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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

NOV 16 2005

LUTHER D. THOMAS, Clerk
By: *J. P. Puckney*
Deputy Clerk

TRUSEAL TECHNOLOGIES, INC.
23150 Commerce Park
Beachwood, Ohio 44122

Plaintiff,

v.

TECHCON GROUP, INC.
42-40 Bell Blvd.
Suite 304
Bayside, New York 11361

Defendant.

Civil Action No.

05 CV 2947

**COMPLAINT FOR PATENT INFRINGEMENT AND INFRINGEMENT
OF TRADE DRESS UNDER THE LANHAM ACT**
(Jury Demand)

For its Complaint against Techcon Group, Inc., Plaintiff TruSeal Technologies, Inc. states as follows.

THE PARTIES

1. Plaintiff TruSeal Technologies, Inc. ("TruSeal") is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business located at 23150 Commerce Park, Beachwood, Ohio 44122 and

FORMS RECEIVED

Consent to US Mag

Pretrial Instructions

Title VII NTC

DJW

regularly does business in this judicial district including selling, advertising and marketing its products within in this district as well as maintaining display booths at trade shows held in this district. TruSeal is a wholly-owned subsidiary of Quanex, Inc. TruSeal is in the business of designing, developing and manufacturing spacer products and is the owner of U.S. Patent No. 5,851,609 and the trade dress associated with its Swiggle® product line in the United States of America.

2. Defendant Techcon Group, Inc. (“Techcon”) is a corporation organized and existing under the laws of the State of New York, having its headquarters and principal place of business at 565 Plandome Road, Suite 112, Manhasset, New York, 11030. Upon information and belief, Techcon resides and regularly does business in this judicial district by selling and offering products for sale in this district, advertising its products for sale in this district, and maintaining a display booth at a trade show in this district where it sold and offered for sale its products

JURISDICTION AND VENUE

3. This action arises under the Patent Laws of the United States, Title 35, United States Code. This Court has jurisdiction under 28 U.S.C. § 1338(a) and (b).

4. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

FACTUAL BACKGROUND

5. Plaintiff TruSeal is one of the world's leading developers and manufacturers of insulating glass sealant spacer systems for windows and doors. Among its product offerings, TruSeal developed the revolutionary insulating glass sealant spacer known as Swiggle® that allows window manufacturers to reduce production time, cut labor costs and most importantly, deliver improved thermal performance in each and every window. Swiggle® is a warm edge sealant spacer system. As a leading supplier in the insulating glass market for more than 40 years, TruSeal is a preferred supplier to the majority of the largest window producers in North America. Today, TruSeal's products and technologies are used by more than 800 world-wide manufacturers of insulating glass.

6. TruSeal has established its place in the market by investing in research, obtaining protection for its intellectual property, requiring a rigorous quality assurance program, having the foremost warranty program in the industry and ensuring continuous customer service. TruSeal not only provides its customers with market and technology information but also works directly with its customer base at their sites to train and educate its customers in its processes

7. TruSeal and its Swiggle® product line are recognized throughout the industry as a leading sealant/spacer system. TruSeal's Swiggle® product line is easily recognizable by its distinctive and arbitrary grey and black color configuration in an all-in-one warm edge sealant/spacer system. When a window manufacturer sees a grey and black spacer warm edge sealant/spacer system, the customer knows that the system is a high quality, well constructed system from a sole source—TruSeal.

8. Upon information and belief, Techcon placed an advertisement for its "MaxSeal" product in the August 2005 issue of Door and Window Manufacturers Magazine for a product bearing the trade dress of TruSeal's Swiggle® product lines. A true and correct copy of the advertisement is attached as Exhibit A.

9. During September 13-15, 2005 at the GlassBuild America Show in Atlanta, Georgia, Techcon had a booth and displayed physical samples of its MaxSeal product installed in a 5 inch by 5 inch insulated glass window having a cutaway corner to illustrate the glass assembly and seal construction. Techcon also distributed sales brochure to potential customers describing and illustrating its MaxSeal product bearing the trade dress of TruSeal's Swiggle® product lines. Upon information and belief, Techcon was offering for sale the MaxSeal product at the GlassBuild America Show.

10. The MaxSeal physical samples and brochures clearly instruct and induce customers to install the MaxSeal in the manner prescribed by the '609 patent in a "Warm Edge Insulated Glass Spacer System." A true and correct copy of the MaxSeal advertisement distributed at the show is attached as Exhibit B. True and correct photographs of the physical sample of the MaxSeal product installed in a 5 inch by 5 inch insulated glass window having a cutaway corner are attached as Exhibit C.

11. Upon information and belief, Techcon has been selling and offering for sale to TruSeal's customers its MaxSeal product in this district. Techcon's MaxSeal product is a sealant spacer system used for assembling multiple pane insulated glass systems. Techcon's assembly, display, offers for sale, and use of its MaxSeal products in the United States directly infringes the '609 patent. Techcon's MaxSeal product contributorily infringes the '609 patent.

12. Techcon shows in its sales brochure for MaxSeal how MaxSeal is applied to the first glass unit. A second piece of glass is then applied on the opposite side of the seal. The brochure also illustrates the undulating spacer element that is a characteristic of TruSeal's trade dress of the Swiggle® products. The physical sample of the MaxSeal product installed between two glass panes and

the Sales Brochure distributed at the show induce Techcon's customers to infringe TruSeal's '609 patent

COUNT I: INFRINGEMENT OF THE '609 PATENT

13. TruSeal incorporates by reference herein the allegations of Paragraphs 1-12 of this Complaint.

14. TruSeal is the owner by assignment of the '609 patent entitled PREFORMED FLEXIBLE LAMINATE. The '609 patent was duly and legally issued by the United States Patent and Trademark Office ("USPTO") on December 22, 1998. The '609 patent is still in force and effect and is presumed valid under the U.S. patent laws. A copy of the '609 patent is attached as Exhibit D.

15. Techcon has been and still is directly infringing the '609 patent under 35 U.S.C. § 271(a) by making and using insulated glass windows that embody one or more claims of the '609 patent.

16. Techcon has been and still is indirectly infringing the '609 patent under 35 U.S.C. § 271(b) by actively inducing direct infringement by other persons who manufacture and use products that embody one or more of the claims of the '609 patent while Techcon had knowledge of the '609 patent and knew or should have known that its actions would induce direct infringement by others and

intended that its actions would induce direct infringement by others. Techcon will continue to infringe unless enjoined by this court.

17. Techcon has been and still is indirectly infringing the '609 patent under 35 U.S.C. § 271(c) by contributory infringement by providing non-staple articles of commerce to others for use in an infringing system with knowledge of the '609 patent and knowledge that these non-staple articles of commerce are used as a material part of the claimed inventions of the '609 patent. Techcon will continue to infringe unless enjoined by this court.

18. Techcon has knowingly and willfully infringed the '609 patent.

19. As a result of Techcon's infringement of the '609 patent, TruSeal has suffered monetary damages in an amount not yet determined, and will continue to suffer irreparable harm in the future unless Techcon's infringing activities are enjoined by this Court.

20. TruSeal will be greatly and irreparably harmed unless preliminary and permanent injunctions are issued enjoining Techcon and their agents, servants, employees, attorneys, representatives, and all others acting on their behalf from infringing the '609 patent.

**COUNT II: FALSE DESIGNATION OF ORIGIN UNDER SECTION 43(a) OF
THE LANHAM ACT BY VIRTUE OF THE USE OF MISLEADING AND
IMITATION OF TRUSEAL'S TRADE DRESS**

21. TruSeal incorporates by reference herein the allegations of Paragraphs 1-23 of this Complaint.

22. For many years, TruSeal has been selling its Swiggle® Seal product. Since its introduction, has continuously provided a unique undulating spacer element and aesthetically-pleasing grey sightline, as opposed to the more common black sightline provided by other products. A picture of TruSeal's distinctive grey Swiggle® Seal product is attached as Exhibit E.

23. TruSeal's unique and arbitrary combination of a black core and a grey sightline in a warm edge all-in-one sealant/spacer system has acquired a "secondary meaning" or has become distinctive in the minds of purchasers of sealant/spacer systems as being associated exclusively with TruSeal.

24. Techcon is advertising and selling its MaxSeal product bearing the trade dress of TruSeal's Swiggle® product lines. The MaxSeal product bears a striking resemblance to, and indeed imitates TruSeal's distinctive Swiggle® Seal products. Specifically, Techcon's MaxSeal utilizes TruSeal's characteristic undulating spacer combined with a black core and grey sightline - just like Swiggle® - to provide the immediate commercial impression that Techcon's

products would be associated with and emanate from the same source as Swiggle®-TruSeal. The use of the black core and grey sightline in Techcon's MaxSeal products in the United States constitutes a false designation of origin in violation of Section 43(a) of the Lanham Act, 35 U.S.C. §§ 114 and 1125 and is intentionally designed to deceive and has deceived customers and prospective customers into believing that Techcon's sealant spacer systems are manufactured by TruSeal and, as a consequence, is likely to divert and has diverted customers away from TruSeal.

25. TruSeal has been and is being damaged by such false designations of origin by Techcon and has no adequate remedy at law. Techcon's unlawful conduct will continue to damage TruSeal unless enjoined by this Court.

COUNT III: DECEPTIVE TRADE PRACTICES
UNDER O.C.G.A. § 10-1-372

26. TruSeal incorporates by reference herein the allegations of Paragraphs 1-25 of this Complaint.

27. Techcon is advertising and selling its MaxSeal product bearing the trade dress of TruSeal's Swiggle® product lines. The MaxSeal product bears a striking resemblance to, and indeed imitates TruSeal's distinctive Swiggle® Seal products. Specifically, Techcon's MaxSeal utilizes TruSeal's characteristic black

core and grey sightline, providing the immediate commercial impression that Techcon's products would be associated with and emanate from TruSeal. The use of the black core and grey sightline in Techcon's MaxSeal products in the United States constitutes a false designation of origin in violation of O.C.G.A. § 10-1-372 and is intentionally designed to deceive and has deceived customers and prospective customers into believing that Techcon's sealant spacer systems are manufactured by TruSeal and, as a consequence, is likely to divert and has diverted customers away from TruSeal.

28. TruSeal has been and is being damaged by such confusion or misunderstanding as to the affiliation, connection or association of its trade dress with Techcon's products.

PRAYER FOR RELIEF

Plaintiff TruSeal prays for the following relief:

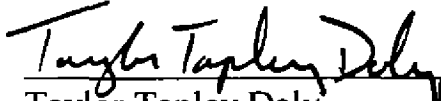
- (a) A judgment that Techcon has directly infringed and continues to infringe the '609 patent;
- (b) A judgment that Techcon has indirectly infringed by contributory infringement and/or inducement, and continues to infringe the '609 patent;

- (c) A judgment that Techcon's infringement of the '609 patent has been willful;
- (d) A judgment against Techcon awarding TruSeal damages suffered by TruSeal pursuant to 35 U.S.C. § 284 on account of Techcon's infringement of the '609 patent;
- (e) A judgment that TruSeal's damages be trebled pursuant to 35 U.S.C. § 284 and that punitive damages be assessed against Techcon;
- (f) Preliminary and permanent injunctions against Techcon and any entity acting in concert with Techcon, pursuant to 35 U.S.C. § 283, preventing Techcon and any such entity, from infringing the '609 patent;
- (g) A judgment that Techcon has violated section 43(a) of the Lanham Act, 15 U.S.C. §§ 1114 and 1125, by imitating TruSeal's trade dress;
- (h) A judgment against Techcon awarding TruSeal damages suffered by TruSeal pursuant to 15 U.S.C. § 1117 on account of Techcon's infringement of TruSeal's trade dress and that damages be trebled;
- (i) A judgment that Techcon has engaged in deceptive trade practices under O.C.G.A. § 10-1-372;

- (j) A judgment against Techcon awarding TruSeal damages suffered by TruSeal pursuant to O.C.G.A. § 10-1-373 on account of Techcon's infringement of TruSeal's trade dress and that damages be trebled;
- (k) Preliminary and permanent injunctions, pursuant to 15 U.S.C. § 1116 and O.C.G.A. § 10-1-373, against Techcon and any entity acting in concert with Techcon preventing Techcon and any such entity from selling products that infringe TruSeal's trade dress;
- (l) A judgment that this is an exceptional case and that TruSeal be awarded reasonable attorney fees pursuant to 35 U.S.C. § 285, 15 U.S.C. § 1117 and O.C.G.A. § 10-1-373; and
- (m) A judgment that Techcon be directed to pay TruSeal its costs incurred herein and such other and further relief as the Court deems just and equitable.

**TRUSEAL TECHNOLOGIES, INC. RESPECTFULLY DEMANDS
TRIAL BY JURY ON ALL ISSUES SO TRIABLE.**

Respectfully submitted this 16th day of November, 2005,


Taylor Tapley Daly w/ express permission
by CFF

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pro hac vice to be filed*