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11 **UNITED STATES DISTRICT COURT**  
12 **FOR THE DISTRICT OF NEVADA**

14 TRUSEAL TECHNOLOGIES, INC.,

15 Plaintiff,

16 v.

17 BEIJING HUALI ARCHITECTURE  
DECORATION CO., LTD.,

18 Defendant.

Case No. 2:08-cv-01338-JCM-(GWF)

**AMENDED COMPLAINT FOR PATENT  
INFRINGEMENT, AND FOR TRADE  
DRESS INFRINGEMENT UNDER THE  
LANHAM ACT AND THE NEVADA  
DECEPTIVE TRADE PRACTICES ACT**

(Jury Demand)

19  
20 For its Amended Complaint against Beijing Huali Architecture Decoration Co., Ltd.,  
21 Plaintiff Truseal Technologies, Inc. states as follows:

22 **JURISDICTION AND VENUE**

- 23 1. Count I of this action arises under the Patent Laws of the United States, Title 35,  
24 United States Code. This Court has jurisdiction over Count I under 28 U.S.C. § 1338(a).  
25 2. Count II of this action arises under the Lanham Act, Title 15, United States Code.  
26 This Court has jurisdiction over Count II under 28 U.S.C. §§ 1331(a) and 1338(b).  
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1 and most importantly, deliver improved thermal performance in each and every window.  
2 Edgetherm is a warm edge sealant spacer system. As a leading supplier in the insulating glass  
3 market for more than 40 years, Truseal is a preferred supplier to the majority of the largest  
4 window producers in North America. Today, Truseal's products and technologies are used by  
5 more than 800 world-wide manufacturers of insulating glass.

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

11 10. Truseal and its Edgetherm product line are recognized throughout the industry as a  
12 leading sealant/spacer system. Truseal has been selling Edgetherm for almost a decade. In one  
13 iteration, Edgetherm has a unique and arbitrary color scheme that includes a black core and a gray  
14 sightline in an all-in-one (unitary) construction. Edgetherm is easily recognized by customers due  
15 to its distinctive color scheme in a unitary construction.

16 11. The black core and gray sightline color scheme is the foundation for Truseal's  
17 entire family of sealant/spacer system products. When window manufacturers see the unitary  
18 black and gray flexible spacer/sealant system, they immediately recognize it as being a Truseal  
19 product. Truseal also uses this distinctive black and gray color combination in its Duraseal and  
20 Duralite products.

21 12. Truseal's customers, as well as the entire market, know that Truseal is  
22 synonymous with products of the highest quality backed by a strong warranty. Truseal backs all  
23 of its products with the best warranty available in the industry. The distinctive gray and black  
24 color scheme does not simply signal a Truseal product—it also carries the hallmark of Truseal's  
25 outstanding customer service. Truseal has won industry awards for its customer-service as well  
26 its innovation. Therefore, Truseal's color scheme is uniquely intertwined with its marketing,  
27 service and reputation. Accordingly, when a window manufacturer sees a gray and black spacer  
28 warm edge sealant/spacer system, the customer knows that the system is a high quality, well

1 constructed system from a sole source—Truseal. Unfortunately, this means that any time  
2 customers have a black core/gray sightline sealant/spacer system that fails in the field, they will  
3 automatically assume it is a Truseal product based solely on its appearance.

4 13. Huali is attempting to co-opt Truseal’s technology and reputation for its own  
5 benefit. At the September 2007 GlassBuild show in Atlanta, Georgia, Truseal first discovered  
6 Huali’s efforts to sell an infringing product. At that show, Huali was calling the product both  
7 HualiSeal and Swiggle, Swiggle being Truseal’s well-known former name for Edgetherm. At its  
8 booth, Huali freely distributed samples of HualiSeal—its Edgetherm knock-off. The sample  
9 comprised two-paned windows using the HualiSeal sealant/spacer system. By all outward  
10 appearances, HualiSeal had simply copied Truseal’s patented Edgetherm product and its  
11 distinctive color scheme. In response, Truseal informed Huali at the show that it was infringing  
12 Truseal’s intellectual property and requested immediate cessation.

13 14. In September 2008, however, Huali and its infringing product resurfaced, this time  
14 being sold under the name “EdgeMax Seal”. In September 2008, Truseal learned that one of its  
15 former salesmen had teamed with a Texas-based distributor to sell the Huali product to Truseal’s  
16 customers. Truseal obtained a Huali EdgeMax Seal sample and took pictures of a Huali box.

17 15. EdgeMax Seal is exactly the same as HualiSeal—just renamed. Truseal tested the  
18 Huali samples in September 2008. Specifically, Truseal tested the September 2008 Huali samples  
19 to determine if the samples contained each of the (1) metal spacer, (2) core and (3) longitudinal  
20 adhesive claimed in the ‘328 Patent. Using a standard thermogravimetric analysis and a visual  
21 inspection, Truseal discovered that the samples incorporate the above three components.

22 16. Huali is using materials for its EdgeMax Seal/HualiSeal product that do not meet  
23 the industry norms. Windows made by a former Edgetherm customer—Maritech Window—had  
24 issues adhering to the glass pane of an insulating glass unit. In addition, on October 6, 2008  
25 Truseal obtained samples of Huali’s HualiSeal/EdgeMax Seal at the GlassBuild Show currently  
26 underway at the Las Vegas Convention Center. Just like the other samples, this new sample  
27 clearly has: (1) an undulating metal spacer, (2) a core and (3) a longitudinal adhesive. Indeed, a  
28

1 side-by-side comparison of Edgetherm and HualiSeal/EdgeMax Seal demonstrates that they are  
2 visually indistinguishable—except that Huali’s products are of lower quality.

3 **COUNT I:**  
4 **INFRINGEMENT OF THE ‘328 PATENT**

5 17. Truseal incorporates by reference herein the allegations of Paragraphs 1-16 of this  
6 Complaint.

7 18. Truseal is the owner by assignment of the ‘328 Patent entitled PREFORMED  
8 FLEXIBLE LAMINATE. The ‘328 Patent was duly and legally issued by the United States  
9 Patent and Trademark Office (“USPTO”) on March 12, 2002. The ‘328 Patent is still in force and  
10 effect and is presumed valid under the U.S. patent laws. A copy of the ‘328 Patent is attached as  
11 Exhibit A.

12 19. Huali has been and still is directly infringing the ‘328 Patent under 35 U.S.C. §  
13 271(a) by making, using, and/or selling insulated glass windows that embody one or more claims  
14 of the ‘328 Patent. Huali will continue to infringe unless enjoined by this court.

15 20. Huali has been and still is indirectly infringing the ‘328 Patent under 35 U.S.C. §  
16 271(b) by actively inducing direct infringement by other persons who manufacture and use  
17 products that embody one or more of the claims of the ‘328 Patent while Huali had knowledge of  
18 the ‘328 Patent and knew or should have known that its actions would induce direct infringement  
19 by others and intended that its actions would induce direct infringement by others. Huali will  
20 continue to infringe unless enjoined by this court.

21 21. Huali has been and still is indirectly infringing the ‘328 Patent under 35 U.S.C. §  
22 271(c) by contributory infringement by providing non-staple articles of commerce to others for  
23 use in an infringing system with knowledge of the ‘328 Patent and knowledge that these non-  
24 staple articles of commerce are used as a material part of the claimed inventions of the ‘328  
25 Patent. Huali will continue to infringe unless enjoined by this court.

26 22. Huali has knowingly and willfully infringed the ‘328 Patent.

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1 U.S.C. §§ 114 and 1125 and is intentionally designed to deceive and has deceived customers and  
2 prospective customers into believing that the Huali Products are manufactured by Truseal and, as  
3 a consequence, is likely to divert and has diverted customers away from Truseal.

4 **COUNT III:**  
5 **DECEPTIVE TRADE PRACTICES UNDER THE**  
6 **NEVADA DECEPTIVE TRADE PRACTICES ACT, NRS CHAPTER 598**

7 30. Truseal incorporates by reference herein the allegations of Paragraphs 1-29 of this  
8 Complaint.

9 31. Huali is advertising and selling the Huali Products bearing the trade dress of  
10 Truseal’s Edgetherm product lines. The Huali Products bear a striking resemblance to, and  
11 indeed imitate Truseal’s distinctive Edgetherm products. Specifically, the Huali Products utilize  
12 Truseal’s characteristic black core and gray sightline, providing the immediate commercial  
13 impression that the Huali Products would be associated with and emanate from Truseal.

14 32. The use of the trade dress of Truseal’s Edgetherm product, including the black  
15 core and gray sightline, by the Huali Products in the state of Nevada constitutes a knowingly  
16 made false representation as to the source, sponsorship, or approval of goods for sale, and/or a  
17 knowingly made false representation as to affiliation, connection, or association of another  
18 person, in violation of the Nevada Deceptive Trade Practices Act, NRS § 598.0915 (2) and (3),  
19 and is intentionally designed to deceive and has deceived customers and prospective customers  
20 into believing that Huali’s sealant spacer systems are manufactured by Truseal and, as a  
21 consequence, is likely to divert and has diverted customers away from Truseal.

22 33. Truseal has been and is being damaged by such confusion or misunderstanding as  
23 to the source, sponsorship, approval, affiliation, connection or association of its trade dress with  
24 the Huali Products.

25 WHEREFORE, Plaintiff Truseal prays for the following relief:

- 26 (a) A judgment that Huali has directly infringed and continues to infringe the ‘328  
27 Patent;  
28 (b) A judgment that Huali has indirectly infringed by contributory infringement and/or  
inducement, and continues to infringe the ‘328 Patent;

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1 (c) A judgment that Huali's infringement of the '328 Patent has been willful;

2 (d) A judgment against Huali awarding Truseal damages suffered by Truseal pursuant  
3 to 35 U.S.C. § 284 on account of Huali's infringement of the '328 Patent;

4 (e) A judgment that Truseal's damages be trebled pursuant to 35 U.S.C. § 284 and that  
5 punitive damages be assessed against Huali;

6 (f) Preliminary and permanent injunctions against Huali and any entity acting in  
7 concert with Huali, pursuant to 35 U.S.C. § 283, preventing Huali and any such entity, from  
8 infringing the '328 Patent;

9 (g) A judgment that Huali has violated section 43(a) of the Lanham Act, 15 U.S.C. §§  
10 1114 and 1125, by imitating Truseal's trade dress;

11 (h) A judgment against Huali awarding Truseal damages suffered by Truseal pursuant  
12 to 15 U.S.C. § 1117 on account of Huali's infringement of Truseal's trade dress and that damages  
13 be trebled;

14 (i) A judgment that Huali has engaged in deceptive trade practices under the Nevada  
15 Deceptive Trade Practices Act, NRS Chapter 598;

16 (j) A judgment against Huali awarding Truseal damages suffered by Truseal pursuant  
17 to the Nevada Deceptive Trade Practices Act, NRS Chapter 598, on account of Huali's  
18 infringement of Truseal's trade dress;

19 (k) Preliminary and permanent injunctions, pursuant to 15 U.S.C. § 1116 and the  
20 Nevada Deceptive Trade Practices Act, NRS Chapter 598, against Huali and any entity acting in  
21 concert with Huali preventing Huali and any such entity from selling products that infringe  
22 Truseal's trade dress;

23 (l) A judgment that this is an exceptional case and that Truseal be awarded reasonable  
24 attorney fees pursuant to 35 U.S.C. § 285, 15 U.S.C. § 1117, and the Nevada Deceptive Trade  
25 Practices Act, NRS Chapter 598;

26 (m) A judgment that Huali be directed to pay Truseal its costs incurred herein; and

27 (n) Such other and further relief as the Court deems just and equitable.

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**JURY DEMAND**

Truseal Technologies, Inc. respectfully demands trial by jury on all issues so triable.

RESPECTFULLY SUBMITTED this Thirty-first day of October, 2008.

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