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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

VITA-MIX CORPORATION.

Plaintiff,

vs.

TAIWAN STAR INDUSTRIAL INC.,  
WELBORN APPLIANCES INC., and R&B  
WHOLESALE DISTRIBUTORS. INC.

Defendants.

) CIVIL ACTION NO. **1:05CV2326**  
)  
)  
) JUDGE:  
) *JUDGE WIGENT*  
)  
) **COMPLAINT**  
) **MAG. JUDGE VECCHIARELLI**  
)  
) **JURY TRIAL DEMANDED**  
)

*Act  
M&R*

Plaintiff Vita-Mix Corporation. for its complaint against Defendants Taiwan Star Industrial Inc.. Welborn Appliances Inc.. and R&B Wholesale Distributors, Inc., alleges as follows:

**THE PARTIES**

1. Plaintiff Vita-Mix Corporation ("Vita-Mix") is a corporation organized and existing under the laws of the State of Ohio. Vita-Mix maintains its principal place of business at 8615 Usher Road. Cleveland, OH 44138.
2. Upon information and belief, defendant Taiwan Star Industrial Inc. ("Taiwan Star") is a foreign corporation organized and existing under the laws of Taiwan and does business under the trade names Taistar JTC, JTC Electronics Corp.. and JTC L.A. Upon further information and belief. Taiwan Star maintains its principal place of business at #3B36. 5 Hsin-Yi Rd, Sec 5. Taipei, Taiwan.
3. Upon information and belief. defendant Welborn Appliances Inc. ("Welborn") is

a corporation organized and existing under the laws of the State of California and does business under the trade names Welbon Appliances Inc., Welbob Appliances Inc., Welbon U.S.A. Inc., and Welbon Inc. Upon further information and belief, Welborn maintains its principal place of business at 1230 Santa Anita Ave. #A, S. El Monte, CA 91733.

4. Upon information and belief, defendant R & B Wholesale Distributors, Inc. ("R&B Wholesale") is a corporation organized and existing under the laws of the State of California and has a principal place of business at 2350 S. Milliken Ave., Ontario, CA 91761.

#### **JURISDICTION AND VENUE**

5. This is an action for patent infringement arising under the patent laws, Title 35 United States Code and for trade dress infringement arising under the Lanham Act § 43(a). 15 U.S.C. § 1125(a).

6. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1338(a), 1338(b), and 1367(a).

7. Venue is proper in this district under 28 U.S.C. § 1391(b).

#### **BACKGROUND FACTS**

8. On June 22, 1993, the United States Patent and Trademark Office ("USPTO") granted U.S. Patent No. Des. 336,590 for an invention entitled "Blender With Pitcher and Base Components" ("the '590 design patent"). A true and correct copy of the '590 design patent is attached hereto as Exhibit A. The inventor of the claimed subject matter of the '590 design patent is Frank P. Barnard, and Vita-Mix is the owner of the entire right, title, and interest in and to the '590 design patent. The claim of the '590 design patent is both valid and enforceable.

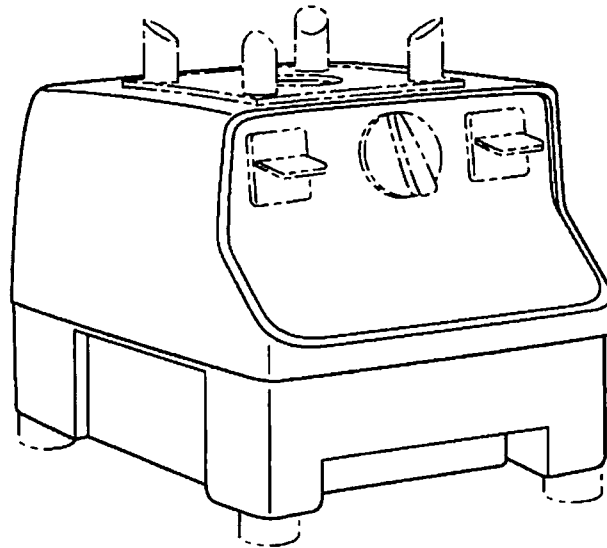
9. On December 28, 1993, the United States Patent and Trademark Office (“USPTO”) granted U.S. Patent No. 5,273,358 for an invention entitled “Quiet and Efficient Motor Cooling Fan Assembly for a Blender” (“the ‘358 patent”). A true and correct copy of the ‘358 patent is attached hereto as Exhibit B. The inventors of the claimed subject matter of the ‘358 patent are Jack M. Byrne and Richard D. Boozer, and Vita-Mix is the owner of the entire right, title, and interest in and to the ‘358 patent. The claims of the ‘358 patent are both valid and enforceable.

10. On April 12, 1994, the USPTO granted U.S. Patent No. 5,302,021 for an invention entitled “Method of Preventing the Formation of an Air Pocket in a Blender” (“the ‘021 patent”). A true and correct copy of the ‘021 patent is attached hereto as Exhibit C. The inventors of the claimed subject matter of the ‘021 patent are David Jennett, Richard D. Boozer, and John K. Barnard, and Vita-Mix is the owner of the entire right, title, and interest in and to the ‘021 patent. The claim of the ‘021 patent is both valid and enforceable.

11. Vita-Mix markets, sells, and distributes commercial blenders under the trademarks Vita-Prep<sup>®</sup>, Drink Machine<sup>™</sup>, and Barboss<sup>®</sup> (collectively “the Vita-Mix commercial blenders”), which products are marked with the ‘590 design patent, the ‘358 patent, and the ‘021 patent (collectively “patents in suit”). The Vita-Mix commercial blenders have been continuously sold in the United States through food service equipment dealers and distributors. Moreover, the Vita-Mix commercial blenders are well known for their quality and reliability.

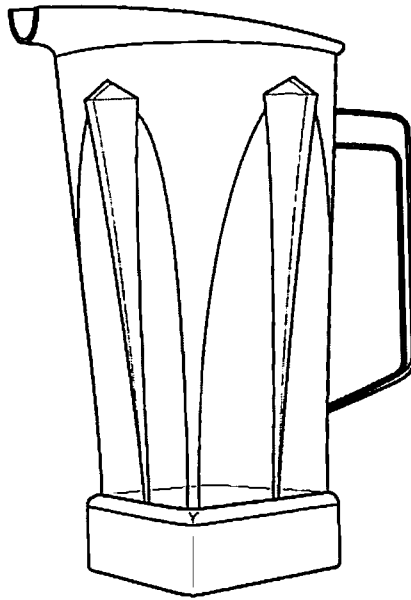
12. The Vita-Mix commercial blenders include two main components — a motor base and a container.

13. The product design (i.e., the shape) of the motor base of the Vita-Mix commercial blenders is represented in the following line drawing, with the portions shown in broken lines not forming part of the design:



This product design is distinctive and non-functional, and is protectable trade dress under §43(a) of the Lanham Act (“Motor Base Trade Dress”). Vita-Mix has used and continues to use its distinctive Motor Base Trade Dress to market and sell the Vita-Mix commercial blenders. By virtue of the distinctiveness of the Motor Base Trade Dress and the widespread sales of the Vita-Mix commercial blenders, the Motor Base Trade Dress is immediately identifiable and has come to be associated with Vita-Mix. Therefore, the Motor Base Trade Dress has acquired secondary meaning.

14. The product design of the container of the Vita-Mix commercial blenders is represented in the following line drawing:

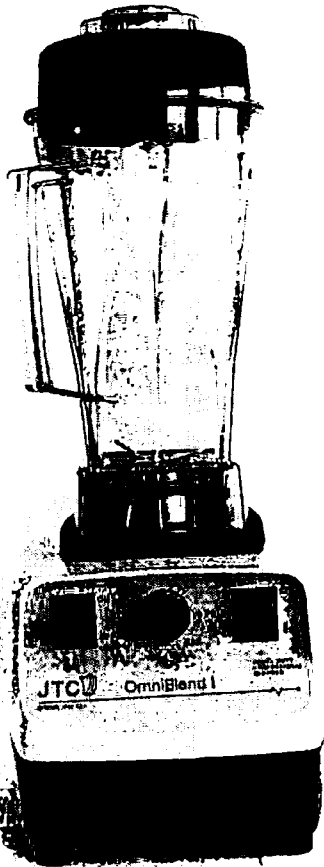


This product design is distinctive and non-functional, and is protectable trade dress under §43(a) of the Lanham Act (“Container Trade Dress”). Vita-Mix has used and continues to use its distinctive Container Trade Dress to market and sell the Vita-Mix commercial blenders. By virtue of the distinctiveness of the Container Trade Dress and the widespread sales of the Vita-Mix commercial blenders, the Container Trade Dress is immediately identifiable and has come to be associated with Vita-Mix. Therefore, the Container Trade Dress has acquired secondary meaning.

15. Packaged with substantially all of the Vita-Mix commercial blenders is a specially-designed plunger, also known as a “tamper,” configured to prevent the formation of an air pocket in the blender during operation of the blender.

16. Upon information and belief, Taiwan Star is the manufacturer of a blender product sold under the product name JTC Omniblend I, Model No. TM-767 (“the JTC Omniblend product”) and exported to the United States with the intent that it be distributed

throughout the United States, including Ohio and this judicial district. A true and correct image of the JTC Omniblend product is shown below:



17. The JTC Omniblend product includes various accessories packaged therewith, including a plunger that is substantially similar to the plunger packaged with the Vita-Mix commercial blenders. Copies of the User's Manual and Warranty Card for the JTC Omniblend product are attached hereto as Exhibit D. The User's Manual for the JTC Omniblend product illustrates a plunger (identified as a "mixing rod") that is supplied with the JTC Omniblend product.

18. Upon information and belief, through an established distribution network that

includes Welborn and R&B Wholesale. Taiwan Star is offering for sale and/or selling the JTC Omniblend product in the United States, including Ohio and this judicial district.

19. Upon information and belief, Welborn imports the JTC Omniblend product into the United States from Taiwan Star. Upon further information and belief, Welborn is also a distributor of the JTC Omniblend product and is offering for sale and/or selling in the United States, including Ohio and this judicial district. For example, the JTC Omniblend product can be directly purchased on Welbon Appliance Inc.'s interactive website at the following web address: [www.welboninc.com/rest equip\\_TM-767.html](http://www.welboninc.com/rest equip_TM-767.html). A true and correct copy of this web page is attached hereto as Exhibit E.

20. Upon information and belief, R&B Wholesale is an authorized distributor of products imported by Welborn. Upon further information and belief, as an authorized distributor of these products, R&B Wholesale is offering for sale and/or selling the JTC Omniblend product in the United States, including Ohio and this judicial district.

21. By offering for sale and/or selling the JTC Omniblend product in Ohio and this judicial district through an established distribution network, Taiwan Star, Welborn, and R&B Wholesale are infringing the patents in suit, thereby tortiously injuring Vita-Mix in Ohio and this judicial district. Upon further information and belief, Taiwan Star, Welborn, and R&B Wholesale (a) regularly solicit business in Ohio and this judicial district; (b) engage in a persistent course of conduct by conducting business in Ohio and this judicial district; and (c) derive substantial revenue from goods used or consumed in Ohio and this judicial district.

## COUNT I

### Patent Infringement – U.S. Patent No. Des. 336,590

22. Paragraphs 1-21 are re-alleged and restated as if fully set forth herein.

23. By making, importing, offering for sale, and/or selling the JTC Omniblend product in the United States, including Ohio and this judicial district, Taiwan Star, Welborn, and/or R&B Wholesale are directly and/or indirectly infringing one or more claims of the '590 design patent, in violation of 35 U.S.C. §§ 271(a), 271(b), and 271(c).

24. Upon information and belief, the infringement of the '590 design patent by Taiwan Star, Welborn, and/or R&B Wholesale was and is willful and deliberate, and will continue unless enjoined by this Court.

25. As a direct and proximate result of Taiwan Star's, Welborn's, and/or R&B Wholesale's infringement of the '590 design patent, Vita-Mix has suffered, and continues to suffer, damages in an amount to be established at trial. Furthermore, Vita-Mix has suffered, and continues to suffer, irreparable harm for which there is no adequate remedy at law.

## COUNT II

### Patent Infringement – U.S. Patent No. 5,273,358

26. Paragraphs 1-25 are re-alleged and restated as if fully set forth herein.

27. By making, importing, offering for sale, and/or selling the JTC Omniblend product in the United States, including Ohio and this judicial district, Taiwan Star, Welborn, and/or R&B Wholesale are directly and/or indirectly infringing one or more claims of the '358 patent, in violation of 35 U.S.C. §§ 271(a), 271(b), and 271(c).

28. Upon information and belief, the infringement of the '358 patent by Taiwan Star,



Welborn, and/or R&B Wholesale was and is willful and deliberate, and will continue unless enjoined by this Court.

29. As a direct and proximate result of Taiwan Star's, Welborn's, and/or R&B Wholesale's infringement of the '358 patent, Vita-Mix has suffered, and continues to suffer, damages in an amount to be established at trial. Furthermore, Vita-Mix has suffered, and continues to suffer, irreparable harm for which there is no adequate remedy at law.

### COUNT III

#### Patent Infringement – U.S. Patent No. 5,302,021

30. Paragraphs 1-29 are re-alleged and restated as if fully set forth herein.

31. By making, importing, offering for sale, and/or selling the JTC Omniblend product in the United States, including Ohio and this judicial district, Taiwan Star, Welborn, and/or R&B Wholesale are directly and/or indirectly infringing one or more claims of the '021 patent, in violation of 35 U.S.C. §§ 271(a), 271(b), and 271(c).

32. Upon information and belief, the infringement of the '021 patent by Taiwan Star, Welborn, and/or R&B Wholesale was and is willful and deliberate, and will continue unless enjoined by this Court.

33. As a direct and proximate result of Taiwan Star's, Welborn's, and/or R&B Wholesale's infringement of the '021 patent, Vita-Mix has suffered, and continues to suffer, damages in an amount to be established at trial. Furthermore, Vita-Mix has suffered, and continues to suffer, irreparable harm for which there is no adequate remedy at law.

**COUNT IV**

**Trade Dress Infringement**

34. Paragraphs 1-33 are re-alleged and restated as if fully set forth herein.

35. The foregoing acts of Taiwan Star, Welborn, and/or R&B Wholesale constitute trade dress infringement in violation of the Lanham Act § 43(a), 15 U.S.C. § 1125(a).

36. Upon information and belief, Taiwan Star's, Welborn's, and/or R&B Wholesale's acts constituting trade dress infringement were and are willful and will continue unless enjoined by this Court.

37. As a direct and proximate result of Taiwan Star's, Welborn's, and/or R&B Wholesale's acts constituting trade dress infringement, Vita-Mix has suffered and/or likely will suffer irreparable harm, for which there is no adequate remedy at law, and damages in an amount to be established at trial.

**PRAYER**

**WHEREFORE**, Plaintiff Vita-Mix Corporation respectfully requests that this Court enter judgment in favor of Vita-Mix and against Defendants, and:

A. Preliminarily and permanently enjoin Defendants, and their officers, employees, servants, and agents, and all persons in active concert with any of them, against any further: i) acts of direct infringement, inducement of infringement, or contributory infringement, under 35 U.S.C. § 283, including without limitation importing, manufacturing, offering for sale, and/or selling the JTC Omniblend product and ii) acts constituting trade dress infringement under 15 U.S.C. § 1125(a).

B. Order Defendants to deliver up for destruction any and all of its products that

infringe any claim of the patents in suit, or otherwise induce or contribute to such infringement under 35 U.S.C. § 283.

C. Order Defendants to pay, in accordance with 35 U.S.C. § 284, damages adequate to compensate for the patent infringement, but in no event less than a reasonable royalty for the use made of the invention, together with interest and costs.

D. Order Defendants to pay, in accordance with 15 U.S.C. § 1117, compensatory damages for trade dress infringement in an amount to be established at trial.

E. Order Defendants to file with the Court and provide Vita-Mix with an equitable accounting and disgorgement of all revenues and/or profits wrongfully realized by Defendants through the use of Vita-Mix's Motor Base Trade Dress and Container Trade Dress under 15 U.S.C. § 1117(a).

F. Find the infringement by Defendants to be willful, and order them to pay three (3) times the amount of damages and/or found or assessed, under 35 U.S.C. § 284 and 15 U.S.C. § 1117(a).

G. Find this to be an exceptional case, and order Defendants to pay Vita-Mix's attorneys' fees under 35 U.S.C. § 285 and 15 U.S.C. § 1117(a).

H. Order Defendants to deliver for destruction all products, packaging and documents in their possession, custody or control, bearing or using any or all of Vita-Mix's Motor Base Trade Dress and Container Trade Dress or any reproduction, copy or colorable imitation thereof, and all plates, molds, matrices and other means of making the same, under 15 U.S.C. § 1118.

I. Order Defendants to pay the costs of this action as well as interest on the judgment.

J. Grant Vita-Mix such other and further relief as this Court may deem proper and just under the circumstances.

**DEMAND FOR JURY TRIAL**

Plaintiff Vita-Mix Corporation hereby demands a trial by jury of all issues so triable in this action.

Respectfully submitted,



DATED: September 30, 2005

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