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CLERK OF DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
[Signature]
DEPUTY

Attorneys for Plaintiffs, LYNN CHENOWTH; and TRANSPORTATION EQUIPMENT, INC. dba PULLTARPS

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

LYNN CHENOWTH;
TRANSPORTATION EQUIPMENT, INC.
dba PULLTARPS,

Plaintiffs,

v.

ROBERT L. SACKETT; STEVE AND
LAURIE HANGER, CO-TRUSTEES OF
THE WILBUR L. HANGER TRUST; and
DOES 1 to 100, inclusive,

Defendants.

CASE NO: 05cv1483 B (WMc)

[Copyright/Trademark/Unfair
Competition]

**FIRST AMENDED COMPLAINT FOR:
INVALIDATION OR AMENDMENT OF
UNITED STATES PATENT; VIOLATION
OF FEDERAL TRADEMARK AND
LANHAM ACT; STATE AND COMMON
LAW UNFAIR COMPETITION; TRADE
LIBEL; BREACH OF CONTRACT;
UNFAIR BUSINESS PRACTICES; AND
DEMAND FOR JURY TRIAL**

Plaintiffs, LYNN CHENOWTH and TRANSPORTATION EQUIPMENT, INC. dba PULLTARPS, allege as follows:

GENERAL ALLEGATIONS

1. This action arises under the Lanham Act, U.S.C. Title 15, Section 43(a), and this court has original jurisdiction under 15 U.S.C.S. §§1051 et seq, as more fully alleged below. This action also involves a dispute over the inventorship, ownership and/or validity of a U.S. patent, and therefore, this Court has original and exclusive jurisdiction pursuant to Title 28,

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ORIGINAL

- 1 United States Code, Section 1338(a). Such jurisdiction is therefore exclusive of the courts
2 of the states in such patent cases.
- 3 2. Venue in this judicial district is proper pursuant to Title 28, United States Code, Section
4 1391 because defendants reside in this judicial district.
- 5 3. Plaintiff, LYNN CHENOWTH, is an individual who resides in San Diego, California, and
6 he is President of TRANSPORTATION EQUIPMENT, INC. dba PULLTARPS
7 (“PULLTARPS”).
- 8 4. Plaintiff, TRANSPORTATION EQUIPMENT, INC. dba PULLTARPS is a California
9 Corporation, having a principal place of business at 1404 N. Marshall Ave., El Cajon, CA
10 92020. Plaintiff’s business includes the marketing, distribution and/or sale of truck
11 accessories, including a product known as the “Slope Detector” which essentially identifies,
12 illustrates and/or warns of excessive tilt in large trucks and similar vehicles.
- 13 5. Defendant, ROBERT L. SACKETT, is an individual who resides in the County of San
14 Diego.
- 15 6. On information and belief, Defendants STEVE and LAURIE HANGER are co-trustees of
16 the WILBUR L. HANGER TRUST and are sued herein in such representative capacity.
17 WILBUR L. HANGER, deceased, was an individual who resided in the County of San
18 Diego, at all times material to this litigation..
- 19 7. Plaintiffs have no knowledge of the true names and capacities of the defendants sued herein
20 as DOES 1 to 100, inclusive, and therefore sues these defendants by such fictitious names.
21 Plaintiffs will amend their Complaint to allege the true names and capacities when they are
22 ascertained.
- 23 8. Plaintiffs allege, on information and belief, that at all relevant times, each of the defendants
24 were authorized and empowered by each of the other defendants to act as the agent of each
25 of the remaining defendants, and each and all of the defendants’ conduct and activity as
26 alleged have been done by them within the scope and capacity of, and as agents for, the
27 other Defendants.
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2 **FIRST CAUSE OF ACTION**
3 **(Invalidity or Amendment of a United States Patent)**
4 **Against ROBERT SACKETT and DOES 1 to 25**

5 9. Plaintiffs hereby re-allege, as if fully set forth, the allegations of paragraphs 1 through 8.
6 Plaintiffs also allege, as if fully set forth, the common damages allegations set forth below
7 in paragraphs 37 through 39.

8 10. In and around 1994, plaintiffs and SACKETT, who was then an employee of PULLTARPS,
9 and within the scope of that employment, discussed the need for a device that measured,
10 illustrated to and/or alerted a vehicle driver as to the tilt of a vehicle, its trailer and/or its
11 elevatable bin. SACKETT represented that he had a patent on such a device that had been
12 issued in 1986. In fact, SACKETT's patent was only for an Electronic Inclination Gauge,
13 a bar for measuring angles of inclination from the vertical and horizontal.

14 11. During and within the scope of his subsequent employment with PULLTARPS,
15 SACKETT, working with plaintiffs and other PULLTARPS employees, helped develop a
16 prototype for such a devise, referred to as Slope Detector I. Plaintiffs felt the product could
17 and should be improved. Thereafter, SACKETT, within the scope of his employment and
18 again working with plaintiffs, other PULLTARPS employees and the product manufacturer,
19 helped develop another devise, referred to as Slope Detector II. In that same manner, Slope
20 Detector III was developed.

21 12. During and within the scope of his employment with PULLTARPS,, SACKETT worked
22 with various attorneys in the application for a patent as to the slope detector device,
23 including attorneys for plaintiffs. On April 19, 1995, a United States patent application was
24 filed, mistakenly naming SACKETT as sole inventor of an "Apparatus for Measuring
25 Truck Tilt and Preventing Roll-Over." The Patent was granted on October 3, 2000 under
26 Patent No. 6,128,076. (Referred to in this Complaint as the "Subject Patent).
27

28 13. The Subject Patent claims "an apparatus for measuring side-to-side tilt of a vehicle and
displaying indicia showing the amount of tilt present ...". The patented devise is described
as including: a transparent tube with a bubble which is mounted on the truck through which

1 light is emitted to generate an electronic signal; the electronic signal is then used to
2 automatically shut of the truck's elevating bin and to emit an audible alarm; and the
3 electronic signal is also used to produce a visible display which indicates the amount of tilt.
4 The Subject Patent also includes other claims as to the composition of the device.

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- 6 14. Defendant, ROBERT L. SACKETT, claims to own all rights, title and interest in and to
7 United States Letter Patent No. 6,128,076. The Subject Patent was issued naming
8 SACKETT as the sole inventor. In fact, persons other than SACKETT were inventors,
9 including but not limited to, CHENOWTH and/or other PULLTARPS employees or agents
10 who conceived of: the device itself; the electronic means in which the device functions, as
11 described in the patent; using the electronic signal to shut off the elevating bin; and/or using
12 the electronic signal to produce an audible alarm.
- 13 15. United States Letter Patent No. 6,128,076 is therefore invalid pursuant to Title 35, United
14 States Code, Sections 101, 102, 103, and 116.

15 **SECOND CAUSE OF ACTION**

16 (Trademark Infringement; Lanham Act Violations;
17 and State and Common Law Unfair Business Practices)

18 Against Defendants ROBERT L. SACKETT; STEVE and LAURIE HANGER, CO-
19 TRUSTEES OF THE ESTATE OF WILBUR L. HANGER;
20 and DOES 15 to 35

- 21 16. Plaintiffs hereby re-allege, as if fully set forth, the allegations of paragraphs 1 through 15.
22 Plaintiffs also allege, as if fully set forth, the common damages allegations set forth below
23 in paragraphs 37 through 39.
- 24 17. As to the State and common law causes of action, this court has jurisdiction over this cause
25 of action pursuant to 28 U.S.C. § 1367(a). The Court has jurisdiction over this causes of
26 action in that the claim is joined with substantial and related claims under the Patent Laws
27 and Trademark Laws of the United States, and they are based on a common nucleus of
28 operative facts.
18. On December 12, 1994, plaintiff, LYNN CHENOWTH DBA PULLTARPS
MANUFACTURING applied for a "Slope Detector" United States Federal Trademark for

1 use in "a system comprised of a tilt indicator, a lighted display indicating tilt angle and an
2 alarm for indicating excessive tilt for use in the detection and warning of excessive tilt in
3 dump trucks and the like, in Class 9." The date of first use in commerce was October 28,
4 1994, and plaintiffs have continually used that trademark since then in interstate commerce.
5 On July 16, 1996, the subject trademark was successfully registered, No. 1,986,661
6 (referred to in this complaint as the "Mark").

7 19. Plaintiffs have expended a great deal of effort and resources in promoting their products
8 under the Mark and have developed a reputation for high quality and reliability in the
9 United States. On information and belief, through extensive use and advertisement of the
10 Mark in the marketplace, plaintiffs' Mark has become "famous" as defined by Federal Law,
11 including but not limited to Lanham Act Section 43 c.

12 20. Defendants have made and used false designations of origin, misleading description of fact,
13 and false and misleading representations of fact which are likely to cause confusion, or to
14 cause mistake, or to deceive as to the affiliation, connection, sponsorship, or approval
15 between plaintiffs' services and products and defendants' services and products.
16 Defendants' conduct includes, but is not limited to: using a trademark that is the same
17 and/or confusingly similar to plaintiffs' Mark; and misrepresenting that defendants could
18 produce the plaintiffs' products. On information and belief, defendants currently possess
19 product labels and product packaging which contains and/or uses the plaintiffs' Mark.

20 21. By the above-mentioned acts, defendants have violated §43(a) of the Lanham Act, 15
21 U.S.C. §1125(a) and plaintiffs' trademark rights, and defendants will continue to do so
22 unless enjoined by the Court. Defendants' violations have caused, and will continue to
23 cause, actual confusion in the market place between plaintiffs and defendants, and between
24 their respective products and/or services.

25 22. Defendants' conduct was willful in that defendants knew of plaintiffs' trademark rights,
26 trademark application and/or trademark registration. Defendants willfully intended to trade
27 on the plaintiffs' reputation in the marketplace, and/or to cause dilution of the plaintiffs'
28 famous Mark.

1 23. By the above-mentioned acts, defendants have committed acts of unfair competition,
2 violating California *Business and Professional Code* (Cal. B & P §17200 et seq.) and
3 California *Business and Professional Code* §17500 relative to false and misleading
4 advertisements. Defendants unfair business practices and misleading advertisements
5 present a continuing threat and damage to plaintiffs and the public in general.

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7 **THIRD CAUSE OF ACTION**
8 **(Breach of Contract Against All Defendants)**

9 24. Plaintiffs reallege and incorporate by reference paragraphs 1 through 23 above as though
10 fully set forth herein. Plaintiffs also allege, as if fully set forth, the common damages
11 allegations set forth below in paragraphs 37 through 39.

12 25. This court has jurisdiction over this cause of action pursuant to 28 U.S.C. § 1367(a)
13 because the claim is joined with substantial and related claims under the Patent Laws and
14 Trademark Laws of the United States, and they are based on a common nucleus of
15 operative facts.

16 26. On 6/26/01, Defendants and PULLTARPS entered into a distribution agreement in which
17 defendants were to provide plaintiffs with manufactured Slope Detector products. Pursuant
18 to that agreement, PULLTARPS purchased numerous Slope Detectors for resale to
19 PULLTARPS customers over the next few years and into 2003. Plaintiffs purchased these
20 products in large quantities on various occasions during that time frame.

21 27. Under the terms of the agreement, and pursuant to previous agreements and operating
22 practices between the parties, and pursuant to applicable law, defendants agreed to satisfy
23 any warranty claims for product failures.

24 28. Numerous defendants products which were purchased by plaintiffs failed to operate
25 properly, and generally, defendants products purchased by plaintiffs during this time frame
26 had design and manufacturing defects which made the products non-functional in
27 foreseeable circumstances, including but not limited to product failures in wet weather.

28 29. Plaintiffs complained to defendants about these various defects and product failures, and

1 plaintiffs also requested repairs and/or replacements of the various defective products. In
2 breach of their express and implied contractual obligations, and in breach of express and
3 implied warranties, defendants failed to repair and/or replace the defective products which
4 had been delivered, and defendants failed to remedy the product defects in general.

5 30. By reason of defendants' breach of said contract as herein alleged, plaintiffs have suffered
6 various damages including: the costs incurred in repairing and/or replacing the defective
7 products; the costs incurred in traveling to various venues to work with end users to remedy
8 the product malfunctions; the costs incurred in testing and developing plaintiffs' own
9 remedies for the product defects and product failures; and plaintiffs' loss of good will and
10 customers (as to other products and services provided by plaintiffs) because of the
11 customers' dissatisfaction with the subject products.

12 **FOURTH CAUSE OF ACTION**
13 **(Trade Libel/Product Disparagement Against All Defendants)**

14 31. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 30 above as though
15 fully set forth herein.

16 32. This court has jurisdiction over this cause of action pursuant to 28 U.S.C. § 1367(a)
17 because the claim is joined with substantial and related claims under the Patent Laws and
18 Trademark Laws of the United States, and they are based on a common nucleus of
19 operative facts.

20 33. In 2003, after plaintiffs stopped purchasing defendants' products, defendants sent
21 solicitations regarding defendants' claimed "patent, manufacturing and marketing rights."
22 These solicitations were sent to numerous individuals and companies in the trucking
23 industry, including clients of the plaintiffs. In the solicitation, defendants made several
24 false and/or misleading descriptions or representations which were derogatory to plaintiffs'
25 business in general and/or to the quality of plaintiffs' products or services, including, but
26 not limited to: that defendants were the developers and sole owners of the Slope Detector;
27 that the products cost \$175 each; and that plaintiffs company "legally lost their exclusive
28 marketing rights contract by default for non-payment of a guaranteed royalty."

1 34. Defendants, by making false descriptions or representations, intended to cause harm to
2 plaintiff's pecuniary interest, or recognized or should have recognized that it was likely to
3 do so. This conduct constitutes trade libel and/or product disparagement.

4 35. As a direct result and proximate result of defendants' acts of trade libel and/or product
5 disparagement, plaintiffs have been and are likely to suffer pecuniary damage, in an amount
6 to be proven at trial, including damage caused by the deterrence of actual or prospective
7 customers and the resultant delay and/or loss of sales.

8 36. By the above-mentioned acts, defendants have committed acts of unfair competition,
9 violating California *Business and Professional Code* (Cal. B & P §17200 et seq.) and
10 California *Business and Professional Code* §17500 relative to false and misleading
11 advertisements. Defendants unfair business practices and misleading advertisements
12 present a continuing threat and damage to plaintiffs and the public in general..

13 **COMMON ALLEGATIONS OF DAMAGES**

14 37. Defendants' acts alleged above have caused, and will continue to cause, damage to
15 plaintiffs' business, trademark rights, reputation and/or goodwill, and will cause plaintiffs
16 to lose profits.

17 38. Defendants have profited from the wrongful acts alleged above, at the expense of plaintiffs
18 and the general public.

19 39. On information and belief, defendants will continue these wrongful acts unless restrained
20 by the Court, all to plaintiff's irreparable damage. It would be difficult to ascertain the
21 amount of compensation which could afford plaintiffs adequate relief for such continuing
22 acts. Plaintiffs' remedy at law is not adequate to compensate it for these future damages.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, plaintiffs pray that:

25 1. This Court grant an injunction against defendants, their officers, servants, agents,
26 employees, related organizations, their successors and assigns, and those persons in active
27 concert or participation with them, enjoining all continuing acts of trade libel and product
28 disparagement concerning plaintiffs and/or plaintiff's products;

- 1 2. This Court grant an injunction enjoining and restraining defendants and their agents,
2 servants and employees from: using any trademark confusingly similar to plaintiffs' Slope
3 Detector Mark; directly or indirectly making false or misleading representations concerning
4 defendants' business, services and/or products; directly or indirectly continuing any acts of
5 unfair competition, as herein alleged;
- 6 3. This Court, pursuant to the power granted it under 15 U.S.C.S. §1118, order that all labels,
7 signs, letterhead, envelopes, computer equipment which generates offending web sites,
8 prints, packages, wrappers, receptacles, and advertisements in the possession of defendants
9 bearing false or misleading information, sign, symbol and/or trademark shall be delivered
10 up and destroyed;
- 11 4. Defendants be required to account to plaintiffs for any and all profits derived by defendants
12 from the sale of goods using plaintiffs' Mark;
- 13 5. Defendants pay to plaintiffs any and all profits derived by defendants from the sale of
14 defendants' goods and/or services, and/or for all damages sustained by plaintiffs by reason
15 of these acts of infringement and/or unfair competition, the amounts of which are currently
16 unknown, but on information and belief in excess of \$25,000;
- 17 6. The Court award plaintiffs three times the amount of defendants' profits and/or plaintiffs'
18 damages sustained by plaintiffs by reason of these acts of infringement and/or unfair
19 competition;
- 20 7. The Court award plaintiffs monetary damages caused by defendants' trade liable, product
21 disparagement, breach of contract and/or breach of warranties, the amounts of which are
22 currently unknown, but on information and belief in excess of \$25,000;
- 23 8. The Court order that the Subject Patent be amended to set forth the rightful inventors and
24 owners, or alternatively, order the Subject Patent invalidated;
- 25 9. Costs of this action be awarded to plaintiffs;
- 26 10. Plaintiffs be awarded reasonable attorney fees; and
- 27 11. Any other relief which the Court deems just.

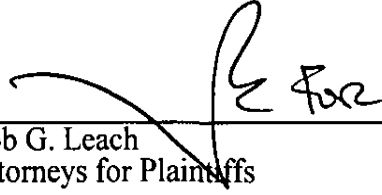
28 **JURY DEMAND**

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Plaintiffs request a trial by jury of all claims that may be so tried.

Dated: October 20, 2005

CHARMASSON, BUCHACA & LEACH, LLP



Rob G. Leach
Attorneys for Plaintiffs