

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FUSIONBRANDS, INC.;)	
ANNA M. STEWART; and)	
STEPHEN KRAIGH STEWART,)	
)	AMENDED COMPLAINT
Plaintiffs,)	
)	CIVIL ACTION
v.)	FILE NO. 1:09-CV-0364
)	
TAYLOR GIFTS, INC. (d/b/a)	JURY TRIAL
TAYLOR SALES COMPANY,)	DEMANDED
GET ORGANIZED, and)	
KITCHEN & MUCH MORE), and)	
THE HELMAN GROUP, LTD.,)	
)	
Defendants.)	

VERIFIED AMENDED COMPLAINT

Plaintiffs, FUSIONBRANDS, INC., ANNA M. STEWART, and STEPHEN KRAIGH STEWART (“Plaintiffs”) for their Complaint against Defendants, TAYLOR GIFTS, INC. (d/b/a TAYLOR SALES COMPANY, GET ORGANIZED, and KITCHEN & MUCH MORE) and THE HELMAN GROUP, LTD. (“Defendants”) allege as follows:

PRELIMINARY STATEMENT

1. This case concerns the willful infringement of Plaintiffs’ intellectual property as well as a classic case of “bait and switch” for

consumers who are attempting to purchase a popular kitchen product. Plaintiffs Anna M. Stewart and Stephen Kraigh Stewart are the designers of the PoachPod,[®] which is a flexible egg-poacher that floats in boiling water. This husband and wife team also founded FusionBrands, Inc., which is the manufacturer of the PoachPods.[®] Launched only a few years ago, the PoachPod[®] has already received national and international design awards, been sold in at least ten (10) world markets, and has been featured in national publications such as the New York Times and Bon Appetit Magazine.

2. Defendant Taylor Gifts, Inc. (“Taylor”) is a web-based seller of kitchen products that advertised Plaintiffs’ PoachPod[®] on its website, showing pictures of the genuine PoachPod[®] and using its name. However, while genuine PoachPods[®] were advertised, Defendants actually shipped counterfeit products to consumers. These counterfeit products were provided to Defendant Taylor by Defendant Helman Group, Ltd. (“Helman”). The substituted products looked almost identical to the PoachPod[®], but were smaller, less dense, and notably of inferior quality. In so doing, Defendants knowingly infringed on Plaintiffs’ intellectual property

rights and knowingly created a false advertising program to lure fans of the PoachPod® while damaging Plaintiffs' goodwill and deceiving consumers.

3. This is an action for infringement of United States Patent Number US D556,501 S ("the '501 Patent"), pursuant to the United States Patent Act, and for unfair competition and infringement of United States Trademark Number 3,300,977 ("the '977 Trademark"), pursuant to the Lanham Act. A copy of the '501 Patent is attached to this Complaint as Exhibit A. A copy of the '977 Trademark is attached to this Complaint as Exhibit B.

PARTIES

4. Plaintiffs ANNA M. STEWART and STEPHEN KRAIGH STEWART (collectively, "Stewarts") are the owners of the '501 Patent.

5. Plaintiff FUSIONBRANDS, INC. ("FusionBrands") is the owner of the '977 Trademark. The Stewarts are the founders of FusionBrands.

6. Plaintiff FusionBrands is, and at all times mentioned herein was, a corporation organized and existing under the laws of the State of Georgia, having a principal place of business at 692 Highland Avenue, Atlanta, Georgia 30312-1436.

7. Plaintiffs are residents of the State of Georgia and may be contacted through the undersigned counsel.

8. Upon information and belief, Defendant Taylor is, and at all times mentioned herein was, a corporation organized and existing under the laws of the State of Pennsylvania, having a principal place of business located at 600 Cedar Hollow Road, Paoli, Pennsylvania 19301.

9. Upon information and belief, Defendant Taylor can be served at 600 Cedar Hollow Road, Paoli, Pennsylvania 19301.

10. Upon information and belief, Defendant Helman is, and at all times mentioned herein was, a corporation organized and existing under the laws of the State of California, having a principal place of business located at 1621 Beacon Place, Oxnard, California 93033.

11. Upon information and belief, Defendant Helman can be served through its registered agent for service of process, Barry Helman, at 28955 Selfridge Drive, Malibu, California 90265.

JURISDICTION AND VENUE

12. This is an action for pecuniary and injunctive relief for patent infringement arising under the United States Patent Act, Title 35 of the

United States Code, and for unfair competition and trademark infringement under the Lanham Act, 15 U.S.C. § 1114(1).

13. This Court has jurisdiction over the subject matter of this action as provided for in 28 U.S.C. §§ 1331 and 1338 and 15 U.S.C. § 1121. Venue is proper in this District pursuant to 28 U.S.C. § 1391 and § 1400.

14. This Court has personal jurisdiction over the Defendants in that they have worked in concert to introduce the infringing products into a stream of commerce terminating in the Northern District of Georgia. Taylor maintains several internet websites wherein it solicits business from and completes sales with customers in the Northern District of Georgia. Many of the products sold through Taylor's websites are manufactured or imported by Helman. Defendants send products, or have caused products to be sent, into the Northern District of Georgia. Further, Defendants have committed acts of patent infringement, trademark infringement, and unfair competition during the course of business in this District.

FACTUAL BACKGROUND

15. The Stewarts are the owners of the '501 Patent for a "Poach Pod."

16. The '501 Patent issued on December 4, 2007. A copy of this Patent is attached to this Complaint as Exhibit A.

17. Upon information and belief, Defendant Helman manufactures or imports, and Defendant Taylor sells products that infringe upon one or more claims of the '501 Patent.

18. Plaintiff FusionBrands manufactures the PoachPod®, and is the owner of the '977 Trademark, which is federally registered and consists of standard characters spelling out the word 'poachpod'. The foregoing registration is valid and subsisting and is in full force and effect.

19. The '977 Trademark was registered on October 2, 2007. A copy of this registration is attached to this Complaint as Exhibit B.

20. Upon information and belief, Defendant Taylor sells products that infringe upon one or more of the trademark rights associated with the '977 Trademark.

21. As a result of Plaintiffs' substantial advertising and promotional efforts, Plaintiff FusionBrands has become widely known to consumers as the source of products bearing the '977 Trademark. The '977 Trademark is widely recognized by consumers as being associated with Plaintiffs' high

quality goods and has become synonymous with the goodwill and reputation of Plaintiff FusionBrands.

22. At all times relevant to this Complaint, Defendants have been aware of the goodwill represented by the '977 Trademark and that consumers recognize the '977 Trademark as identifying the products of Plaintiffs, distinguishing Plaintiffs' products from those of others and symbolizing products of the highest quality.

23. Defendants have intentionally and willfully adopted and used a mark that is confusingly similar to the '977 Trademark.

24. Recently Plaintiffs became aware of Defendants' use of the '977 Trademark on websites operated by Defendant Taylor to advertise products that appear identical to those of the Plaintiffs, identifying each one as a 'poachpod.' Screen captures of various websites operated by the Defendant are attached hereto as Exhibit C. Additionally, Defendants have used the '977 Trademark on instruction sheets that accompany infringing products that are shipped to consumers.

25. Defendants copied FusionBrands's packaging and used its design in website advertising for Defendant Taylor's infringing goods, and shipped a product manufactured by Defendant Helman that, while similar in

design and shape, is inferior to the original. Photographs showing a side-by-side comparison of genuine PoachPods® to the counterfeit products sold by Defendants in response to orders placed for PoachPods® are pictured below. In these pictures, the genuine PoachPod® is larger and slightly darker in color than the infringing product. The Defendants' customers have no way of knowing that they are victims of a "bait and switch," and that the product actually being shipped by Defendants is not that of the Plaintiffs. To the contrary, the photographs and language contained on Defendant Taylor's website indicate purchasers are ordering "poachpods."





26. Upon information and belief, Defendants have performed the aforesaid acts with fraudulent purpose and knowledge to inappropriately trade upon Plaintiffs' extensive goodwill, including using FusionBrands' trademark to induce customers to buy Defendants' infringing products and in so doing, unlawfully profit from such sales.

27. Defendants' infringement of Plaintiffs' rights is willful and deliberate and with full knowledge of Plaintiffs' prior rights in the '501 Patent and the '977 Trademark.

FIRST CAUSE OF ACTION FOR PATENT INFRINGEMENT

28. Plaintiffs repeat and hereby incorporate herein by reference, as though specifically pleaded herein, the allegations of the preceding paragraphs.

29. On December 4, 2007, the '501 Patent was duly and legally issued to the Stewarts.

30. Pursuant to 35 U.S.C. § 282, the '501 Patent is presumed valid.

31. Defendants' activities constitute infringement of one or more claims of the '501 Patent.

32. Upon information and belief, Defendants will continue to infringe the '501 Patent unless enjoined by this Court.

33. As a result of Defendants' infringing conduct, Plaintiffs have been irreparably damaged to an extent not yet determined and Plaintiffs will continue to be irreparably damaged by such acts in the future unless Defendants are enjoined by this Court from committing further acts of infringement.

34. The infringement of the '501 Patent alleged above has injured Plaintiffs. Plaintiffs are entitled to recover damages in an amount that adequately compensates Plaintiffs for Defendants' infringement, which, in no event, can be less than a reasonable royalty.

**SECOND CAUSE OF ACTION FOR TRADEMARK
INFRINGEMENT UNDER LANHAM ACT § 32**

35. Plaintiffs repeat and hereby incorporate herein by reference, as though specifically pleaded herein, the allegations of the preceding paragraphs.

36. The U.S. Patent and Trademark Office determined that the ‘977 Trademark met all requirements for federal registration and issued a Certificate of Registration to Plaintiff FusionBrands for the trademark.

37. Plaintiffs’ use of the ‘977 Trademark occurred prior to the use by Defendants for advertising on the Taylor website or in companion materials accompanying infringing products.

38. Defendants have been manufacturing, importing, selling, distributing, and otherwise marketing in interstate commerce, similar products bearing the ‘977 Trademark.

39. Defendants’ purpose and intent in adopting the mark was and is to deceive customers.

40. Defendants have committed and, unless enjoined by this Court, will continue to commit the infringing acts alleged above, with full knowledge of Plaintiffs’ prior rights in the trademark, with willful and intentional disregard of Plaintiffs’ rights.

41. Defendants' use of the infringing marks as described above has caused and, unless enjoined by this Court, will continue to cause confusion in the mind of customers as to the relationship or affiliation between the parties.

42. Defendants' use of the PoachPod® brand name comprises an infringement of FusionBrands's registered trademark and is likely to cause confusion, mistake and deception of the public as to the identity and origin of FusionBrands's goods.

43. By reason of Defendants' acts and practices in violation of Section 32(1) of the Lanham Act as set forth above, Plaintiffs have suffered and will continue to suffer injury and damages.

44. By reason of Defendants' conduct, Defendant has caused and, unless such acts and practices are enjoined by the Court, will continue to cause, immediate and irreparable harm to Plaintiffs for which there is no adequate remedy at law.

**THIRD CAUSE OF ACTION FOR UNFAIR COMPETITION
UNDER LANHAM ACT § 43(a)**

45. Plaintiffs repeat and hereby incorporate herein by reference, as though specifically pleaded herein, the allegations of the preceding paragraphs.

46. The '977 Trademark has become uniquely associated with and identifies Plaintiffs as the source for PoachPods®.

47. Defendants use the PoachPod® brand name on the Taylor website and in companion materials accompanying infringing products in a deliberate and willful effort to deceive, mislead, and confuse consumers to enable Defendants to trade-off of Plaintiffs' reputation and goodwill.

48. Defendants' acts constitute unfair competition in violation of Section 43(a) of the Lanham Act.

49. By reason of the Defendants' conduct, Plaintiffs have suffered and will continue to suffer damage to their business, reputation and goodwill.

50. By reason of Defendants' conduct, Defendants have caused and, unless enjoined by the Court, will continue to cause immediate and irreparable harm to Plaintiffs for which there is no adequate remedy at law.

51. Plaintiffs are entitled to a preliminary injunction to be made permanent upon entry of final judgment, preventing Defendants' conduct.

REQUESTED RELIEF

WHEREFORE, Plaintiffs pray for a judgment against Defendants as follows:

- A. That Defendants be declared to have infringed, induced others to infringe, and/or committed acts of contributory infringement, with respect to the claims of the subject U.S. Patent;
- B. That Defendants, their officers, agents, servants, employees, attorneys, parents, subsidiaries, affiliates, successors, and all others in active concern or participation with them or acting on their behalf be permanently enjoined from further infringement of the subject U.S. Patent;
- C. That Defendants be ordered to account for and pay to Plaintiffs all damages caused to said Plaintiffs by reason of said Defendants' infringement of the subject U.S. Patent pursuant to 35 U.S.C. § 284 including enhanced damages;
- D. That Plaintiffs be granted pre-judgment and post-judgment interest on the damages caused to them by reason of Defendants' infringement of the subject U.S. Patent;

- E. That Defendants, their officers, agents, servants, employees, attorneys, parents, subsidiaries, affiliates, successors, and all others in active concern or participation with them or acting on their behalf be preliminarily and permanently enjoined from:
- a. Using the '977 Trademark, or any colorable imitation thereof;
 - b. Using any trademark that imitates or is confusingly similar to or in any way similar to the '977 Trademark, or that is likely to cause confusion, mistake, deception, or public misunderstanding as to the origin of Plaintiffs' products or their connectedness to Defendants; and
 - c. Engaging in any trade practices whatsoever, including those complained of herein, which tend to unfairly compete with or injure Plaintiffs' business and the goodwill associated therewith;
- F. That Defendants be required to file with the Court and serve on Plaintiffs within thirty (30) days after entry of the Injunction, a report in writing under oath setting forth in detail the manner

and form in which Defendants have complied with the Injunction;

- G. That, pursuant to 15 U.S.C. § 1117, Defendants be held liable for all damages suffered by Plaintiffs resulting from the acts alleged herein;
- H. That, pursuant to 15 U.S.C. § 1117, Defendants be compelled to account to Plaintiffs for any and all profits derived by it from its illegal acts complained of herein;
- I. That the Defendants be ordered pursuant to 15 U.S.C. § 1118 to deliver up for destruction all containers, labels, signs, prints, packages, wrappers, receptacles, advertising, promotional material or the like in possession, custody or under the control of Defendants bearing a trademark found to infringe FusionBrands's trademark rights, as well as all plates, matrices, and other means of making same;
- J. That this matter be declared an "exceptional case" pursuant to 35 U.S.C. § 285 and 15 U.S.C. § 1117, and that said Defendants be ordered to pay Plaintiffs' attorney fees and costs;

K. That Plaintiffs are granted such other and further relief as the case may require and the Court may deem just and proper.

JURY DEMAND

In accordance with Fed. R. Civ. P. 38 (b), Plaintiffs hereby demand a trial by jury.

Respectfully submitted this 6th day of March, 2009.

/s/ Mary Donne Peters

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CERTIFICATION

The Undersigned hereby certifies that the text of this document has been prepared with Times New Roman 14 point, one of the fonts and point selections approved by the Court in Local Rule 5.1B.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted this 6th day of March, 2009.

/s/ Mary Donne Peters

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