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6 Counsel for Plaintiff

7  
8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA**

10 REMY INTERNATIONAL, INC., a Delaware  
Corporation,

Case No.

11 Plaintiff,

**COMPLAINT**

12 ANDRE NIERMANN AUTOMOTIVE  
ELECTRICAL PRODUCTS, INC., a  
13 German Corporation,

14 Defendant.

15 For its complaint against Defendant, Plaintiff Remy International, Inc., ("Remy"),  
16 complains and alleges as follows:

17 **NATURE OF ACTION**

18 This is an action for patent infringement and unfair competition under federal  
19 statutes, with pendent claims for common law deceptive trade practices and trademark  
20 infringement. Plaintiff seeks damages, attorneys' fees, costs, and preliminary and  
21 permanent injunctive relief.

22 **JURISDICTION AND VENUE**

23 1. This Court has subject matter jurisdiction over this action pursuant to 28  
24 U.S.C. §§ 1331, 1388(a), 1388(b) and 15 U.S.C. § 1121. This court has supplemental  
25 jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367(a).

26 2. This court has personal jurisdiction over Defendant because (a) Defendant  
27 has transacted business in Nevada, and (b) Defendant has committed tortious acts that it  
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1 knew or should have known would cause injury to Plaintiff in the State of Nevada.

2 3. Venue is proper in the United States District Court for the District of Nevada  
3 pursuant to 28 U.S.C. §§1391(b) because a substantial part of the events or omissions  
4 giving rise to the claims occurred in Nevada.

5 **THE PARTIES**

6 4. Plaintiff Remy International, Inc. ("Remy") is a Delaware Corporation with a  
7 principal place of business located at 2902 Enterprise Drive, Anderson, Indiana 46013.  
8 Remy is the owner of the U.S. Patents in Suit, as set forth in the allegations herein.

9 5. Upon information and belief, Defendant Andre Niermann Automotive  
10 Electrical Products, Inc. ("Niermann") is a Corporation formed under the laws of the nation  
11 of Germany, with a principal place of business located at Werner von Siemens Str. 7A, D  
12 33334, Gutersloh, Germany.

13 **ALLEGATIONS COMMON TO ALL COUNTS**

14 **A. Plaintiff's Patents**

15 6. Remy is an international corporation specializing in the manufacture of  
16 automotive electrical and engine components using Remy's patented designs and  
17 technology.

18 7. Remy's products include the CS130D Alternator ("CS130D") and the PG260  
19 Starting Motor ("PG260").

20 8. Remy owns seven U.S. Patents (collectively, "the Patents in Suit"), related to  
21 the CS130D and the PG260. Each of the Patents in Suit were originally filed by Remy's  
22 predecessor-in-interest, General Motors Corporation, and have been assigned exclusively  
23 to Remy pursuant to valid and enforceable Patent Assignment Agreements:

24 (a) U.S. Patent No. 5,268,605 ("the '605 patent") entitled "Electrical Field  
25 Connection," issued on December 7, 1993. A true and correct copy of  
26 the '605 patent is attached hereto as **Exhibit A**.

27 (b) U.S. Patent No. 5,307,700 ("the '700 patent") entitled "Electric Engine  
28 Starter," issued on May 3, 1994. A true and correct copy of the '700

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1 patent is attached hereto as **Exhibit B**.

2 (c) U.S. Patent No. 5,307,702 ("the '702 patent") entitled "Engine Starter  
3 Having an Internal Shield," issued on May 3, 1994. A true and correct  
4 copy of the '702 patent is attached hereto as **Exhibit C**.

5 (d) U.S. Patent No. 5,295,404 ("the '404 patent") entitled "Shift Lever  
6 Mechanism for Engine Starting Apparatus," issued on March 22, 1994.  
7 A true and correct copy of the '404 patent is attached hereto as  
8 **Exhibit D**.

9 (e) U.S. Patent No. 5,252,878 ("the '878 patent") entitled "Brush Holder  
10 Assembly," issued on October 12, 1993. A true and correct copy of the  
11 '878 patent is attached hereto as **Exhibit E**.

12 (f) U.S. Patent No. 5,281,881 ("the '881 patent") entitled "Frame and  
13 Magnet Assembly for a Dynamoelectric Machine," issued on January  
14 25, 1994. A true and correct copy of the '881 patent is attached hereto  
15 as **Exhibit F**.

16 (g) U.S. Patent No. 5,105,114 ("the '114 patent") entitled "Frame and  
17 Magnet Assembly for a Dynamoelectric Machine," issued on April 14,  
18 1992. A true and correct copy of the '114 patent is attached hereto as  
19 **Exhibit G**.

20 9. Since 1992, Remy has invested substantial time, expertise and money  
21 patenting, marketing, promoting, manufacturing, and distributing products that embody the  
22 technology and designs covered by the Patents in Suit.

23 10. Remy maintains strict limitations and controls on the companies it contracts  
24 with to manufacture, distribute, market, and sell goods and services that embody the  
25 technology and designs covered by the Patents in Suit.

26 **B. Plaintiff's Trademarks**

27 11. Remy markets its patented products under several exclusive trademarks, both  
28 registered and non-registered with the United States Patent and Trademark Office

1 ("USPTO") (collectively, the "Remy Marks").

2 12. Remy owns exclusive common law trademark rights for the mark CS130D,  
3 having used this mark exclusively in commerce for electronic engine starters since at least  
4 1992.

5 13. Remy owns exclusive common law trademark rights for the mark PG260,  
6 having used this mark exclusively in commerce for electronic engine starters since at least  
7 1993.

8 14. Remy is the exclusive licensee of the mark DELCO for "electric starting,  
9 lighting, and ignition apparatus and parts thereof employed with internal-combustion  
10 engines for use on automobiles." (US. Reg. No. 0180358). Remy and its predecessors in  
11 interest have used this mark in commerce since 1923.

12 15. Remy is the exclusive licensee of the mark DECLO REMY for "electrical  
13 starting, lighting, and ignition apparatus and parts thereof for use with the engines of motor-  
14 driven vehicles." (US Reg. No. 0246572). Remy and its predecessors in interest have used  
15 this mark in commerce since 1928.

16 **C. Niermann's Ongoing Infringing Activity**

17 16. Upon information and belief, Defendant Niermann offers new and  
18 remanufactured starters and alternators, as well as related parts and accessories, in over  
19 40 countries worldwide.

20 17. Upon information and belief, as part of its online catalog Niermann has  
21 offered, and continues to offer, counterfeit products that infringe upon Remy's patents in  
22 suit and Remy's exclusive trademark rights.

23 18. Upon information and belief, Defendant Niermann offers and ships infringing  
24 products to consumers throughout the United States, including the state of Nevada.

25 19. Upon information and belief, Niermann has offered, and continues to offer  
26 products in commerce utilizing the technology embodied in the Patents in Suit without the  
27 authorization of Remy.

28 20. On October 20, 2006 counsel for Remy sent correspondence to Niermann

1 demanding that Niermann cease and desist its patent and trademark infringing commercial  
2 activities. Niermann ignored Remy's correspondence.

3 21. Even with constructive and actual knowledge of Plaintiff Remy's patented  
4 technology and designs, and after notification of a potential legal action, Niermann  
5 continued, and continues, to:

6 (a) offer and engage in infringing engine starter remanufacturing products  
7 and related services; and

8 (b) advertise its infringing products and services online at <niermann-  
9 electric.com>.

10 **FIRST CLAIM FOR RELIEF**

11 **Federal Patent Infringement –**  
12 **Direct Infringement under 35 U.S.C. § 271(a)**

13 22. Remy incorporates the allegations in the preceding paragraphs as if fully set  
14 forth herein.

15 23. Niermann has directly infringed the Patents in Suit, either literally, or under  
16 the Doctrine of Equivalents, and is continuing to directly infringe the Patents in Suit by  
17 making, using, selling and/or offering to sell products that embody the inventions and are  
18 within the scope of the claims of the Patents in Suit.

19 24. Niermann's infringing acts have been, and continue to be, without Remy's  
20 permission, license, or consent.

21 25. Niermann's infringing acts have been, and continue to be, willful and  
22 deliberate, entitling Remy to the recovery of treble damages, and making this an  
23 exceptional case within the meaning of 35 U.S.C. § 285.

24 26. As a direct and proximate result of Niermann's infringement, Remy has  
25 suffered, and will continue to suffer, monetary loss, irreparable injury to its business,  
26 reputation, and goodwill, and diminution of the value of the Patents in Suit, unless and until  
27 Defendant is enjoined from its infringing activities.  
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**SECOND CLAIM FOR RELIEF**

**Federal Patent Infringement –**

**Contributory Infringement under 35 U.S.C. §271(b)**

27. Remy incorporates the allegations in the preceding paragraphs as if fully set forth herein.

28. Niermann has induced infringement of the Patents in Suit by intentionally encouraging, causing, urging, and/or aiding others to directly infringe the Patents, by offering to sell and selling products that are within the scope of the Patents, and otherwise providing others with information and assistance for practicing the claimed inventions.

29. Niermann's infringing acts have been, and continue to be, without Remy's permission, license, or consent.

30. Niermann's infringing acts have been, and continue to be, willful and deliberate, entitling Remy to recovery of treble damages, and making this an exceptional case within the meaning of 35 U.S.C. § 285.

31. As a direct and proximate result of Niermann's infringement, Remy has suffered, and will continue to suffer, monetary loss, irreparable injury to its business, reputation, and goodwill, and diminution of the value of the Patents in Suit, unless and until Defendant is enjoined from continuing its infringing activities.

**THIRD CLAIM FOR RELIEF**

**Trademark Infringement – 15 U.S.C. §1114**

32. Remy incorporates the allegations in the preceding paragraphs as if fully set forth herein.

33. Defendant used and is using in commerce the terms "Delco" and "Delco Remy" to promote its infringing products.

34. These terms are identical Plaintiff's DELCO and DECLO REMY trademarks.

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1 35. Defendant's use in commerce of Plaintiff's marks constitutes a reproduction,  
2 copying, counterfeiting, and colorable imitation of Plaintiff's trademark in a manner that is  
3 likely to cause confusion or mistake or is likely to deceive consumers.

4 36. By using Plaintiff's marks with the knowledge that Plaintiff owns, has used,  
5 and continues to use, its trademark throughout the United States, Defendant intended to  
6 cause confusion, cause mistake, or deceive consumers.

7 37. Defendant is using marks identical to Plaintiff's trademarks in connection with  
8 the sale, offering for sale, or advertising of products in a manner that is likely to cause  
9 confusion, or to cause mistake, or to deceive consumers as the affiliation, connection or  
10 association with Plaintiff or as to the origin, sponsorship, or approval of Defendant's  
11 products or commercial activities by Plaintiff.

12 38. Defendant's use of Plaintiff's marks has created a likelihood of confusion  
13 among consumers who may falsely believe that Defendant's business is associated with  
14 Plaintiff's DELCO or DELCO REMY products, or that Plaintiff sponsors or approves of  
15 Defendant's products or commercial activities.

16 39. Unless Defendant is immediately enjoined and prohibited from using the  
17 DELCO and DELCO REMY marks to market its infringing products, it will continue to  
18 infringe upon Plaintiff's intellectual property and goodwill.

19 40. As a direct and proximate result of Defendant's infringement, Plaintiff has  
20 suffered, and will continue to suffer, monetary loss and irreparable injury to its business,  
21 reputation and goodwill.

22 **FOURTH CLAIM FOR RELIEF**

23 **Unfair Completion: False Designation of Origin – 15 U.S.C. § 1125(a)(1)(a)**

24 41. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set  
25 forth herein.

26 42. Defendant's use of the DELCO, DELCO REMY, CS130D, and PG260 marks  
27 to market its products constitutes a false designation of origin, as the use of Plaintiff's  
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1 marks indicates to the consumer that products marketed or sold by Niermann are endorsed  
2 by or affiliated with Plaintiff Remy, when in fact they are not.

3 43. Defendant's actions have created a likelihood of confusion among consumers  
4 who will falsely believe that Neirmann is operated or endorsed by Plaintiff Remy, when in  
5 fact it is not.

6 44. Defendant's use of the DELCO, DELCO REMY, CS130D, and PG260 marks  
7 to market its products to the public constitutes intentional conduct by Niermann to make  
8 false designations of origin and false descriptions about Defendant's goods, services, and  
9 commercial activities.

10 45. Unless Defendant is immediately enjoined and prohibited from using the  
11 Remy Marks to market its products, Defendant will continue to intentionally make false  
12 designations of origin and false descriptions about Defendant's goods, services and  
13 commercial activities.

14 46. As a direct and proximate result of Defendant's false designation of origin,  
15 Plaintiff has suffered, and will continue to suffer, monetary loss and irreparable injury to its  
16 business, reputation, and goodwill.

17 **FIFTH CLAIM FOR RELIEF**

18 **Common Law Trademark Infringement**

19 47. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set  
20 forth herein.

21 48. By virtue of having used and continuing to use the trademarks, Plaintiff has  
22 acquired common law rights in the marks.

23 49. Defendant's use of marks identical or confusingly similar to Plaintiff's CS130D  
24 and PG260 trademarks infringes Plaintiff's common law rights in its trademarks.

25 50. This use is likely to cause confusion, mistake or deception among consumers  
26 who will believe that Niermann is affiliated with or endorsed by Plaintiff Remy, when it is  
27 not.



1 51. Unless Defendant is enjoined and prohibited from continuing to engage in its  
2 infringement of Plaintiff's Remy Marks, Defendant will continue to infringe upon Plaintiff's  
3 intellectual property and goodwill.

4 52. As a direct and proximate result of Defendant's common law trademark  
5 infringement, Plaintiff has suffered, and will continue to suffer, monetary loss to its  
6 business, reputation and goodwill.

7 **SIXTH CLAIM FOR RELIEF**

8 **Deceptive Trade Practices Under N.R.S. § 598.915**

9 53. Upon information and belief, in the course of conducting its business,  
10 Niermann knowingly made false representations as to affiliation, connection and/or  
11 association with Remy by representing to consumers that it provided DELCO products.  
12

13 54. Upon information and belief, in the course of conducting its business,  
14 Niermann knowingly made false representations as to affiliation, connection and/or  
15 association with Remy by representing to consumers that it provided engine starter  
16 products labeled CS130D and PG260.

17 55. Upon information and belief, in the course of conducting his business,  
18 Niermann knowingly made false representations as to affiliation, connection and/or  
19 association with Remy by referring to Remy's trademarks DELCO, DELCO REMY,  
20 CS130D and PG260, and otherwise engaged in deceptive trade practices.

21 56. As the direct and proximate result of Niermann's conduct, Remy has suffered,  
22 and will continue to suffer, monetary damages and irreparable injury to its business,  
23 reputation, and goodwill, unless and until Defendant is enjoined from continuing its  
24 infringing activities.

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully requests that this Court enter judgment in its favor and grant the following relief:

- A. A declaration that Niermann infringed, induced others to infringe, and/or contributed to the infringement of the Patents in Suit;
- B. An award of damages to Plaintiff for Niermann's infringement of the Patents in Suit;
- C. A preliminary and permanent injunction against Niermann, its officers, partners, employees, agents, parents, subsidiaries, attorneys, and anyone acting or participating with Niermann, precluding the manufacture, use, sale, or offer for sale any product that infringes the Patents in Suit;
- D. A finding that this case is exceptional pursuant to 35 U.S.C. § 285, and an award of Plaintiff's attorney fees and costs;
- E. A preliminary and permanent injunction prohibiting Niermann and its officers, agents, servants, employees and/or all persons acting in concert with it from:  
(1) using the Remy Marks, or confusingly similar variations thereof, alone or in combination with any other words, letter strings, phrases or designs in commerce or in connection with any business or for any purpose; (2) representing itself or any of its officers, agents, servants, employees and/or all other persons acting in concert with it, as representatives of Remy; (3) representing to third parties that its activities, or the activities of its officers, agents, servants, employees and/or all other persons acting in concert with it, are affiliated with or endorsed by Remy; and (4) representing to third parties that its products are in any way affiliated with or endorsed by Remy;
- F. An award of profits made by Niermann's as a result of the acts complained of herein in accordance with 15 U.S.C. § 1117;
- G. An award of compensatory, consequential, statutory and punitive damages to

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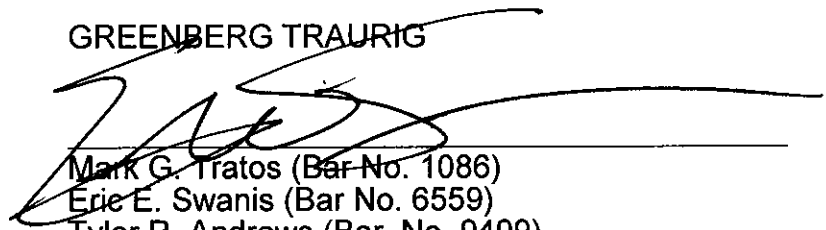
Remy in an amount to be determined at trial;

H. An award of interest, costs, attorneys' fees incurred by Plaintiff in prosecuting this action; and

I. All other relief to which Remy is entitled.

DATED: October 30, 2006.

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