

**UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS**

FILED
Clerk's Office
USDC, Mass.
Date 11/8/01
By J. F. [Signature]
Deputy Clerk

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TRUEBRO, INC., :

Plaintiff, :

Civ. Action No. 00-11619-REK

- against - :

PLUMBEREX SPECIALTY PRODUCTS, :
INC., and FUTURA SALES INC., :

Defendants. :
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FIRST AMENDED COMPLAINT

NOW COMES plaintiff TRUEBRO, INC. by its undersigned attorneys and complains as follows:

1. Plaintiff TRUEBRO, INC. ("Truebro") is a Connecticut corporation having its principal place of business at 7 Main Street, Ellington, Connecticut.

2. Defendant PLUMBEREX SPECIALTY PRODUCTS, INC. ("Plumberex") is a California corporation having its principal place of business at 72096 Dunham Way #E, Thousand Palms, California.

3. Defendant FUTURA SALES INC. ("Futura") is a Massachusetts corporation having its principal place of business at # 3 Lavelle Lane, Framingham, Massachusetts.

4. This complaint is for infringement by each of the defendants of United States patents in force and for unfair competition by Plumberex and Futura. Subject matter jurisdiction is thus vested in this Court under 28 U.S.C. §§ 1331 and 1338.

5. Plumberex and Futura are subject to personal jurisdiction in the District of Massachusetts.

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6. Venue is properly laid in this district under 28 U.S.C. §§ 1391 and 1400.

Background

7. Truebro is in the business of designing, manufacturing, marketing, distributing and selling undersink protective products, in particular, insulating covers for pipes for protecting wheelchair-bound persons and others using sinks with exposed water piping from impact or scalding injury upon contact with undersink supply and drain pipes. Its products are protected by United States patents and include products sold under the registered Truebro trademark, LAV GUARD®.

8. Modern effective forms of these protective products were developed by the brothers Thomas W. Trueb and Steven R. Trueb, principals of Truebro. They began as a partnership and incorporated Truebro in the next year to pursue a business in such protective products.

9. After investing extensive time, personal effort and capital in developing the product, including purchase of the valuable required injection molding equipment, the Trueb brothers, through their partnership and, thereafter, Truebro, built a business in high-quality molded plastic products, including the LAV GUARD® protective pipe covers and other products. Truebro also acquired certain tangible and intangible assets of Brocar, Inc. and its principal John Helmsderfer in 1999.

10. As part of the protection for its enterprise, Truebro owns and maintains exclusive rights under United States Patents Nos. 5,303,730, 5,360,031, 5,564,463, 5,678,598, 5,901,739, and 5,915,412. Truebro has the power to sue under each of these patents. Thomas and Steven Trueb are the inventors of the inventions described and claimed in the 5,303,730 and 5,360,031 patents. John Helmsderfer is the inventor of the inventions described and claimed in the

5,564,463, 5,678,598, 5,901,739, and 5,915,412 patents, which are among the assets purchased or licensed from Brocar, Inc. and its principal John Helmsderfer in 1999.

11. Truebro and Plumberex compete in selling undersink protective pipe covers to several markets, primarily the market of professional plumbing wholesalers who supply products to professional plumbing contractors to be installed in public facilities compliant with the federal Americans with Disabilities Act and other public standards. Until recently, Plumberex's primary product for this market was essentially a vinyl or fabric and foam envelope, secured about the P-trap of a sink. Upon information and belief, Plumberex sold this product under the brand "Handy-Shield" to representatives and distributors for a lower price than Truebro's patented product.

12. On information and belief Plumberex and its representatives and distributors including defendant Futura currently offer to the trade a Plumberex copy of Truebro's LAV GUARD[®] product identified as the Handy-Shield Pro-2000 series..

13. On information and belief Plumberex has shipped into Massachusetts and Plumberex and Futura have been offering the Handy-Shield Pro-2000 products to customers and potential customers in this judicial district, and Plumberex has offered to sell and has shipped such products to or through Futura, and others in this judicial district for sale to customers therein.

14. The Plumberex Pro-2000 product is clearly inferior to Truebro's LAV GUARD product in its construction, fit, stability, appearance and functionality. Nonetheless, upon information and belief, defendants have promoted the Pro-2000 product as an equivalent to Truebro's LAV GUARD[®] product. Such comparison is false.

COUNT I
PATENT INFRINGEMENT

15. Truebro repeats and incorporates herein paragraphs 1-14 as stated above.

16. Plumberex's Pro-2000 product is covered by one or more claims of each of United States Patents Nos. 5,303,730, 5,360,031, 5,564,463, 5,678,598, 5,901,739, and 5,915,412, literally and under the doctrine of equivalents.

17. Upon information and belief, Plumberex has made, used, offered for sale, and sold its Pro-2000 product and Futura has offered for sale and sold the same product, but neither of them had license to do so. Accordingly, Plumberex and Futura have infringed United States Patents Nos. 5,303,730, 5,360,031, 5,564,463, 5,678,598, 5,901,739, and 5,915,412 covering the Pro-2000 product and defendants have induced others to infringe by using the product.

18. Truebro has brought to the attention of Plumberex, in connection with Plumberex's molded vinyl product Pro-2000, patents owned or controlled by Truebro including United States Patents Nos. 5,303,730, 5,360,031, 5,564,463, 5,678,598, 5,901,739, and 5,915,412. Truebro has also marked products sold by it with notice of these and other patents on data sheets shipped with products and/or on packaging of products. Nonetheless, upon information and belief, Plumberex has continued to make, offer for sale and sell the Pro-2000 product. Plumberex has willfully infringed one or more of the claims of United States Patents Nos. 5,303,730, 5,360,031, 5,564,463, 5,678,598, 5,901,739, and 5,915,412.

19. Truebro has suffered lost sales and erosion of its prices as well as irreparable injury to its good will and reputation and to the reputation of its patented products, because of the patent infringement by Plumberex and Futura.

20. Truebro has been irreparably harmed, and will continue to be irreparably harmed, by the patent infringement by defendants unless they are enjoined from their infringement.

COUNT II
VIOLATION OF THE LANHAM ACT

21. Truebro repeats and incorporates herein paragraphs 1-14 as stated above.

22. Upon information and belief, the defendants have misrepresented to the trade and to the public that the Plumberex Pro-2000 product is equivalent to Truebro's LAV GUARD® product in commercial promotion in interstate commerce and have violated subsection 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

23. Truebro has been damaged through lost sales and erosion of its prices and has suffered irreparable injury to its good will and reputation by defendants' violation of the Lanham Act, and, upon information and belief, defendants have enjoyed profits from that violation.

24. Truebro has been irreparably harmed, and will continue to be irreparably harmed, by the Lanham Act violations by Plumberex and Futura unless they are enjoined from their violation.

COUNT III
VIOLATION OF THE LANHAM ACT IN ADVERTISING ORIGINAL HANDY-SHIELD
PRODUCT

25. Truebro repeats and incorporates herein paragraphs 1-14 as stated above.

26. Upon information and belief, the defendants have misrepresented to the trade and to the public that the Plumberex original Handy-Shield foam envelope product has a result of "zero" smoke density in the ASTM E-84 surface burning characteristics/flame spread and smoke developed test in commercial promotion in interstate commerce and have violated subsection 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

27. Upon information and belief, the defendants have misrepresented to the trade and to the public that the Plumberex original Handy-Shield foam envelope product complies with ADA regulation 4.19.4, requiring undersink protective products to have no sharp or abrasive

surfaces, while Plumberex requires installers to use sharp-edged abrasive cable ties to install the product, in commercial promotion in interstate commerce and have violated subsection 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

28. Truebro believes it has been damaged through lost sales by defendants' violation of the Lanham Act, and, upon information and belief, defendants have enjoyed profits from that violation.

29. Truebro has been irreparably harmed, and will continue to be irreparably harmed, by the Lanham Act violations by Plumberex and Futura unless they are enjoined from their violation.

WHEREFORE, plaintiff Truebro, Inc. prays that this Court enter judgment:

a. Finding that defendants Plumberex Specialty Products, Inc., and Futura Sales Inc. have infringed each of United States Patents Nos. 5,303,730, 5,360,031, 5,564,463, 5,678,598, 5,901,739, and 5,915,412;

b. Finding that defendant Plumberex Specialty Products, Inc. willfully infringed each of United States Patents Nos. 5,303,730, 5,360,031, 5,564,463, 5,678,598, 5,901,739, and 5,915,412;

c. Finding that defendants Plumberex Specialty Products, Inc. and Futura Sales Inc. violated the Lanham Act by misrepresenting in commercial promotion in interstate commerce the quality of the Plumberex Pro-2000 product in favorable comparison with plaintiff Truebro, Inc.'s LAV GUARD[®] product;

d. Finding this an exceptional case because of the willful patent infringement by defendant Plumberex Specialty Products, Inc.;

- e. Awarding plaintiff Truebro, Inc. as to both defendants, its damages caused by defendants' infringement of its patents;
- f. Awarding plaintiff Truebro, Inc. as to Plumberex a multiple of its damages caused by Plumberex's infringement of Truebro's patents;
- g. Awarding plaintiff Truebro, Inc. as to both defendants, for their violation of the Lanham Act, a multiple of defendants' profits and Truebro's damages;
- h. Awarding plaintiff Truebro, Inc. as to both defendants, for their violation of the Lanham Act, Truebro's costs of this action;
- i. Awarding plaintiff Truebro, Inc. its reasonable attorneys' fees;
- j. Enjoining for the pendency of this case and permanently thereafter defendants and anyone acting in concert with either of them, from making, using, selling, offering to sell, or importing the Pro-2000 product or any other product covered by the patent in suit;
- k. Enjoining for the pendency of this case and permanently thereafter defendants and anyone acting in concert with them, from misrepresenting the comparative quality of Plumberex's products with those of plaintiff Truebro, Inc; and
- l. Granting such other relief as the Court may find just or equitable.

Dated: November 6, 2001

CERTIFICATE OF SERVICE
I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by mail, hand, by Nov. 6, 2001
[Signature]

TRUEBRO, INC.

By Its Attorneys,

[Signature]
James A. G. Hamilton (BBO # 218760)

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