



4. The Court has personal jurisdiction over Defendant pursuant to Federal Rule of Civil Procedure 4(e) and 42 Pa. C.S.A. § 5332(b), and venue is proper in the Eastern District of Pennsylvania pursuant to 28 U.S.C. §1391. Armstrong's corporate headquarters is in this judicial district, and Defendant does substantial business in this state and judicial district.

5. By virtue of the matters alleged herein, there is a substantial and continuing justiciable controversy between Armstrong and Defendant with respect to the infringement and/or validity of an asserted United States Patent. A judicial declaration is necessary and appropriate in order to resolve this controversy.

### **BACKGROUND**

6. Defendant claims to be the assignee of United States Patent No. 7,550,192 B2, entitled "Resilient Floor Tile" ("the '192 Patent") (which issued on June 23, 2009), and claims to have rights in the '192 Patent sufficient to bring lawsuits for the alleged infringement thereof.

7. Armstrong develops, manufactures, markets, and sells flooring and related building products including, as relevant here, resilient floor tile.

8. Defendant has made and continues to make threats that Armstrong's manufacture, use, marketing, offering for sale, and sales of various resilient floor tiles infringe the '192 Patent.

9. On July 15, 2009, Defendant filed suit against another manufacturer of resilient floor tile, Tarkett Enterprises, Inc., for alleged infringement of the '192 Patent. (*Congoleum Corporation v. Tarkett Enterprises, Inc.*, 1:09-cv-00522 (D. Del. 2009)). On or around that same day, Defendant's representatives informed Armstrong's retailers and wholesalers that Defendant believes Armstrong and its retailers and wholesalers are infringing the '192 Patent by making and/or selling various resilient vinyl floor tiles, and that soon they will be unable to sell such tile. Defendant's representatives have made similar threats to other Armstrong retailers and

wholesalers during the past several weeks. In turn, Armstrong's retailers and wholesalers have communicated Defendant's threats to Armstrong, and expressed concerns about their ability to continue selling Armstrong's resilient vinyl floor tile products.

**COUNT I**  
**(Declaration of Invalidity)**

10. Armstrong re-alleges and incorporates by reference Paragraphs 1 through 9 of this Complaint as though fully set forth herein.

11. Upon information and belief, the '192 Patent is invalid under the United States patent laws, including but not limited to provisions of 35 U.S.C. §§ 102, 112, 171, and/or 172, for at least one or more of the following reasons:

- a. The alleged invention claimed in the '192 Patent was known or used by others in this country, or was patented or described in printed publications in this or a foreign country, before the alleged invention thereof by the persons named as the inventors of the '192 Patent;
- b. The alleged invention claimed in the '192 Patent was patented or described in printed publications in this or a foreign country, or was in public use or on sale in this country, more than one year prior to the first date of the application for the '192 Patent in the United States;
- c. The alleged invention claimed in the '192 Patent is described in patents granted, which applications were filed in the United States by third persons prior to the alleged inventions claimed in the '192 Patent; and
- d. Any differences between the alleged invention claimed in the '192 Patent and the prior art are such that the alleged invention of the '192 Patent would have been

obvious at the time of the alleged invention by persons of ordinary skill in the arts to which the subject matter pertains.

12. Armstrong is entitled to a judicial declaration that the claims of the '192 patent are invalid.

**COUNT II**  
**(Declaration of Non-Infringement)**

13. Armstrong re-alleges and incorporates by reference Paragraphs 1 through 12 of this Complaint as though fully set forth herein.

14. Armstrong has not infringed, either literally or under the doctrine of equivalents, the '192 Patent.

15. Armstrong is entitled to a judicial declaration that the manufacture, sale or use of Armstrong's resilient vinyl floor tile products do not infringe, directly or indirectly, any valid claim of the '192 patent.

**COUNT III**  
**(Tortious Interference)**

16. Armstrong re-alleges and incorporates by reference Paragraphs 1 through 15 of this Complaint as though fully set forth herein.

17. Armstrong is engaged in the business of developing, marketing, and selling flooring and related building products including, as relevant here, resilient floor tile.

18. Upon information and belief, Defendant is also engaged in the business of developing, marketing, and selling flooring and related building products including, as relevant here, resilient floor tile.

19. Armstrong and Defendant are competitors in the United States markets for resilient floor tile.

20. Armstrong has existing and prospective contractual relations with various retailers and wholesalers that sell Armstrong flooring products.

21. Upon information and belief, Defendant and its agents intentionally interfered with Armstrong's existing and prospective contractual relations with retailers and wholesalers of Armstrong's flooring products by contacting and telling these retailers and wholesalers that certain Armstrong vinyl floor tile products infringe the '192 Patent, and that they will soon be precluded from selling these products.

23. Upon information and belief, Defendant and its agents were without privilege or justification to make these statements to Armstrong's retailers and wholesalers because Defendant knows or should know that its patent is not infringed, invalid and/or unenforceable.

24. Upon information and belief, Defendant made the foregoing statements with the intent to obstruct Armstrong's existing and prospective contractual relationships with its retailers and wholesalers, at least with respect to the sale of Armstrong's resilient vinyl floor tiles.

25. Upon information and belief, Armstrong has suffered damages as a result of Defendant's actions alleged herein, in an amount according to proof at trial.

26. Unless restrained, Defendant's tortious interference with Armstrong's commercial relations will continue to damage Armstrong, including causing irreparable harm to Armstrong's business relations, reputation, and goodwill. Armstrong has no adequate remedy at law for such harm.

**COUNT IV**  
**(False Advertising)**

27. Armstrong re-alleges and incorporates by reference Paragraphs 1 through 26 of this Complaint as though fully set forth herein.

28. Defendant claims that its DuraCeramic tiles are covered by the claims of the '192 Patent.

29. In Defendant's marketing campaign for its DuraCeramic floor tiles, Defendant has made and continues to make false and/or misleading statements in commerce about the origin, nature, characteristics, and/or qualities of its DuraCeramic floor tiles. For example, Defendant's DuraCeramic resilient floor tile products are not ceramic, although the name suggests that they are. Moreover, Defendant's and Defendant's agents' marketing materials for the DuraCeramic tiles not only suggest that such tiles are ceramic, but that they are in fact *extraordinary* ceramic. Similar false and/or misleading statements about the origin, nature, characteristics, and/or qualities of Defendant's DuraCeramic brand residential tiles can be found in various promotion materials distributed by Defendant and its agents.

31. Defendant's branding and statements suggesting that its DuraCeramic tiles are ceramic and/or extraordinary ceramic are false and/or misleading as to the origin of these goods in violation of 15 U.S.C. § 1125(a)(1)(A), and misrepresent the nature, characteristics and/or qualities of these goods in violation of 15 U.S.C. § 1125(a)(1)(B).

32. Upon information and belief, Defendant's false and/or misleading branding and deceptive misrepresentations regarding its DuraCeramic brand resilient tile products are willful and intentional, and made with deceptive intent, making this an exceptional case.

33. Defendant's false and/or misleading claims have caused and will continue to cause Armstrong actual damages, irreparable harm to Armstrong's business reputation, injury to its goodwill, loss of competitive advantage and pecuniary damages, which shall continue unless and until Defendant is enjoined from deceiving consumers regarding its DuraCeramic tiles.

34. Armstrong has no adequate remedy at law.

### **PRAYER FOR RELIEF**

WHEREFORE, Armstrong prays that:

1. The Court enter judgment in favor of Armstrong and declare that the '192 Patent is not infringed by Armstrong, and that the '192 Patent is invalid.

2. The Court grant preliminary and permanent injunctions enjoining and restraining Defendant and its agents, servants, and employees, and all persons in active concert or participation with them, from stating or representing, directly or indirectly, to any person that Armstrong has infringed any claim of the '192 Patent.

3. The Court award Armstrong its actual damages, in an amount to be proven at trial.

4. The Court declare this matter an exceptional case pursuant to 35 U.S.C. § 285.

5. The Court permanently enjoin Defendant, and its affiliated companies, officers, agents, servants, employees and all other persons or entities acting in concert and participating with Defendant, from using any false or misleading advertising statements in connection with what are currently called the DuraCeramic products.

6. The Court require corrective advertising as necessary.

7. The Court require Defendant to pay to Armstrong its reasonable costs and expenses, including attorneys' fees, incurred in the preparation and prosecution of this action;

8. Armstrong have such other and further relief as this Court may deem just, including enhanced damages as applicable; and

9. That all matters so triable be tried by a jury.

Respectfully submitted this 3<sup>rd</sup> day of September, 2009.

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