deceive, or assist in deceiving the public as to the source, sponsorship, or origin of the cookware or with the intention to defraud, or to assist defrauding Tristar Products, constituting trafficking or attempting to traffic in counterfeit marks in violation of N.J.S.A. § 56:3-13.16.

105. Defendants' acts have caused and will continue to cause irreparable damage and injury to Tristar Products if not enjoined by this Court.

106. Tristar Products has no adequate remedy at law.

**COUNT VIII**

**FEDERAL TRADEMARK DILUTION**

107. Plaintiffs reallege and incorporate the allegations set forth in Paragraph 1 through Paragraph 106 herein.

108. This claim arises under 15 U.S.C. §1125(c)(1).

109. Tristar is the exclusive owner of the COPPER CHEF marks.

110. The COPPER CHEF marks are famous and distinctive within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. §1125(c).

111. The COPPER CHEF marks have gained widespread publicity and public recognition in New Jersey and around the United States.

112. Defendants' acts constitute use in commerce of the COPPER CHEF marks.

113. Tristar Products has not licensed or otherwise authorized the Defendants' use of the COPPER CHEF marks.

114. Consumers are likely to purchase Defendants' products in the erroneous belief that the Defendants are associated with, sponsored by, or affiliated with Tristar Products, and/or that Tristar Products is the source of those products.

115. Defendants' use of the COPPER CHEF marks dilute and/or are likely to dilute the distinctive quality of the COPPER CHEF marks and reduce the ability of such marks to identify and distinguish Tristar's COPPER CHEF products.

116. Upon information and belief, Defendants' unlawful use of the COPPER CHEF marks in connection with inferior goods is also likely to tarnish the COPPER CHEF marks and cause blurring in the minds of consumers between Tristar Products and the Defendants, thereby reducing the value of the COPPER CHEF marks as unique identifiers of Tristar Products' products.

117. Defendants' acts have caused and will continue to cause Tristar Products damages for which Tristar Products lacks an adequate remedy at law.

## **COUNT IX**

### **FEDERAL FALSE ADVERTISING BY DEFENDANTS**

118. Plaintiffs reallege and incorporate the allegations set forth in Paragraph 1 through Paragraph 117 herein.

119. This claim arises under 15 U.S.C. §1125(b).

120. Defendants' use of the "LIKE SEEN ON TV" mark on the product packaging of the COPPER SQUARE PAN constitutes false or misleading statements of fact that the COPPER SQUARE PAN is advertised and promoted on television.

121. Defendants' false and/or misleading statements have actually deceived or have a tendency to deceive consumers who are interested in purchasing genuine "AS SEEN ON TV" products. Such deception will continue as Tristar Products continues to market and sell the COPPER CHEF products.

122. Defendants' deceptive acts are material and likely to influence the consumers' purchasing decisions.

123. Defendants' acts have caused and are likely to cause competitive or commercial injury to Tristar Products.

124. Upon information and belief, Defendants' false and/or misleading statements have been knowing, deliberate, willful, intended to cause confusion, intended to cause mistake, and intended to deceive the purchasing public and with the intent to trade on the goodwill and reputation of Tristar Products and the COPPER CHEF products.

**COUNT X**

**FEDERAL TRADE DRESS INFRINGEMENT AND  
UNFAIR COMPETITION BY DEFENDANTS  
(COPPER SQUARE PAN)**

125. Plaintiffs reallege and incorporate the allegations set forth in Paragraph 1 through Paragraph 124 herein.

126. This claim arises under 15. U.S.C. § 1125(a).

127. Upon information and belief, Defendants' unauthorized use in interstate commerce of Plaintiff's trade dress has caused and is likely to cause confusion, mistake or deception as to the (a) characteristics, qualities or origin of the COPPER SQUARE PAN product, (b) an affiliation,

connection or association between Plaintiff and Defendants, and/or (c) sponsorship or approval of the COPPER SQUARE PAN product by Plaintiff.

128. Such actions, as used in commercial advertising, have misrepresented and continue to misrepresent the nature, characteristics or qualities of Defendants' COPPER SQUARE PAN product.

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

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

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

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

**COUNT XI**

**COMMON LAW TRADEMARK INFRINGEMENT AND  
UNFAIR COMPETITION BY DEFENDANTS**

133. Plaintiffs reallege and incorporate the allegations set forth in Paragraph 1 through Paragraph 132 herein.

134. This claim arises under New Jersey common law.

135. Defendants have acted unfairly through their unauthorized use of Plaintiff's trade dress. Defendants' conduct has and will mislead and deceive consumers as to the identity and source of the COPPER SQUARE PAN product and COPPER SQUARE PAN Fry Basket.

136. Defendants have acted unfairly through their unauthorized use of Tristar Products' COPPER CHEF marks. Defendants' conduct has and will mislead and deceive consumers as to the identity and source of the COPPER SQUARE PAN.

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

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

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

**PRAYER FOR RELIEF**

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

- A. That Defendants have infringed and are infringing the '641 patent;
- B. That Defendants have infringed and are infringing the COPPER CHEF word mark;



C. That Defendants have infringed and are infringing the COPPER CHEF stylized mark;

D. That Defendants have and are falsely designating the origin of the COPPER SQUARE PAN product;

E. That Defendants have and are falsely advertising the COPPER SQUARE PAN product;

F. That Defendants have counterfeited and are counterfeiting the COPPER CHEF marks;

G. That Defendants have diluted and are diluting the COPPER CHEF marks;

H. That Defendants have infringed and are infringing Plaintiff's trade dress;

I. That Defendants have engaged in unfair competition;

J. That Defendants and their officers, directors, agents, employees, attorneys, and those persons in active concert or participation with any of them, be preliminarily and permanently enjoined from further acts of infringement of the '641 patent;

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

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

M. 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 unfair competition;

N. 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 false advertising;

O. 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 false designation of origin;

P. 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 trademark dilution;

Q. 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 trademark counterfeiting;

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

S. That Defendants be ordered to pay Plaintiffs an award of Defendants' total profits for infringement of the '641 patent in accordance with 35 U.S.C. § 289;

T. That Defendants be ordered to pay Tristar Products damages sufficient to compensate for said Defendants' infringement of Tristar Products' trademarks, with pre-judgment and post-judgment interest;

U. That Defendants be ordered to pay Tristar Products damages sufficient to compensate for said Defendants' acts of false designation of origin, with pre-judgment and post-judgment interest;

V. That Defendants be ordered to pay Tristar Products damages sufficient to compensate for said Defendants' acts of false advertising, with pre-judgment and post-judgment interest;

W. That Defendants be ordered to pay Tristar Products damages sufficient to compensate for said Defendants' acts of trademark counterfeiting, with pre-judgment and post-judgment interest;

X. That Defendants be ordered to pay Tristar Products damages sufficient to compensate for said Defendants' acts of trademark dilution, with pre-judgment and post-judgment interest

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

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

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

BB. 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.

Respectfully submitted this 23<sup>rd</sup> day of December 2019,

**Bakos & Kritzer**

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 23, 2019, a copy of the foregoing was duly served upon counsel of record for Defendant, in the manner indicated:

- Via First Class Mail
- Via Overnight Courier
- Via Electronic Mail
- Via Facsimile
- Via Hand Delivery
- Via ECF

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