

4. On information and belief, and according to the record of the New Jersey Secretary of State, Defendant is a New Jersey corporation, incorporated in 2015, with a principal place of business in New Jersey at 537 New Durham Road, Piscataway, New Jersey.

5. Defendant describes itself as “a leading supplier of value and private label brands within the health, beauty, and household products segments” and claims that it “distributes its products through one facilities (sic) in New Jersey.” See <http://www.tsmbrands.com/about.html>

JURISDICTION AND VENUE

6. This action arises under the Federal Patent Act, 35 U.S.C. §§100 et seq and the Federal Lanham Act, 15 U.S.C. § 100 et seq. This Court has federal question jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a), 35 U.S.C. § 281, and 15 U.S.C. § 1121.

7. Venue lies within this Court pursuant to 28 U.S.C. § 1391(a) and (b)(1) and 28 U.S.C. §1400, inasmuch as Defendant (i) resides in this District and (ii) has committed acts of infringement and has a regular and established place of business in this District.

COUNT I – PATENT INFRINGEMENT

8. Plaintiff is the owner of U.S. Design Patent 828,173 (the “Patent”), for the “ornamental design of a bottle” as shown in the Patent. A copy of the Patent is attached hereto as EXHIBIT 1.

9. The Patent is valid and subsisting.

10. Defendant is infringing the Patent by making, using, and/or selling products embodying the design of the Patent, including without limitation, “Luxury Men” 3 in 1 body wash, shampoo, and conditioner.

11. Plaintiff has never granted Defendant a license or other authority to use the patented design.

12. Upon information and belief, Defendant's acts of infringement are willful, inasmuch as Defendant intentionally copied the patented design with full knowledge of the Patent.

13. The acts of Defendant have caused irreparable harm and damage to Plaintiff and will continue to cause irreparable harm to Plaintiff, and have caused and will continue to cause Plaintiff to suffer monetary damage in an amount thus far not determined.

14. Plaintiff has no adequate remedy at law for the injury alleged in this count, and said injury is, in part, intangible in nature and not capable of being fully measured or valued entirely in terms of monetary damages.

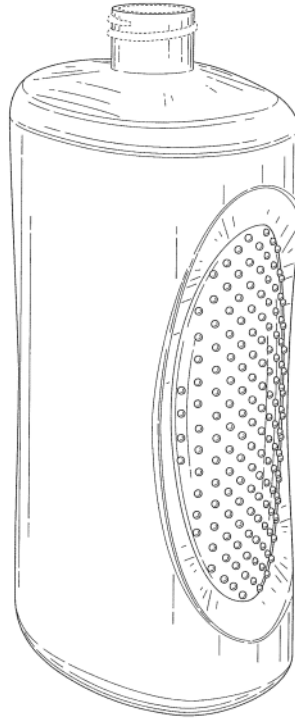
15. Notwithstanding the inadequacy of and the difficulty of presently fully ascertaining Plaintiff's monetary damages caused by Defendant's wrongful conduct, Plaintiff is informed and believes and, based upon such information and belief, alleges that said conduct has resulted in irreparable, direct and proximate damages to Plaintiff. Plaintiff seeks leave of this Court to amend its Complaint to allege the full nature and extent of said monetary damages if, when and to the extent the damages are ascertained.

COUNT II
TRADE DRESS INFRINGEMENT, FALSE DESIGNATION OF ORIGIN,
AND UNFAIR COMPETITION (LANHAM ACT § 43(a))

16. Plaintiff repeats and incorporates by reference the allegations in the preceding paragraphs of this Complaint as if fully stated herein.

17. For purposes of this Count and all other trademark, unfair competition claims, Plaintiff's "Trade Dress" is defined as the overall appearances of Plaintiff's bottle design, without reference to the color of the bottle, its packaging or its content. Though the Trade Dress is defined as, and by, the actual appearance of the bottle, it can be described as encompassing an hour glass

or “waisted” bottle with indentations on each side of the bottle, and stippling in the recesses, as shown in the following drawing:



18. As evidenced by the grant of the Patent, Plaintiff’s Trade Dress is ornamental and non-functional (as pursuant to the relevant portions of the Patent Act, design patents are only available for ornamental, non-functional designs).

19. Inasmuch as design patent protection is available only for ornamental, non-functional designs, the simultaneous protection of the same design by both a design patent and the trademark / trade dress laws is legally permissible.

20. Plaintiff has used the Trade Dress in commerce, by offering for sale and selling products in the bottle design since at least 2017.

21. Some of Plaintiff’s most popular and successful products are sold in the Trade Dress. Since introducing the Trade Dress, Plaintiff has sold over 12 Million products in the Trade Dress.

22. As a result of Plaintiff's extensive use of the Trade Dress, the consuming public has come to associate the Trade Dress with Plaintiff and Plaintiff alone, such that the Trade Dress now identifies Plaintiff as the source of products sold in the Trade Dress.

23. The Trade Dress has acquired distinctiveness and a secondary meaning.

24. The Trade Dress acquired its secondary meaning prior to the time Defendant began to offer for sale and sell products in an infringing trade.

25. The Trade Dress is a strong trade dress based on both its commercial strength.

26. Long after Plaintiff began to use the Trade Dress and long after the Trade Dress acquired its secondary meaning, Defendant began to offer for sale and sell products in a bottle design that is virtually indistinguishable from the Trade Dress (the "Infringing Trade Dress").

27. Defendant's use of the Infringing Trade Dress creates a likelihood of confusion with Plaintiff, Plaintiff's Trade Dress, and Plaintiff's goods offered and sold in connection with the Trade Dress.

28. Plaintiff's goods sold in the Trade Dress are offered, sold, distributed, furnished and/or advertised to the same or similar classes of purchasers as Defendant's goods sold in the Infringing Trade Dress.

29. Upon information and belief, Defendant was aware of Plaintiff and Plaintiff's use of its Trade Dress prior to the time Defendant's selected and commenced use of the Infringing Trade Dress.

30. Upon information and belief, based upon, without limitation, the similarity of Plaintiff's Trade Dress and Defendant's Infringing Trade Dress, and Defendant's prior knowledge of Plaintiff and Plaintiff's use of its Trade Dress, Defendant adopted and used the Infringing Trade Dress with the intent to cause confusion among consumers and with the purpose of benefitting

from Plaintiff's reputation and goodwill, and Defendant's conduct constitutes willful trademark infringement and unfair competition.

31. The acts and conduct of Defendant are willful, unfair, untrue and deceptive, in that they intend to mislead, deceive and confuse, and have had and continue to have the result of misleading, deceiving and confusing the public to believe that Defendant, Defendant's goods, and/or the Infringing Trade Dress are affiliated with, sponsored or controlled by Plaintiff. As a consequence, Defendant attempted to trade upon, and gain public acceptance and other benefits from Plaintiff's favorable reputation, which has accordingly, been placed at risk by Defendant's illegal acts and conduct.

32. The acts of Defendant constitute infringement of the Trade Dress, and the use of a false designation of origin, false representations, and unfair competition, by inducing the erroneous belief that Defendant, Defendant's goods, and/or the Infringing Trade Dress are in some manner affiliated with, originate from, and/or are sponsored by Plaintiff, and by misrepresenting the nature and/or origin of Defendant's goods, are all in violation of Lanham Act §43(a), 15 U.S.C. §1125(a).

33. The acts of Defendant have caused irreparable harm and damage to Plaintiff and will continue to cause irreparable harm to Plaintiff, and have caused and will continue to cause Plaintiff to suffer monetary damage in an amount thus far not determined.

34. Plaintiff has no adequate remedy at law for the injury alleged in this count, and said injury is, in part, intangible in nature and not capable of being fully measured or valued entirely in terms of monetary damages.

35. Notwithstanding the inadequacy of and the difficulty of presently fully ascertaining Plaintiff's monetary damages caused by Defendant's wrongful conduct, Plaintiff is

informed and believes and, based upon such information and belief, alleges that said conduct has resulted in irreparable, direct and proximate damages to Plaintiff. Plaintiff seeks leave of this Court to amend its complaint to allege the full nature and extent of said monetary damages if, when and to the extent the damages are ascertained.

COUNT III
UNFAIR COMPETITION PURSUANT TO N.J.S.A. 56:4-1

36. Plaintiff repeats and incorporates by reference the allegations in the preceding paragraphs of this Complaint as if fully stated herein.

37. The actions of Defendant as stated herein above constitute unfair competition under New Jersey law, N.J.S.A. 56:4-1, and violation of Plaintiff's rights therein.

38. As a proximate result of Defendant's unfair competition with Plaintiff from the use of the Infringing Trade Dress, Plaintiff is entitled to relief in the form of damages and injunctive relief.

COUNT IV
COMMON LAW TRADEMARK INFRINGEMENT

39. Plaintiff repeats and incorporates by reference the allegations in the preceding paragraphs of this Complaint as if fully stated herein.

40. The actions of Defendant as stated herein above constitute infringement of Plaintiff's common law Trade Dress.

41. As a proximate result of Defendant's infringement of the common law rights of Plaintiff, Plaintiff is entitled to relief in the form of damages and injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays:

(a) That this Court grant a Permanent Injunction pursuant to 35 U.S.C. § 283, enjoining and restraining Defendant and its agents, servants, employees, sales representatives, distributors, subsidiaries, heirs, successors and assigns, and all other persons acting by, through, or in active concert with any of them, from directly or indirectly infringing the Patent;

(b) That this Court grant a Permanent Injunction pursuant to 15 U.S.C. § 1116, enjoining and restraining Defendant and its agents, servants, employees, sales representatives, distributors, subsidiaries, heirs, successors and assigns, and all other persons acting by, through, or in active concert with any of them, from engaging in any course of conduct likely to cause confusion, deception, or mistake, or to injure Plaintiff's business reputation or to dilute the distinctive quality of Plaintiff's Trade Dress, including without limitation, any and all use of the Infringing Trade Dress;

(c) That this Court order pursuant to 15 U.S.C. § 1118, that all products, molds, advertisements, goods, and counterfeits or colorable imitations in the possession of Defendant and its agents, servants, employees, sales representatives, distributors, subsidiaries, heirs, successors and assigns, and all other persons acting by, through, or in active concert with any of them bearing or incorporating the Trade Dress and/or any other mark or dress confusingly similar to the Trade Dress be delivered and/or destroyed as the Court shall direct;

(d) That this Court order pursuant to 15 U.S.C § 1116(d)(1)(A), the seizure of all goods in the Infringing Trade Dress, all materials, goods, and all means and implements used by or on behalf of Defendant in the making and/or duplication of the Infringing Trade Dress, and all records

documenting the manufacture, sale, and/or receipt of goods and things involved in the manufacture and sale of goods in connection with the Infringing Trade Dress;

(e) That this Court order pursuant to 35 U.S.C. § 289 and/or 35 U.S.C. 284, that Defendant be required to account to and pay Plaintiff, Plaintiff's lost profits, Defendant's profits, and/or such other measure of profits determined by the Court resulting from the infringement of the Patent, and for treble and/or increased damages;

(f) That this Court order pursuant to 15 U.S.C. § 1117(a), that Defendant be required to account to and pay Plaintiff for any and all profits derived from the use of the Infringing Trade Dress and/or the sales of products in the Infringing Trade Dress and/or any other mark or dress confusingly similar to the Trade, and for all damages sustained by Plaintiff by reason of said acts of infringement and unfair competition complained of herein and that said damages be trebled pursuant to 15 U.S.C. § 1117(b) and N.J.S.A. 56:4-2 as a result of Defendant's willful violations of 15 U.S.C. § 1125(a) and N.J.S.A. 56:4-1, and use of a counterfeit mark, in an amount to be determined at trial;

(g) That by reason of Defendant's intentional and willful conduct, and to deter such conduct in the future, that the Court award exemplary and punitive damages against Defendant and in favor of Plaintiff;

(h) That the costs of this action, together with reasonable attorney's fees, be awarded to Plaintiff pursuant to 35 U.S.C. § 285 and /or 15 U.S.C. § 1117(a);

(i) That Plaintiff be awarded pre-judgment and post-judgment interest on all monetary awards, and

(j) That Plaintiff be granted such further relief as the Court shall deem just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury for all issues triable by a jury.

CERTIFICATION

Pursuant to Local Civil Rule 11.2, I hereby certify that to the best of my knowledge that the matter in controversy is not the subject of any other action pending in any court or of any pending administrative proceeding.

Dated: April 3, 2020

Respectfully submitted,

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