

1 Keith R. Lange (KL 0427)  
2 PEQUIGNOT + MYERS LLC  
3 103 Forestville Road  
4 P.O. Box 193  
5 Lincoln University, PA 19352  
6 Phone: 610-869-6302  
7 Facsimile: 610-680-3853

8 Matthew A. Pequignot  
9 Michael G. Sullivan  
10 PEQUIGNOT + MYERS LLC  
11 1636 R Street, NW  
12 Third Floor  
13 Washington, D.C. 20009  
14 Phone: 202-328-1200  
15 Facsimile: 202-328-2219

16 *Attorneys for Plaintiffs Instant Fabric Display, LLC,*  
17 *The Hughes Group, and Optima Graphics, Inc.*

18 UNITED STATES DISTRICT COURT  
19 FOR THE DISTRICT OF NEW JERSEY

20 INSTANT FABRIC DISPLAY, LLC  
21 5610 Wisconsin Ave. NW  
22 Suite 1104  
23 Chevy Chase, Maryland 20815

24 and

25 THE HUGHES GROUP  
26 9520 Gerwig Lane  
27 Unit F  
28 Columbia, Maryland 21046

and

OPTIMA GRAPHICS, INC.  
1710 Larkin Williams  
Fenton, Missouri 63026

Plaintiffs,

v.

MCRAE IMAGING INC.  
4090A Sladeview Crescent  
Unit 1  
Mississauga, Ontario L5L5Y5

Defendant

Case No. 07-2799(PGS)

COMPLAINT AND DEMAND FOR  
TRIAL BY JURY FOR PATENT  
INFRINGEMENT, TRADEMARK  
INFRINGEMENT, TRADE DRESS  
INFRINGEMENT, AND UNFAIR  
COMPETITION UNDER  
FEDERAL AND STATE LAWS

FILED TO:  
CLERK OF COURT  
2007 JUN 11 A 11:48  
UNITED STATES  
DISTRICT COURT

1 Plaintiffs INSTANT FABRIC DISPLAY, LLC, THE HUGHES GROUP,  
2 and OPTIMA GRAPHICS INC. (hereinafter referred to as “IFD,” “HUGHES,”  
3 and “OPTIMA,” respectively, and collectively referred to as “PLAINTIFFS”), by  
4 their attorneys, for their Complaint against Defendant MCRAE IMAGING INC.  
5 (hereinafter referred to as “MCRAE”) allege as follows:

6  
7 **NATURE OF THE CASE**

8 1. This is an action for (i) patent infringement, (ii) trademark  
9 infringement, (iii) trade dress infringement, and (iv) unfair competition under  
10 federal and state laws.

11  
12 2. PLAINTIFFS seek injunctive relief, damages and other relief against  
13 MCRAE.

14 **THE PARTIES**

15  
16 3. IFD is a corporation organized and existing under the laws of the state  
17 of Maryland, having its principal place of business at 5610 Wisconsin Ave. NW,  
18 Suite 1104, Chevy Chase, Maryland 20815.

19 4. HUGHES is a corporation organized and existing under the laws of  
20 the state of Maryland, having its principal place of business at 9520 Gerwig Lane,  
21 Unit F, Columbia, Maryland 21046

22 5. OPTIMA is a corporation organized and existing under the laws of the  
23 state of Missouri, having its principal place of business at 1710 Larkin Williams,  
24 Fenton, Missouri 63026.

25 6. Upon information and belief, MCRAE is a corporation organized and  
26 existing under the laws of Canada, having its principal place of business at 4090A  
27 Sladeview Crescent, Unit 1, Mississauga, Ontario L5L5Y5.

**MCRAE'S "TRADEWIND" PRODUCT**

1  
2  
3 7. On information and belief, MCRAE markets, offers for sale, and/or  
4 sells a product named "TradeWind" (the "TRADEWIND PRODUCT") in the  
5 United States, as shown in Exhibit A.

6 8. The TRADEWIND PRODUCT is a visual display product comprised  
7 of one or more stretch fabric display panels attached to a foldable frame or frames.

8  
9 9. The TRADEWIND PRODUCT display panels have curved or  
10 scalloped borders or sides.

11 10. On information and belief, MCRAE markets and/or offers to sell its  
12 TRADEWIND PRODUCT on the internet or worldwide web with the intent that  
13 such product be purchased and used throughout each of the United States at  
14 tradeshows and the like.

15  
16 11. Upon information and belief, MCRAE sells the TRADEWIND  
17 PRODUCT to the company Testrite Visual Products located at 216 South Newman  
18 Street, Hackensack, New Jersey 07601.

19  
20 **U.S. PATENT NO. 7,191,555**

21 12. On March 20, 2007, United States Patent No. 7,191,555 (hereinafter  
22 "the '555 patent"), entitled DISPLAY PANELS, issued to Robert P. Hughes, a  
23 copy of which is attached as Exhibit B, and was thereafter duly assigned to IFD.

24  
25 13. IFD, by virtue of the assignment from Mr. Hughes, holds all right,  
26 title and interest in the '555 patent.





1           ii.     Stretch fabric display panels, mounted on frames, having curved or  
2 scalloped borders or sides;

3           iii.    Stretch fabric display panels having generally non-stretched central  
4 portions and generally stretched border, edge, or corner portions;

5           iv.     Frames having multiple display panels mounted thereon with one or  
6 more display panels mounted in non-coplanar relation to one or more of the other  
7 display panels.  
8

9  
10           27.    PLAINTIFFS have spent significant amounts of money, time, and  
11 effort advertising and promoting PLAINTIFFS' TRADE DRESS.

12           28.    PLAINTIFFS' advertising and promotional materials for certain  
13 display products prominently tout and/or display PLAINTIFFS' TRADE DRESS.  
14 Examples of these advertising materials are attached as Exhibits E and F.  
15

16           29.    The visual appearance of PLAINTIFFS' TRADE DRESS, embodied  
17 by PLAINTIFFS' products, is markedly different in appearance than prior existing  
18 display products and is readily distinguishable from display products not  
19 employing such distinctive features.

20           30.    Over time, PLAINTIFFS' TRADE DRESS has acquired  
21 distinctiveness or secondary meaning as persons in the relevant channels of trade  
22 recognize and associate PLAINTIFFS' TRADE DRESS as identifying  
23 PLAINTIFFS' products as originating from a particular source.  
24

25           31.    PLAINTIFFS' TRADE DRESS is non-functional, i.e., it is neither  
26 essential to the use or purpose of the display panels or a foldable display frame  
27  
28

1 containing the display panels, nor does it affect the cost of the display panels or  
2 foldable display frames.

3  
4 32. MCRAE makes, uses, markets, offers for sale, and sells products,  
5 including the TRADEWIND PRODUCT, which copy or otherwise embody the  
6 distinctive features of PLAINTIFFS' TRADE DRESS thereby infringing  
7 PLAINTIFFS' TRADE DRESS.

8 **FIRST CLAIM FOR RELIEF**

9  
10 **Patent Infringement**

11 33. This claim for patent infringement arises under Title 35, United States  
12 Code, § 271.

13  
14 34. PLAINTIFFS repeat, reallege, and incorporate by reference each and  
15 every allegation above as if set forth fully herein.

16 35. This Court has jurisdiction of this action under 28 U.S.C. §§ 1331 and  
17 1338. Venue is proper in this District under 28 U.S.C. §§ 1391(b), (c), and (d) and  
18 28 U.S.C. §1400.

19  
20 36. On information and belief, MCRAE has infringed and is now  
21 infringing one or more claims of the '555 patent literally and/or under the Doctrine  
22 of Equivalents by manufacturing, distributing, importing, offering for sale, and/or  
23 selling products covered by one or more claims of the '555 patent within the  
24 United States and by contributing to and inducing infringement of others.

25  
26 37. MCRAE will continue to infringe one or more claims of the '555  
27 patent literally and/or under the Doctrine of Equivalents to PLAINTIFFS' great  
28 and irreparable harm unless it is enjoined by this Court.

1 38. MCRAE has made unlawful gains and profits from said infringement.

2  
3 39. PLAINTIFFS, due to MCRAE's unlawful infringement, have been  
4 deprived of rights and remunerations which would have otherwise come to them  
5 but for the infringement.

6 40. MCRAE has thereby caused PLAINTIFFS irreparable harm and will  
7 continue to cause PLAINTIFFS additional harm and damage.

8  
9 **SECOND CLAIM FOR RELIEF**

10 **Trademark Infringement and**  
11 **False Designation of Origin**

12 41. This claim for trademark infringement and false designation of origin  
13 arises under Title 15, United States Code, §§ 1114 and 1125(a).

14 42. PLAINTIFFS repeat, reallege, and incorporate by reference each and  
15 every allegation above as if set forth fully herein.

16  
17 43. This Court has jurisdiction of this action under 15 U.S.C. §§ 1121 and  
18 1125(a) and 28 U.S.C. §§ 1331 and 1338. Venue is proper in this District under  
19 Title 28 U.S.C. §§ 1391(b), (c), and (d).

20  
21 44. PLAINTIFFS' products sold under the XPRESSIONS® trademark  
22 have come to be known by the relevant consuming public as high quality, effective  
23 display products.

24  
25 45. MCRAE's continued use, threatened future use, and claim of  
26 ownership to the XPRESSIONS® trademark and its use of the mark in connection  
27 with display products which are not OPTIMA's, and without OPTIMA'S  
28 authorization, infringe OPTIMA's exclusive rights in its federally registered



1 trademark in that the public is likely to be and/or has actually been confused,  
2 deceived or mistaken regarding the source or sponsorship of MCRAE's products  
3 offered for sale or sold under the "XPRESSIONS" name.

4  
5 46. These acts of MCRAE constitute false and misleading representations  
6 of fact as to the right to reproduce, display and distribute the XPRESSIONS®  
7 trademark in association with MCRAE's TRADEWIND PRODUCT in violation  
8 of 15 U.S.C. §1125(a).

9 47. MCRAE's infringements of OPTIMA's trademark is willful and  
10 deliberate and with an intent to reap the benefit of OPTIMA's goodwill.

11  
12 48. The aforesaid conduct of MCRAE is causing OPTIMA immediate and  
13 irreparable injury for which OPTIMA has no adequate remedy at law.

14 **THIRD CLAIM FOR RELIEF**

15 **Trade Dress Infringement under 15 U.S.C. § 1125(a)**  
16 **(Section 43(a) of the Lanham Act)**

17  
18 49. This claim for trade dress infringement arises under Title 15, United  
19 States Code, § 1125(a).

20 50. PLAINTIFFS repeat, reallege, and incorporate by reference each and  
21 every allegation above as if set forth fully herein.

22  
23 51. This Court has jurisdiction of this action under 15 U.S.C. §1121 and  
24 28 U.S.C. §§ 1331 and 1338. Venue is proper in this District under 28 U.S.C. §§  
25 1391 (b), (c), and (d).

26  
27 52. By making, advertising, offering to sell, and selling the  
28 TRADEWIND PRODUCT, MCRAE is likely to confuse and/or actually confuses

1 the public into believing that its TRADEWIND PRODUCT is produced by  
2 PLAINTIFFS or have been authorized by, sponsored by, or are in some way  
3 associated with PLAINTIFFS.

4  
5 53. These acts by MCRAE are likely to cause confusion, mistake or  
6 deception as to the origin, connection, association, sponsorship or approval of  
7 MCRAE and its TRADEWIND PRODUCT by or with PLAINTIFFS and its  
8 products, and thus constitutes false designation of origin in violation of 15 U.S.C.  
9 §1125(a).

10 54. These acts of MCRAE constitute false and misleading representations  
11 of fact as to the right to reproduce, display and distribute PLAINTIFFS' TRADE  
12 DRESS in association with MCRAE's TRADEWIND PRODUCT in violation of  
13 15 U.S.C. §1125(a).

14  
15 55. MCRAE has deceptively used, and continues to use, confusingly  
16 similar trade dress to PLAINTIFFS' TRADE DRESS, which is likely to cause  
17 confusion, to cause mistake and to deceive as to MCRAE's affiliation, connection  
18 or association with PLAINTIFFS.

19 56. MCRAE's acts are calculated to deceive, or are likely to deceive, the  
20 public who recognizes and associates PLAINTIFFS' TRADE DRESS with  
21 PLAINTIFFS. Moreover, this conduct is likely to cause confusion, to cause  
22 mistake or to deceive the public as to the source of MCRAE's products, or as to a  
23 possible affiliation with or sponsorship by PLAINTIFFS.

24  
25 57. MCRAE's conduct has caused PLAINTIFFS to suffer and, unless  
26 enjoined by the Court, will cause PLAINTIFFS to continue to suffer damage as to  
27 its operation, reputation, and goodwill. PLAINTIFFS have and will continue to  
28

1 suffer the loss of sales and profits due to MCRAE's acts. MCRAE has been and  
2 will continue to be unjustly enriched by its unlawful acts.

3  
4 58. PLAINTIFFS have no adequate remedy at law. MCRAE's conduct  
5 has caused and, if not enjoined, will continue to cause irreparable damage to  
6 PLAINTIFFS. As a result of MCRAE's wrongful conduct, PLAINTIFFS are  
7 entitled to injunctive relief.

8 **FOURTH CLAIM FOR RELIEF**

9 **Unfair Competition under 15 U.S.C. § 1125(a)**  
10 **(Section 43(a) of the Lanham Act)**

11  
12 59. This claim for unfair competition arises under 15 U.S.C. § 1125(a)  
13 (Section 43(a) of the Lanham Act) and alleges the use in commerce of false  
14 designations of origin, false description and false representations.

15 60. PLAINTIFFS repeat, reallege, and incorporate by reference each and  
16 every allegation above as if set forth fully herein.

17  
18 61. This Court has jurisdiction of this action under 15 U.S.C. §§ 1121 and  
19 1125(a) and 28 U.S.C. §§ 1331 and 1338. Venue is proper in this District under  
20 Title 28 U.S.C. §§ 1391(b), (c), and (d).

21 62. MCRAE's use of the trademark "XPRESSIONS" and PLAINTIFFS'  
22 TRADE DRESS constitutes a use in commerce of a false designation of origin and  
23 a false and misleading description and representation of goods and services, and  
24 containers for goods, in commerce, with knowledge of the falsity, which has and is  
25 likely to cause confusion, mistake and deception, and a use in commercial  
26 advertising and promotion which misrepresents the nature, characteristics, qualities  
27

28

1 and origin of MCRAE's goods, all within the meaning and in violation of 15  
2 U.S.C. §1125(a).

3  
4 63. Upon information and belief, the aforesaid acts of MCRAE were  
5 committed willfully, knowingly, maliciously, and in conscious disregard of  
6 PLAINTIFFS' rights.

7 64. The aforesaid conduct of MCRAE has caused, and unless retrained by  
8 this Court will continue to cause, immediate and irreparable injury to  
9 PLAINTIFFS' property and business.

10 65. The aforesaid conduct of MCRAE has caused PLAINTIFFS to sustain  
11 monetary damage, loss, and injury in an amount to be determined at the time of  
12 trial.  
13

14 **FIFTH CLAIM FOR RELIEF**

15 **Trade Dress Infringement and**  
16 **Unfair Competition under Common Law**

17  
18 66. This claim for trade dress infringement and unfair competition arises  
19 under the common law of the state of New Jersey.

20 67. PLAINTIFFS repeat, reallege, and incorporate by reference each and  
21 every allegation above as if set forth fully herein.  
22

23 68. This Court has jurisdiction of this action under 28 U.S.C. §§ 1332 and  
24 1367 and under common law principals of pendant jurisdiction. Venue is proper in  
25 this District under 28 U.S.C. §1391 (b), (c), and (d).

26 69. MCRAE's acts constitute common law trade dress infringement,  
27 misappropriation of PLAINTIFFS' goodwill and unfair competition in the state of  
28

1 New Jersey, including this District, and other states where MCRAE's  
2 TRADEWIND PRODUCT is being offered for sale, advertised, or distributed, and  
3 are a violation of the common law of the state of New Jersey and laws of other  
4 states, by reason of which PLAINTIFFS have suffered, and will continue to suffer,  
5 monetary damages and irreparable injury.

6  
7 **SIXTH CLAIM FOR RELIEF**

8 **Trade Dress Infringement and**  
9 **Unfair Competition under New Jersey statutory law**  
10 **pursuant to N.J.S.A. §56:4-1 *et. seq.***

11 70. This is an action for trade dress infringement and unfair competition  
12 under New Jersey statutory law pursuant to N.J.S.A. §56:4-1 *et. seq.*

13 71. PLAINTIFFS repeat, reallege, and incorporate by reference each and  
14 every allegation above as if set forth fully herein.

15  
16 72. This Court has jurisdiction of this action under 28 U.S.C. §§ 1332 and  
17 1367 and under common law principals of pendant jurisdiction. Venue is proper in  
18 this District under 28 U.S.C. §1391 (b), (c), and (d).

19 73. MCRAE's acts constitute statutory trade dress infringement,  
20 misappropriation of PLAINTIFFS' goodwill and unfair competition in the state of  
21 New Jersey, including this District, and other states where MCRAE's  
22 TRADEWIND PRODUCT is being offered for sale, advertised, or distributed, and  
23 are a violation of the statutory law of the state of New Jersey and laws of other  
24 states, by reason of which PLAINTIFFS have suffered, and will continue to suffer,  
25 monetary damages and irreparable injury.  
26  
27  
28

1           WHEREFORE, PLAINTIFFS pray that this Court enter judgment in their  
2 favor on each and every claim for relief set forth above and award them relief,  
3 including, but not limited to:

4           A.     That this Court order, adjudge, and decree that MCRAE has infringed  
5 the '555 patent.

6           B.     That this Court order, adjudge, and decree that MCRAE has infringed  
7 the XPRESSIONS® trademark.

8           C.     That this Court order, adjudge, and decree that MCRAE willfully and  
9 knowingly infringed the XPRESSIONS® trademark.

10          D.     That this Court order, adjudge, and decree that MCRAE has infringed  
11 PLAINTIFFS' TRADE DRESS under 15 U.S.C. §1125(a).

12          E.     That this Court order, adjudge, and decree that MCRAE willfully and  
13 knowingly infringed PLAINTIFFS' TRADE DRESS.

14          F.     That this Court order, adjudge, and decree that MCRAE has engaged  
15 in unfair competition.

16          G.     That this Court order, adjudge, and decree that MCRAE willfully and  
17 knowingly engaged in unfair competition.

18          H.     Preliminary and permanent injunctions restraining MCRAE and its  
19 officers, agents, servants, and employees, from directly or indirectly making or  
20 causing to be made, importing, offering for sale, selling or causing to be sold, or  
21 using or causing to be used, any product determined to fall within the scope of one  
22 or more claims of the '555 patent, or otherwise directly infringing, or contributing  
23 to or inducing the infringement of others.

1 I. Preliminary and permanent injunctions, enjoining MCRAE and its  
2 officers, directors, employees, agents, subsidiaries, and all persons in active  
3 concert or participation with any of them from using the XPRESSIONS®  
4 trademark or PLAINTIFFS' TRADE DRESS, or any colorable imitation or other  
5 unauthorized use thereof, or any other false suggestion of origin, sponsorship,  
6 approval, affiliation or connection with PLAINTIFFS and their products.

7  
8 J. That this Court order MCRAE, its officers, agents, servants and  
9 employees to deliver up to this Court for destruction all products infringing upon,  
10 directly or otherwise, any claim of the '555 patent.

11 K. That this Court order MCRAE, its officers, agents, servants and  
12 employees to deliver up to this Court for destruction all products and promotional  
13 literature displaying their infringing use of the XPRESSIONS® trademark or  
14 PLAINTIFFS' TRADE DRESS, including but not limited to products, promotional  
15 literature, decals, labels, signs, prints, packages, wrappers, receptacles, and  
16 advertisements.

17  
18 L. That this Court order MCRAE to pay the costs of this action.

19 M. That MCRAE be ordered to account for and pay over all proceeds  
20 made from said wrongful infringing acts and to account for and pay to  
21 PLAINTIFFS damages in a sum to be determined by the Court.

22  
23 N. That this Court order MCRAE to pay to PLAINTIFFS pre- and post-  
24 judgment interest.

25 O. That, given the exceptional circumstances of this case, the Court order  
26 MCRAE to pay to PLAINTIFFS reasonable attorneys' fees and all other costs  
27 which may be incurred by PLAINTIFFS under 15 U.S.C. § 1117.  
28

1 P. Awarding PLAINTIFFS treble damages to compensate PLAINTIFFS  
2 under 15 U.S.C. § 1117.

3 Q. Directing such other relief as the Court may deem appropriate to  
4 prevent the trade and public from deriving any erroneous impression that any  
5 display products manufactured, sold or otherwise circulated or promoted by  
6 MCRAE are authorized by PLAINTIFFS or related in any way to PLAINTIFFS or  
7 their products.  
8

9 R. That this Court grant to PLAINTIFFS such other and further relief as  
10 it may deem just and equitable.


11 **JURY DEMAND**

12 Pursuant to Federal Rule of Civil Procedure 38(b), PLAINTIFFS hereby  
13 demand a trial by jury on all issues so triable.  
14

15 Respectfully submitted,

16 PEQUIGNOT + MYERS LLC  
17 *Attorneys for Plaintiffs Instant Fabric*  
18 *Display, LLC, The Hughes Group,*  
19 *and Optima Graphics, Inc.*  
20

21 Dated: June 8, 2007

22   
Keith R. Lange (KL 0427)

23 **CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2**

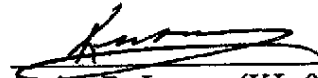
24 The undersigned hereby certifies, pursuant to Local Civil Rule 11.2, that  
25 with respect to the matter in controversy herein, neither plaintiffs nor plaintiffs'  
26 attorneys are aware of any other action pending in any court, or of any pending  
27 arbitration or administrative proceeding, to which this matter is subject.

28 PEQUIGNOT + MYERS LLC



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

*Attorneys for Plaintiffs Instant Fabric  
Display, LLC, The Hughes Group,  
and Optima Graphics, Inc.*



Keith R. Lange (KL 0427)