

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK JUDGE JONES

S.C. JOHNSON & SON, INC.,

Plaintiff,

v.

EZ PRODUCTS OF SOUTH FLORIDA,
L.L.C., d/b/a EZP INTERNATIONAL, and

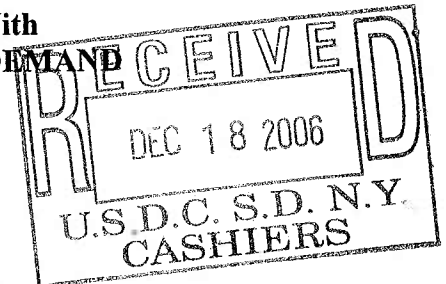
JOSEPH M. COLANGELO,

Defendants.

Civil Action No.: **06 CV 15270**

COMPLAINT

With
JURY DEMAND



Plaintiff, S.C. Johnson & Son, Inc., for its Complaint against defendants EZ

Products of South Florida, L.L.C., d/b/a EZP International, and Joseph M. Colangelo, herein
alleges:

Nature of the Action

1. Plaintiff brings this action seeking injunctive relief and damages for defendants'
 - (a) infringement of plaintiff's U.S. Design Patents Nos. D502,002, D502,324, and D501,728;
 - (b) infringement of plaintiff's trademark, FRESH BRUSH; (c) infringement of plaintiff's trade dress related to the packaging of plaintiff's FRESH BRUSH branded products; (d) false advertising; and (e) infringement of plaintiff's copyrights related to the packaging of plaintiff's FRESH BRUSH branded products, as a result of defendants' manufacture, use, importation, sale, offer for sale, packaging, distribution, and advertising of their FLUSH BRUSH toilet cleaner and FLUSH BRUSH toilet cleaner brush refills.

The Parties

2. Plaintiff, S.C. Johnson & Son, Inc. (“S.C. Johnson”), is a Wisconsin corporation, having its principal place of business at 1525 Howe Street, Racine, Wisconsin 53403.

3. Upon information and belief, defendant EZ Products of South Florida, L.L.C., is a Florida limited liability company, having a principal place of business at 450 Fairway Drive, Suite 105, Deerfield Beach, Florida 33441.

4. Upon information and belief, defendant EZ Products of South Florida, L.L.C., is doing business as EZP International.

5. Upon information and belief, EZP’s registered agent is Joseph M. Colangelo (“Mr. Colangelo”), 450 Fairway Drive, Suite 105, Deerfield Beach, Florida 33441.

6. Upon information and belief, Mr. Colangelo is an owner and manager of EZ Products of South Florida, L.L.C., and a resident of Florida. EZ Products of South Florida, L.L.C., EZP International, and Mr. Colangelo are hereinafter referred to collectively as “EZP”.

Jurisdiction and Venue

7. This action arises under (a) the patent laws of the United States of America, Title 35 of the United States Code; (b) the trademark laws of the United States, Lanham Act §§ 34-36, 39 and 43(a), 15 U.S.C. §§ 1116-1118, 1121 and 1125(a); (c) the copyright laws of the United States, Title 17 of the United States Code; and (d) the related state and common laws of the State of New York, including the law of unfair competition.

8. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) and (b), and also has jurisdiction pursuant to 28 U.S.C. § 1332 based upon the diversity of the citizenship of the parties. This Court has supplemental jurisdiction over the state and common law claims under 28 U.S.C. § 1367.

9. Upon information and belief, EZP manufactures, uses, imports, sells, offers for sale, packages, distributes, and/or advertises various household cleaning products, including the FLUSH BRUSH toilet cleaner and FLUSH BRUSH toilet cleaner refills that are the subject of this Complaint. Such products are imported, sold, offered for sale, used, marketed, distributed, and advertised throughout the United States, including within this judicial district.

10. Upon information and belief, EZP also sells, offers to sell, markets, distributes, and advertises various household cleaning products, including the FLUSH BRUSH toilet cleaner and FLUSH BRUSH toilet cleaner refills, throughout the United States, including within this judicial district, through its Internet website (*www.ezpinternational.com*) accessed by consumers in this judicial district.

11. Accordingly, this Court has personal jurisdiction over the defendants.

12. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c) and 28 U.S.C. §§ 1400(a) and (b).

S.C. Johnson's Patents in Suit

13. U.S. Design Patent No. D502,002 (“the ‘002 patent”) was duly and legally issued on February 22, 2005, and is entitled “Handle.” The nature of this product design is as a handle part of a cleaning implement such as a toilet bowl brush. A true copy of the ‘002 patent is attached hereto as Exhibit 1.

14. S.C. Johnson is the owner of the ‘002 patent.

15. U.S. Design Patent No. D502,324 (“the ‘324 patent”) was duly and legally issued on March 1, 2005, and is entitled “Part of a Handle.” The nature of this product design is as a part of a cleaning implement such as a toilet bowl brush. A true copy of the ‘324 patent is attached hereto as Exhibit 2.

16. S.C. Johnson is the owner of the ‘324 patent.

17. U.S. Design Patent No. D501,728 (“the ‘728 patent”) was duly and legally issued on February 15, 2005, and is entitled “Actuator Jaw.” The nature of this product design is as a clamping jaw used in connection with a toilet brush to hold a brush head. A true copy of the ‘728 patent is attached hereto as Exhibit 3.

18. S.C. Johnson is the owner of the ‘728 patent.

19. The ‘002, ‘324, and ‘728 patents are hereinafter collectively referred to as the “Patents-in-Suit”.

S.C. Johnson’s Copyrights in Suit

20. S.C. Johnson is the owner of the copyrights in and to the original works of authorship that are fixed in the packaging for its (a) FRESH BRUSH branded “Toilet Cleaning System” (e.g., a kit including a handle, cleaning pads, and a storage hook), and (b) FRESH BRUSH branded “Flushable Pad Refills” (hereinafter collectively referred to as “FRESH BRUSH Products”). These original works of authorship are hereinafter collectively referred to as the “Copyrighted Works”.

21. S.C. Johnson has filed applications for registration of its Copyrighted Works in the United States Copyright Office, which have been “signed off on” (i.e., approved) by Ms. Desiree Woodard, Examiner, U.S. Copyright Office. (See Letter from Desiree Woodard, dated December 14, 2006 (Exhibit 4).) These approved applications for registration include:

(a) Work entitled “Packaging for Scrubbing Bubbles Fresh Brush Pads,” published at least on February 1, 2004, and having been assigned by the U.S. Copyright Office an effective date of registration of November 30, 2006 (Exhibit 5);

(b) Work entitled “Packaging for Scrubbing Bubbles Fresh Brush Product,” published at least on February 1, 2004, and having been assigned by the U.S. Copyright Office an effective date of registration of November 30, 2006 (Exhibit 6);

(c) Work entitled “Packaging for Scrubbing Bubbles Fresh Brush Product,” published at least on March 1, 2005, and having been assigned by the U.S. Copyright Office an effective date of registration of November 30, 2006 (Exhibit 7);

(d) Work entitled “Packaging for Scrubbing Bubbles Fresh Brush Pads,” published at least on February 1, 2005, and having been assigned by the U.S. Copyright Office an effective date of registration of November 30, 2006 (Exhibit 8);

(e) Work entitled “Artwork, Photographs and Directions for Scrubbing Bubbles Fresh Brush Product,” published at least on February 1, 2004, and having been assigned by the U.S. Copyright Office an effective date of registration of November 30, 2006 (Exhibit 9);

(f) Work entitled “Artwork, Photographs and Directions for Scrubbing Bubbles Fresh Brush Product,” published at least on February 1, 2004, and having been assigned by the U.S. Copyright Office an effective date of registration of November 30, 2006 (Exhibit 10);

(g) Work entitled “Artwork, Photographs and Directions for Scrubbing Bubbles Fresh Brush Product,” published at least on February 1, 2005, and having been assigned by the U.S. Copyright Office an effective date of registration of December 6, 2006 (Exhibit 11); and

(h) Work entitled “Artwork, Photographs and Directions for Scrubbing Bubbles Fresh Brush Product,” published at least on February 1, 2005, and having been assigned by the U.S. Copyright Office an effective date of registration of November 30, 2006 (Exhibit 12).

22. The original works of authorship that are fixed in the packaging of the FRESH BRUSH Products include, for example, (a) the overall color, graphics, and text schema, including a blue background, with a brand name (e.g., FRESH BRUSH) prominently depicted in yellow and with descriptive and instructional text depicted in white; (b) a depiction of a toilet brush holding a flushable cleaning pad either alone or in proximity to a toilet bowl, wherein the

cleaning pad is depicted with bubbles and sparkles thereabout; (c) images depicting the break up of flushable cleaning pads; (d) images depicting step-by-step instructions for using the toilet cleaning system, such as separating cleaning pads from one another, inserting a cleaning pad into a toilet brush handle, disposing of a cleaning pad into the toilet, and hanging the toilet brush on a toilet; and (e) various textual descriptions and instructions.

S.C. Johnson's Trademark and Trade Dress in Suit

23. S.C. Johnson is the owner of the trademark, FRESH BRUSH.

24. Upon information and belief, the trademark FRESH BRUSH is inherently distinctive, and has also acquired secondary meaning.

25. S.C. Johnson is the owner of the trade dress in the packaging of the FRESH BRUSH Products.

26. A true copy of an example of the packaging for S.C. Johnson's FRESH BRUSH branded "Toilet Cleaning System" is attached hereto as Exhibit 13.

27. A true copy of an example of the packaging for S.C. Johnson's FRESH BRUSH branded "Flushable Pad Refills" is attached hereto as Exhibit 14.

28. S.C. Johnson's trade dress in the packaging for the FRESH BRUSH Products comprises, for example, non-functional features such as (a) a blue background, with a brand name (e.g., FRESH BRUSH) prominently depicted in yellow and with descriptive and instructional text depicted in white; and (b) a depiction of a toilet brush holding a flushable cleaning pad either alone or in proximity to a toilet bowl, wherein the cleaning pad is depicted with bubbles and sparkles thereabout. The trade dress also comprises, for example, non-functional features such as (c) side-by-side images depicting the break up of flushable cleaning pads; (d) a series of images depicting step-by-step instructions for using the toilet cleaning system, such as separating cleaning pads from one another, inserting a cleaning pad into a toilet

brush handle, disposing of a cleaning pad into the toilet, and hanging the toilet brush on a toilet; and (e) the shape and size of the packaging (hereinafter collectively referred to as “FRESH BRUSH Trade Dress”).

29. Upon information and belief, S.C. Johnson’s FRESH BRUSH Trade Dress is inherently distinctive, and has also acquired secondary meaning.

30. Upon information and belief, S.C. Johnson’s trademark FRESH BRUSH and FRESH BRUSH Trade Dress have been continuously and exclusively used by S.C. Johnson in interstate commerce in connection with the FRESH BRUSH Products since March 2004.

31. S.C. Johnson sells and markets its FRESH BRUSH Products to and through Food Stores, Drug Chains, Mass Merchandisers and Warehouse Club retail outlets in the United States, including New York, and around the world. For example, S.C. Johnson sells the FRESH BRUSH Products to Duane Reade, Inc., a drugstore chain in New York City.

The EZP “Knock-Off” Products and Packaging

32. Upon information and belief, EZP manufactures, has or has had manufactured, imports, uses, offers to sell, sells, markets, distributes, and advertises at least the following products, which are knock-offs of S.C. Johnson’s FRESH BRUSH Products: (a) FLUSH BRUSH Toilet Cleaning System (a kit including a handle, cleaning pads, and a storage hook), and (b) FLUSH BRUSH Flushable and Septic-Safe Cleaning Pads (hereinafter collectively referred to as the “EZP Knock-Off Products”). A print-out from EZP’s website of the EZP Knock-Off Products is attached as Exhibit 15.

33. Upon information and belief, at least some of the EZP Knock-Off Products are manufactured in and imported from China.

34. The EZP Knock-Off Products comprise, in part, a handle (or wand) having an actuator jaw for gripping cleaning pads (hereinafter referred to as “EZP Knock-Off Handle” and “EZP Knock-Off Jaw”, respectively).

35. The EZP Knock-Off Handle and Jaw are copies of the product designs embodied in S.C. Johnson’s Patents-in-Suit.

36. Upon information and belief, EZP sells and markets the EZP Knock-Off Products to and through Food Stores, Drug Chains, Mass Merchandisers and Warehouse Club retail outlets in the United States and around the world. For example, EZP has sold the EZP Knock-Off Products to Duane Reade, Inc., a drugstore chain in New York City, which in turn has sold them in this District. An image of an EZP Knock-Off Product, purchased in New York City, is attached as Exhibit 16, along with a photocopy of a receipt identifying the purchase location.

37. EZP sells, markets, distributes, and advertises the EZP Knock-Off Products in interstate commerce in the United States under the name FLUSH BRUSH.

38. EZP’s packaging for the EZP Knock-Off Products comprises, in part, features such as (a) a blue background, with the name FLUSH BRUSH prominently depicted in yellow and with descriptive and instructional text depicted in white; (b) a depiction of a toilet brush holding a flushable cleaning pad either alone or in proximity to a toilet bowl, wherein the cleaning pad is depicted with bubbles and sparkles thereabout; (c) side-by-side images depicting the break up of flushable cleaning pads; and (d) a series of images depicting step-by-step instructions for using the toilet cleaning system, such as separating cleaning pads from one another, inserting a cleaning pad into a toilet brush handle, disposing of a cleaning pad into the toilet, and hanging the toilet brush on a toilet (hereinafter collectively referred to as the “EZP Knock-Off Packaging”).

39. The EZP Knock-Off Packaging is substantially the same size and shape as the packaging for S.C. Johnson's FRESH BRUSH Products.

40. Upon information and belief, images on the EZP Knock-Off Packaging, such as the images depicting step-by-step instructions for use, are literal copies of the images comprising S.C. Johnson's Copyrighted Works.

41. Upon information and belief, products depicted in images on the EZP Knock-Off Packaging are actually S.C. Johnson's FRESH BRUSH Products, not the EZP Knock-Off Products.

42. Substantial portions of instructional and descriptive phraseology on the EZP Knock-Off Packaging literally duplicates that printed on the packaging for S.C. Johnson's FRESH BRUSH Products.

43. Upon information and belief, EZP had access to, obtained, and studied S.C. Johnson's FRESH BRUSH Products and their packaging prior to EZP's creation of the EZP Knock-Off Products and Packaging. For example, the EZP Knock-Off Packaging recites "Compares to Scrubbing Bubbles FRESH BRUSH™", and upon information and belief, EZP commissioned a study to compare the EZP Knock-Off Products to S.C. Johnson's FRESH BRUSH Products (a copy of the Technical Report providing the results of the study is attached hereto as Exhibit 17).

44. Upon information and belief, EZP has admitted that FRESH BRUSH is a trademark owned by S.C. Johnson (see Exhibit 15), and had actual knowledge of that trademark and S.C. Johnson's FRESH BRUSH Trade Dress prior to selling and marketing the EZP Knock-Off Products and Packaging.

45. Upon information and belief, the EZP Knock-Off Products are, in at least some instances, sold next to S.C. Johnson's FRESH BRUSH Products on store shelves (*e.g.*, at Duane Reade stores).

S.C. Johnson's Irreparable Harm

46. S.C. Johnson is one of the largest family-owned companies in the United States, and has been creating innovative products and product brands such as JOHNSON'S WAX, WINDEX, ZIPLOC, PLEDGE, GLADE, RAID, OFF!, VANISH, and EDGE for over 100 years.

47. S.C. Johnson has invested significant resources into the research, design, development, and creation of the FRESH BRUSH Products, spending well over \$1 million on variable expenses alone.

48. S.C. Johnson has also invested significant resources into creating and developing a market for the FRESH BRUSH Products, spending tens of millions of dollars in advertising and promoting these Products since February 2004.

49. As a result of S.C. Johnson's extensive sales, advertising, and promotion of its FRESH BRUSH Products, the FRESH BRUSH mark and the FRESH BRUSH Trade Dress have become well-known to both consumers and the trade and have come to identify S.C. Johnson as the exclusive source of the products with which this mark and trade dress are used. Consumers and the trade have come to expect that the products offered under the FRESH BRUSH name and Trade Dress will be of high quality and good value and will be offered and/or sponsored by S.C. Johnson. As a result, the FRESH BRUSH mark and Trade Dress have acquired great value and goodwill.

50. EZP has entered the market with its low cost, store brand (private label) EZP Knock-Off Products, without incurring the significant research, development, advertising, and promotional costs that S.C. Johnson incurred. Consequently, EZP is able to import, make, use,

offer for sale, and sell the EZP Knock-Off Products and Packaging at a price that is substantially lower than S.C. Johnson's sales prices. EZP, therefore, is reaping the benefit of the substantial investments by S.C. Johnson.

51. As a result, and without the exclusive rights and protections afforded by S.C. Johnson's Patents-in-Suit and other intellectual property rights identified herein, S.C. Johnson will be at a competitive disadvantage.

52. Due to EZP's importation, manufacture, use, offer for sale, and/or sale of the EZP Knock-Off Products, S.C. Johnson has lost market share.

53. Due to EZP's importation, manufacture, use, offer for sale, and/or sale of the EZP Knock-Off Products, there is a substantial risk that price erosion of S.C. Johnson's FRESH BRUSH Products will occur.

54. Due to EZP's importation, manufacture, use, offer for sale, and/or sale of the EZP Knock-Off Products, S.C. Johnson's past, present, and future customers have and will become acclimated to paying significantly less for products protected by the Patents-in-Suit (*e.g.*, the FRESH BRUSH Products), than S.C. Johnson would otherwise charge and receive as payment.

55. Upon information and belief, EZP sells the EZP Knock-Off Products, which are cheap knock-offs of S.C. Johnson's FRESH BRUSH Products, at a sales price that is substantially less than the sales price of S.C. Johnson's FRESH BRUSH Products. Due to customer acclimation, S.C. Johnson believes that customers will be unwilling to pay full price after they become acclimated to paying a substantially lower price. As a result, the market for S.C. Johnson's FRESH BRUSH Products is in jeopardy.

56. Upon information and belief, if the EZP Knock-Off Products remain on the market, the reputation of S.C. Johnson's FRESH BRUSH Products will be damaged due to S.C.

Johnson's inability to control the standards by which the EZP Knock-Off Products are manufactured.

57. Upon information and belief, EZP's sales of the EZP Knock-Off Products is a strong encouragement for others to enter the market with other infringing products and packaging.

58. Upon information and belief, if EZP is preliminarily enjoined from selling the EZP Knock-Off Products, any harm to EZP will be negligible.

59. Upon information and belief, EZP recently entered the market and its sales are relatively small.

60. For the reasons set forth herein, the balance of hardships favors S.C. Johnson and the imposition of a preliminary injunction.

61. The public has a strong interest in protecting, enforcing, and upholding United States patents, like the Patents-in-Suit, and trademarks, and copyrights.

62. For the reasons set forth herein, it is in the public's interest for EZP to be preliminarily and permanently enjoined from infringing S.C. Johnson's substantial intellectual property identified herein.

COUNT I
Infringement of the '002 Patent

63. S.C. Johnson hereby realleges and incorporates by reference the statements in Paragraphs 1 through 62 of this Complaint as if fully set forth herein.

64. Upon information and belief, EZP manufactures, has or had manufactured, imports, uses, offers to sell, and/or sells products that infringe the claim of the '002 patent, pursuant to at least 35 U.S.C. §§ 271(a) and 289. The infringing products imported, made, used,

offered for sale, and/or sold by EZP include, but are not necessarily limited to, the EZP Knock-Off Handle and Jaw.

65. The infringement by EZP has caused and will cause S.C. Johnson injury, including lost sales of its products which it otherwise would have made. The injury to S.C. Johnson is continuing and irreparable unless enjoined by this Court. S.C. Johnson will suffer additional and irreparable damages unless EZP is preliminarily and permanently enjoined by this Court from continuing its infringement. S.C. Johnson has no adequate remedy at law.

66. Upon information and belief, EZP's infringement of the '002 patent was and is willful.

67. Upon information and belief, with respect to the '002 patent, this case is an exceptional one, and S.C. Johnson is entitled to increased damages and to an amount of its reasonable attorney fees under 35 U.S.C. §§ 284 and 285.

COUNT II
Infringement of the '324 Patent

68. S.C. Johnson hereby realleges and incorporates by reference the statements in Paragraphs 1 through 67 of this Complaint as if fully set forth herein.

69. Upon information and belief, EZP manufactures, has or had manufactured, imports, uses, offers to sell, and/or sells products that infringe the claim of the '324 patent, pursuant to at least 35 U.S.C. §§ 271(a) and 289. The infringing products imported, made, used, offered for sale, and/or sold by EZP include, but are not necessarily limited to, the EZP Knock-Off Handle.

70. The infringement by EZP has caused and will cause S.C. Johnson injury, including lost sales of its products which it otherwise would have made. The injury to S.C. Johnson is continuing and irreparable unless enjoined by this Court. S.C. Johnson will suffer

additional and irreparable damages unless EZP is preliminarily and permanently enjoined by this Court from continuing its infringement. S.C. Johnson has no adequate remedy at law.

71. Upon information and belief, EZP's infringement of the '324 patent was and is willful.

72. Upon information and belief, with respect to the '324 patent, this case is an exceptional one, and S.C. Johnson is entitled to increased damages and to an amount of its reasonable attorney fees under 35 U.S.C. §§ 284 and 285.

COUNT III
Infringement of the '728 Patent

73. S.C. Johnson hereby realleges and incorporates by reference the statements in Paragraphs 1 through 72 of this Complaint as if fully set forth herein.

74. Upon information and belief, EZP manufactures, has or had manufactured, imports, uses, offers to sell, and/or sells products that infringe the claim of the '728 patent, pursuant to at least 35 U.S.C. §§ 271(a) and 289. The infringing products imported, made, used, offered for sale, and/or sold by EZP include, but are not necessarily limited to, the EZP Knock-Off Jaw.

75. The infringement by EZP has caused and will cause S.C. Johnson injury, including lost sales of its products which it otherwise would have made. The injury to S.C. Johnson is continuing and irreparable unless enjoined by this Court. S.C. Johnson will suffer additional and irreparable damages unless EZP is preliminarily and permanently enjoined by this Court from continuing its infringement. S.C. Johnson has no adequate remedy at law.

76. Upon information and belief, EZP's infringement of the '728 patent was and is willful.

77. Upon information and belief, with respect to the '728 patent, this case is an exceptional one, and S.C. Johnson is entitled to increased damages and to an amount of its reasonable attorney fees under 35 U.S.C. §§ 284 and 285.

COUNT IV
Copyright Infringement

78. S.C. Johnson hereby realleges and incorporates by reference the statements in Paragraphs 1 through 77 of this Complaint as if fully set forth herein.

79. Upon information and belief, EZP knowingly and willfully directly copied S.C. Johnson's original works of authorship that are fixed in the packaging of the FRESH BRUSH Products (Copyrighted Works), for the specific purpose of infringing S.C. Johnson's copyrights.

80. Upon information and belief, EZP had access to, obtained, and studied S.C. Johnson's FRESH BRUSH Products and their packaging, including the Copyrighted Works, prior to EZP's creation of the EZP Knock-Off Products and Packaging.

81. The aforesaid acts and conduct of EZP constitute infringement of S.C. Johnson's copyrights pursuant to at least 17 U.S.C. § 501.

82. The conduct of EZP as herein alleged will, unless enjoined, further impair or destroy the value of S.C. Johnson's copyrights.

83. As a result of the foregoing acts, EZP has engaged in willful violation of 17 U.S.C. § 501 and is liable for money damages under 17 U.S.C. § 504, including statutory damages or actual damages sustained by S.C. Johnson along with any additional profits of EZP, and for attorney fees. EZP's acts have caused and will continue to cause further irreparable injury to S.C. Johnson if EZP is not preliminarily and permanently enjoined by this Court from infringing S.C. Johnson's copyrights. S.C. Johnson has no adequate remedy at law.

COUNT V
Trade Dress Infringement

84. S.C. Johnson hereby realleges and incorporates by reference the statements in Paragraphs 1 through 83 of this Complaint as if fully set forth herein.

85. Upon information and belief, EZP has been and is using in interstate commerce in the United States a combination of non-functional features in its EZP Knock-Off Packaging that constitutes an unauthorized, colorable imitation of S.C. Johnson's FRESH BRUSH Trade Dress. EZP's use of the EZP Knock-Off Packaging infringes upon the rights of S.C. Johnson in and to its FRESH BRUSH Trade Dress, pursuant to at least 15 U.S.C. § 1125.

86. EZP's unauthorized use of a colorable imitation of S.C. Johnson's FRESH BRUSH Trade Dress without the consent of S.C. Johnson, for the sale of household cleaning products, including the EZP Knock-Off Products, is likely to cause confusion in the minds of the public and is likely to cause mistake or to deceive persons into erroneous belief that EZP's Knock-Off Products and packaging emanate from, are associated with, or are authorized or sponsored by S.C. Johnson, or that they are connected in some way to S.C. Johnson.

87. Upon information and belief, EZP committed the aforesaid acts with knowledge that such colorable imitation of the FRESH BRUSH Trade Dress was intended to cause consumer confusion and/or mistake and/or to deceive consumers.

88. EZP's unauthorized use of a colorable imitation of S.C. Johnson's FRESH BRUSH Trade Dress trades on the goodwill that S.C. Johnson has developed in this trade dress, and such acts violate S.C. Johnson's rights in this trade dress and damage the goodwill represented thereby.

89. EZP's aforesaid acts have damaged S.C. Johnson, and, unless enjoined, will continue to damage S.C. Johnson by further impairing or destroying the value of S.C. Johnson's FRESH BRUSH Trade Dress, and eroding the goodwill associated with that trade dress.

90. EZP's aforesaid acts were and are willful, and EZP is liable to S.C. Johnson for damages and attorney fees. EZP's acts have caused and will continue to cause further irreparable injury to S.C. Johnson if EZP is not preliminarily and permanently enjoined by this Court from further violations of S.C. Johnson's trade dress rights. S.C. Johnson has no adequate remedy at law.

COUNT VI
Trademark Infringement

91. S.C. Johnson hereby realleges and incorporates by reference the statements in Paragraphs 1 through 90 of this Complaint as if fully set forth herein.

92. Upon information and belief, EZP has been and is using the mark FLUSH BRUSH in interstate commerce in connection with the EZP Knock-Off Products. FLUSH BRUSH is an unauthorized, colorable imitation of S.C. Johnson's trademark FRESH BRUSH. EZP's use of the mark FLUSH BRUSH infringes upon the rights of S.C. Johnson in and to its FRESH BRUSH trademark, pursuant to at least 15 U.S.C. § 1125.

93. EZP's unauthorized use of a colorable imitation of S.C. Johnson's trademark FRESH BRUSH without the consent of S.C. Johnson, for the sale of household cleaning products, including the EZP Knock-Off Products, is likely to cause confusion in the minds of the public and is likely to cause mistake or to deceive persons into erroneous belief that EZP's Knock-Off Products emanate from, are associated with, or are authorized or sponsored by S.C. Johnson, or that they are connected in some way to S.C. Johnson.

94. Upon information and belief, EZP committed the aforesaid acts with knowledge that such colorable imitation (*i.e.*, use of FLUSH BRUSH) was intended to cause consumer confusion and/or mistake and/or to deceive consumers.

95. EZP's unauthorized use of a colorable imitation of S.C. Johnson's trademark FRESH BRUSH trades on the goodwill that S.C. Johnson has developed in this mark, and such acts violate S.C. Johnson's rights in this mark and damage the goodwill represented thereby.

96. EZP's aforesaid acts have damaged S.C. Johnson, and, unless enjoined, will continue to damage S.C. Johnson by further impairing or destroying the value of S.C. Johnson's FRESH BRUSH trademark, and eroding the goodwill associated with that mark and other famous trademarks of S.C. Johnson.

97. EZP's aforesaid acts were and are willful, and EZP is liable to S.C. Johnson for damages and attorney fees. EZP's acts have caused and will continue to cause further irreparable injury to S.C. Johnson if EZP is not preliminarily and permanently enjoined by this Court from further violations of S.C. Johnson's trademark rights. S.C. Johnson has no adequate remedy at law.

COUNT VII
False Advertising

98. S.C. Johnson hereby realleges and incorporates by reference the statements in Paragraphs 1 through 97 of this Complaint as if fully set forth herein.

99. Upon information and belief, EZP has been and is using in commercial advertising and promotion in interstate commerce in the United States images of S.C. Johnson's FRESH BRUSH Products on the EZP Knock-Off Packaging. Such use by EZP constitutes false and misleading descriptions and representations of facts, and constitutes false advertising pursuant to at least 15 U.S.C. § 1125.

100. EYP's representation and implication to consumers that the products shown in the images on the EYP Knock-Off Packaging and the products being sold therein are the same products is literally false and misleading.

101. EYP's aforesaid false and misleading representation of facts is likely to cause confusion in the minds of the public and is likely to cause mistake or to deceive persons into erroneous belief that EYP's complained of products and packaging emanate from, are associated with, or are authorized or sponsored by S.C. Johnson, or that they are connected in some way to S.C. Johnson.

102. EYP's aforesaid false and misleading representation of facts also has caused or will cause S.C. Johnson to lose sales of its FRESH BRUSH Products.

103. Upon information and belief, EYP committed the aforesaid acts with knowledge that such false and misleading representation of fact was intended to cause consumer confusion and/or mistake and/or to deceive consumers.

104. EYP's aforesaid false and misleading representation of facts have damaged S.C. Johnson, and, unless enjoined, will continue to damage S.C. Johnson by further impairing or destroying the value of S.C. Johnson's FRESH BRUSH Trade Dress and trademark, and eroding the goodwill associated with them.

105. EYP's aforesaid false and misleading representation of facts were and are willful, and EYP is liable to S.C. Johnson for damages and attorney fees. EYP's acts have caused and will continue to cause further irreparable injury to S.C. Johnson if EYP is not preliminarily and permanently enjoined by this Court from further false advertising. S.C. Johnson has no adequate remedy at law.

COUNT VIII
Common Law Trademark Infringement

106. S.C. Johnson hereby realleges and incorporates by reference the statements in Paragraphs 1 through 105 of this Complaint as if fully set forth herein.

107. Upon information and belief, EZP has been and is using the mark FLUSH BRUSH in New York commerce in connection with the EZP Knock-Off Products. FLUSH BRUSH is an unauthorized, colorable imitation of S.C. Johnson's trademark FRESH BRUSH. EZP's use of the mark FLUSH BRUSH constitutes common law trademark infringement under the laws of the State of New York.

Jury Demand

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, S.C. Johnson demands a jury.

Prayer for Relief

WHEREFORE, Plaintiff S.C. Johnson respectfully requests the Court to enter judgment as follows:

For Patent Infringement:

- A. That Defendants have, jointly and severally, infringed each of the Patents-in-Suit;
- B. That Defendants' infringement of each of the Patents-in-Suit is willful;
- C. That this case is an exceptional one under 35 U.S.C. § 285;
- D. That pursuant to 35 U.S.C. § 283, Defendants, including their officers, directors, managers, employees, agents, licensees, servants, successors and assigns, and any and all persons acting in privity or in concert with them, be preliminarily and permanently enjoined from further acts of infringement of the Patents-in-Suit;

E. That pursuant to 35 U.S.C. §§ 284 and 289, S.C. Johnson be awarded its damages, including lost profits, and Defendants' total profits, together with prejudgment interest, postjudgment interest, and costs, adequate to compensate S.C. Johnson for the infringement of the Patents-in-Suit by EZP, with damages trebled as a result of Defendants' willful infringement of each of the Patents-in-Suit;

F. That pursuant to 35 U.S.C. § 285, S.C. Johnson be awarded its reasonable attorney fees due to the exceptional nature of this case;

For Trademark and Trade Dress Infringement and False Advertising:

G. That Defendants have, jointly and severally, infringed S.C. Johnson's FRESH BRUSH trademark, and infringed S.C. Johnson's FRESH BRUSH Trade Dress;

H. That Defendants' infringement of S.C. Johnson's FRESH BRUSH trademark and Trade Dress is willful;

I. That Defendants have, jointly and severally, engaged in false advertising under 15 U.S.C. § 1125, with the intent to damage S.C. Johnson by the acts complained of herein;

J. That pursuant to 15 U.S.C. § 1116, Defendants, including their officers, directors, managers, employees, agents, licensees, servants, successors and assigns, and any and all persons acting in privity or in concert with them, be preliminarily and permanently enjoined from further acts of infringement of S.C. Johnson's FRESH BRUSH trademark and Trade Dress, and from further acts of false advertising by the acts complained of herein;

K. That pursuant to 15 U.S.C. § 1117, S.C. Johnson be awarded Defendants' profits and any damages adequate to compensate S.C. Johnson for EZP's infringement of S.C. Johnson's FRESH BRUSH trademark and Trade Dress and false advertising, together with

prejudgment interest, postjudgment interest, and costs, with damages trebled as a result of Defendants' willful infringement of S.C. Johnson's FRESH BRUSH trademark and Trade Dress and willful false advertising;

L. That pursuant to 15 U.S.C. § 1117, S.C. Johnson be awarded its reasonable attorney fees due to the exceptional nature of this case;

For Copyright Infringement:

M. That Defendants have, jointly and severally, infringed S.C. Johnson's registered copyrights in its Copyrighted Works;

N. That pursuant to 17 U.S.C. § 502, Defendants be preliminarily and permanently enjoined from further infringement of S.C. Johnson's Copyrighted Works;


O. That pursuant to 17 U.S.C. § 504, S.C. Johnson be awarded its damages and the Defendants' profits or statutory damages for infringement of S.C. Johnson's Copyrighted Works;

P. That pursuant to 17 U.S.C. § 505, S.C. Johnson be awarded its costs and reasonable attorney fees;

Q. That Defendants, and all those in privity and concert with them, be ordered to recall and to deliver up to be impounded or destroyed all goods as well as promotional or advertising material of any kind (*e.g.*, EZP Knock-Off Products and Packaging) which infringe S.C. Johnson's intellectual property identified herein; and

R. That S.C. Johnson be granted such other and further relief as the Court deems just and proper.

Dated: December 18, 2006

By: 
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