

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SCHROEDER & TREMAYNE, INC.)	
)	
Plaintiff,)	Case No. _____
)	
v.)	
)	
JUST PERFECT, INC.,)	JURY TRIAL DEMANDED
SERVE: Behrouz Vossoughi)	
Registered Agent)	
11755 Darlington Ave. #3)	
Los Angeles, CA 90049)	
)	
Defendant.)	

COMPLAINT

COMES NOW Plaintiff Schroeder & Tremayne, Inc. (“S&T” or “Plaintiff”), by and through its undersigned counsel, and for its Complaint against Defendant Just Perfect, Inc. (“JPI” or “Defendant”), states as follows:

THE PARTIES

1. Plaintiff S&T is a Missouri corporation having a principal place of business at 8500 Valcour Avenue, St. Louis, Missouri 63123. S&T manufactures, offers for sale and sells a product called “The Original Dish Drying Glove” throughout the United States and specifically in this District. The Original Dish Drying Glove is part of S&T’s “The Original” brand of products.

2. Defendant JPI is a California corporation having a principal place of business at 11755 Darlington Avenue, #3, Los Angeles, California 90049.

3. Defendant JPI claims that it is either the owner by assignment of, or otherwise entitled to enforce, U.S. Patent No. 7,328,523, entitled “DRYING GLOVE” (the ‘523 Patent”), issued by the United States Patent and Trademark Office on February 12, 2008. However, the records of the United States Patent and Trademark Office do not show that JPI is the owner of the ‘523 Patent. A true and correct copy of the ‘523 Patent is attached hereto as **Exhibit 1**.

JURISDICTION AND VENUE

4. The claims asserted by Plaintiff are for (1) declaratory relief under the patent and trademark laws of the United States of America; (2) tortious interference with contractual rights and prospective economic advantage; (3) injurious falsehood, product disparagement, and defamation per se; and (4) unfair competition under both the common law and the Lanham Act.

5. This Court has jurisdiction over the subject matter of these claims pursuant to 28 U.S.C. §§ 1331, 1332, 1338(a), 2201, and 2202. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), 1391(c), 1391(d) and 1400. Personal jurisdiction exists over JPI in this District because it has transacted business within the State of Missouri and committed tortious acts within the State of Missouri.

BACKGROUND FACTS

6. In or around October 2009, JPI contacted S&T and asserted that JPI was the owner of, or otherwise entitled to enforce, the ‘523 Patent, that JPI had purchased The Original Drying Glove from S&T’s web-site, and that JPI believed that The Original Dish Drying Glove infringed the ‘523 Patent.

7. In response, representatives of S&T sent a letter to JPI on October 23, 2009, in which S&T expressed its disagreement regarding JPI’s assertions of the validity and infringement of the ‘523 Patent, but nonetheless stated that it would cease selling the “Original

Dish Drying Glove’ that you have alleged infringes U.S. Patent No. 7,328,523.” A true and correct copy of the October 23, 2009 letter is attached hereto as **Exhibit 2**.

8. In accordance with the statements in its October 23, 2009 letter, S&T re-designed The Original Dish Drying Glove to further ensure that the product does not infringe the ‘523 Patent.

9. The Original Dish Drying Glove that has been sold since the re-design plainly does not infringe the ‘523 Patent.

10. Nonetheless, in or around March 2010, JPI began sending threatening letters to S&T and certain of S&T’s customers, including Bed Bath & Beyond, alleging that it was entitled to enforce the ‘523 Patent, that the manufacture and sale of The Original Dish Drying Glove infringed the ‘523 Patent, and, further, that it considered the use of the name “The Original Dish Drying Glove” by S&T and its customers to constitute trade dress infringement and false advertising under the Lanham Act. Such correspondence also made numerous demands upon the recipients. A true and correct copy of JPI’s March 31, 2010 letter to S&T is attached hereto as **Exhibit 3**, a true and correct copy of JPI’s April 5, 2010 letter to Bed Bath & Beyond is attached hereto as **Exhibit 4**, and a true and correct copy of JPI’s May 19, 2010 letter to S&T is attached hereto as **Exhibit 5**.

11. S&T is currently making, using, offering for sale, and/or selling The Original Dish Drying Glove, and intends to continue to make, use, offer for sale, and/or sell The Original Dish Drying Glove.

12. S&T has expended substantial resources in developing and marketing The Original Dish Drying Glove, as well as The Original brand. JPI’s threats to pursue claims of patent and trade dress infringement as well as false advertising against S&T have created a

substantial controversy between the parties. The parties clearly have adverse legal interests and the controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

COUNT I

DECLARATORY JUDGMENT OF NONINFRINGEMENT – ‘523 PATENT

13. S&T incorporates by reference the preceding paragraphs of this Complaint as if set forth in full herein.

14. This is a claim for a declaratory judgment that the ‘523 Patent is not infringed by S&T, either directly or as an inducing or contributory infringer.

15. S&T manufactures, markets, offers for sale, and sells The Original Dish Drying Glove.

16. JPI has alleged that The Original Dish Drying Glove infringes one or more claims of the ‘523 Patent that it has the right to enforce.

17. The Original Dish Drying Glove does not infringe any valid or enforceable claim of the ‘523 Patent.

18. S&T has not directly infringed, induced the infringement of, nor has it been a contributory infringer, of any of the claims of the ‘523 Patent.

19. There is a justiciable controversy between the parties regarding the non-infringement of the ‘523 Patent by S&T, and S&T is entitled to a declaratory judgment that will finally resolve this issue.

COUNT II

**DECLARATORY JUDGMENT OF INVALIDITY
OF '523 PATENT**

20. S&T hereby incorporates by reference the preceding paragraphs of this Complaint as if set forth in full herein.

21. This is a claim for declaratory judgment of invalidity of the '523 Patent.

22. Each of the claims of the '523 Patent is invalid because it is anticipated by the pertinent prior art under 35 U.S.C. § 102, and/or would have been obvious to one of ordinary skill in the art in light of the pertinent prior art at the time of the claimed invention under 35 U.S.C. § 103.

23. The claims of the '523 Patent are also invalid for lack of enablement, insufficient written description, indefiniteness, and/or failure to disclose the best mode of the invention under 35 U.S.C. § 112 in that the claims of the '523 Patent are vague and indefinite and incorporate methods and limitations that are neither disclosed, described in, explained by, nor enabled by the specification of the '523 Patent. There is a justiciable controversy between the parties regarding the invalidity of the '523 Patent, and S&T is entitled to a declaratory judgment that will finally resolve this issue.

COUNT III

**DECLARATORY JUDGMENT OF NO FALSE ADVERTISING UNDER THE LANHAM
ACT**

24. S&T hereby incorporates by reference the preceding paragraphs of this Complaint as if set forth in full herein.

25. This is a claim for a declaratory judgment that S&T does not engage in false advertising under the Lanham Act, 15 U.S.C. Section 1125.

26. JPI has alleged, among other things, that S&T's use of the term "The Original" in connection with its sales and advertising of "The Original Dish Drying Glove" constitutes false advertising under the Lanham Act.

27. S&T's advertising, including its use of the term "The Original" in connection with its sales and advertising of "The Original Dish Drying Glove," does not constitute false advertising under the Lanham Act.

28. S&T's use of the term "The Original" is not false or misleading, and does not pose any likelihood of harm to JPI.

29. There is a justiciable controversy between the parties regarding JPI's allegations that S&T is engaging in false advertising under the Lanham Act, and S&T is entitled to a declaratory judgment that will finally resolve this issue.

COUNT IV

DECLARATORY JUDGMENT OF NO INFRINGEMENT OF VALID OR ENFORCEABLE TRADE DRESS RIGHTS UNDER THE LANHAM ACT

30. S&T hereby incorporates by reference the preceding paragraphs of this Complaint as if set forth in full herein.

31. This is a claim for a declaratory judgment that S&T does not infringe any valid or enforceable trade dress rights of JPI under the Lanham Act, 15 U.S.C. Section 1125.

32. JPI has alleged, among other things, that S&T's use of a border on its web page infringes JPI's trade dress rights.

33. S&T's advertising, including its use of a border of in its web page, does not infringe any valid or enforceable trade dress rights of JPI. There is no likelihood of confusion between S&T's advertising and any valid or enforceable trade dress rights belonging to JPI. On information and belief, there is no evidence of actual confusion.

34. Moreover, JPI possess no valid or enforceable trade dress rights. There is no secondary meaning associated with JPI's purported trade dress rights.

35. There is a justiciable controversy between the parties regarding the non-infringement of any valid or enforceable trade dress rights belonging to JPI and S&T is entitled to a declaratory judgment that will finally resolve this issue.

COUNT V

TORTIOUS INTERFERENCE WITH CONTRACTUAL RIGHTS

36. S&T hereby incorporates by reference the preceding paragraphs of this Complaint as if set forth in full herein.

37. S&T has valid and enforceable agreements with customers to purchase The Original Dish Drying Glove for retail re-sale.

38. At all times relevant, JPI was aware of these agreements and contractual relationships.

39. In or around March 2010, JPI began sending threatening letters to customers of S&T, alleging that the sale of The Original Dish Drying Glove infringes the '523 Patent, and making demands upon them. *See* Exhibit 4 hereto.

40. In making the false and misleading representations relating to the allegedly infringing nature of S&T's products and the validity and enforceability of JPI's patent rights, JPI intentionally and unjustifiably interfered with S&T's contractual relationships with customers and suppliers, and sought to induce breaches of contract by those customers. JPI had no reasonable basis in law or fact for its false statements.

41. JPI interfered with these contractual relationships in an attempt to gain a competitive advantage and with the malicious intent to cause harm to S&T.

42. As a direct and proximate result of JPI's willful and intentional interference with these contractual relationships, S&T has been damaged.

43. As a direct and proximate result of JPI's willful and intentional interference with these relationships, S&T has suffered, and continues to suffer economic damages and other intangible economic injuries for which it is entitled to compensation and equitable relief.

44. JPI acted willfully and maliciously in interfering with S&T's contractual relationships as set forth herein.

COUNT VI

TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

45. S&T hereby incorporates by reference the preceding paragraphs of this Complaint as if set forth in full herein.

46. Because of its quality service and products, S&T has developed business relationships with several customers, through which it has derived or has the potential to derive substantial economic benefit. S&T had a reasonable expectation of entering into valid business relationships with these customers for the sale and purchase of The Original Dish Drying Glove.

47. JPI was aware of these relationships and has interfered, and is continuing to interfere, with them with the malicious and purposeful intent to injure S&T and defeat S&T's reasonable business expectancy through the use of wrongful means, including fraudulent and misleading representations pertaining to the its purported patented rights and the allegedly infringing nature of S&T's products directed towards S&T's current and potential customers. JPI has no reasonable basis in law or fact for these false statements.

48. Such interference has resulted in and continues to result in irreparable injury to S&T's goodwill and reputation in addition to proximately causing harm in the form of lost profits for which S&T is entitled to compensation and injunctive relief.

49. On information and belief, as a direct and proximate result of JPI's willful and intentional interference with these relationships, customers have been intimidated into not purchasing The Original Dish Drying Glove.

50. As a direct and proximate result of JPI's willful and intentional interference with these relationships, S&T has suffered, and continues to suffer damages, including lost profits derived from its relationships with customers and prospective customers and other intangible economic injuries for which it is entitled to compensation and equitable relief.

51. JPI acted willfully and maliciously in interfering with S&T's business expectancies as set forth herein.

COUNT VII

INJURIOUS FALSEHOOD AND PRODUCT DISPARAGEMENT

52. S&T hereby incorporates by reference the preceding paragraphs of this Complaint as if set forth in full herein.

53. Written and verbal representations impliedly or expressly stating that S&T's The Original Dish Drying Glove infringes JPI's valid and enforceable patent rights and that S&T engaged in false advertising were made by JPI to S&T's customers despite JPI's knowledge that these statements were false.

54. The false and derogatory statements made by JPI about the business dealings and products of S&T were made maliciously and without justifiable excuse, as part of a calculated effort expressly intended to prevent others from supplying, or dealing with, or purchasing products from S&T.

55. On information and belief, such statements played, and continue to play, a material and substantial part in inducing customers not to deal with S&T.

56. In addition, as the direct and proximate result of JPI's false statements, S&T has been damaged as it has been forced to expend, and continues to expend, significant employee hours and other resources as well as legal fees and costs in an effort to combat the effects of JPI's false statements. The costs sustained by S&T as the result of JPI's false misrepresentations are continuing to accrue.

57. JPI has acted willfully and maliciously in making the false statements referenced herein.

COUNT VIII

DEFAMATION PER SE

58. S&T hereby incorporates by reference the preceding paragraphs of this Complaint as if set forth in full herein.

59. In its written and verbal communications with customers of S&T, JPI states that S&T infringes valid and enforceable patent rights owned by JPI, and has engaged in false advertising.

60. These purported factual statements were false at the time they were made and continue to be false. Said statements were transmitted by JPI to third parties either verbally or in writing with the malicious intent to injure S&T's business, without justification or excuse, without any reasonable basis in law or fact, and with knowledge of their falsity.

61. JPI's false statements impugn the integrity of S&T's business practices and are the direct, immediate, and proximate cause of irreparable damage to S&T's reputation in the marketplace rendering these statements defamatory *per se* such that S&T is entitled to damages.

62. JPI has acted willfully and maliciously in making the false statements referenced herein.

COUNT IX

COMMON LAW UNFAIR COMPETITION

63. S&T hereby incorporates by reference the preceding paragraphs of this Complaint as if set forth in full herein.

64. JPI made false and misleading representations to customers and those with whom S&T had existing economic relations that products developed and sold by S&T infringe valid and enforceable patent rights owned by JPI, and that S&T has engaged in false advertising.

65. JPI made these statements without a reasonable belief that S&T's products could possibly infringe any valid or enforceable patent issued to JPI, or that S&T had engaged in false advertising.

66. JPI's statements were made without a reasonable factual or legal basis in an effort to undermine S&T's position in the marketplace and to unfairly gain a competitive advantage over S&T.

67. JPI's statements and misrepresentations proximately caused, and continue to cause, immediate and irreparable harm to S&T's goodwill and commercial reputation for which there is no adequate remedy at law in addition to causing lost sales and lost profits for which S&T is entitled to monetary and equitable relief.

COUNT X

UNFAIR COMPETITION UNDER THE LANHAM ACT

68. S&T hereby incorporates by reference the preceding paragraphs of this Complaint as if set forth in full herein.

69. This is a claim for unfair competition under the Lanham Act, 15 U.S.C. § 1125.

70. JPI made false and misleading representations to S&T's customers in order to promote its products and to disparage S&T's products, *e.g.*, that products developed and sold by

S&T infringe valid and enforceable patents owned by JPI, and that S&T has engaged in false advertising.

71. JPI's false and misleading statements actually deceived or are likely to deceive a substantial segment of the intended audience, *i.e.*, S&T's customers for the accused products.

72. JPI's false and misleading statements are material in that they have influenced or are likely to influence purchasing decisions of S&T's customers and potential customers for the accused products.

73. JPI caused the false and misleading statements to enter interstate commerce.

74. JPI's false and misleading statements have resulted in actual or probable injury to S&T by causing actual and/or potential customers not to purchase S&T's accused products.

75. JPI's false and misleading statements were undertaken in bad faith in that they were made with knowledge of the invalidity and/or unenforceability of the '523 Patent, with knowledge that S&T's accused products do not infringe any valid or enforceable claim of any patents owned by JPI, and with knowledge that S&T did not engage in false advertising.

76. JPI's statements and misrepresentations proximately caused and continue to cause immediate and irreparable harm to S&T for which there is no adequate remedy at law in addition to causing S&T to suffer lost profits, lost sales, and to incur attorneys' fees, court costs and expenses.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Schroeder & Tremayne, Inc. prays for judgment as follows:

- a. For judgment in favor of Plaintiff Schroeder & Tremayne, Inc. and against Defendant Just Perfect, Inc. on Counts I through X of the Complaint;

- b. For a judicial determination and declaration that Plaintiff Schroeder & Tremayne, Inc. has not infringed, contributed to the infringement of, or induced the infringement of any valid, enforceable claim of U.S. Patent No. 7,328,523;
- c. For a declaration that U.S. Patent No. 7,328,523 is invalid, in whole or in part;
- d. For a judicial determination and declaration that Plaintiff Schroeder & Tremayne, Inc. has not engaged in false advertising;
- e. For a judicial determination and declaration that Plaintiff Schroeder & Tremayne, Inc. has not infringed any valid or enforceable trade dress rights of Just Perfect, Inc.;
- f. For costs of suit and reasonable attorneys' fees pursuant to the "exceptional case" provision of 35 U.S.C. § 285 and other applicable law, because Just Perfect, Inc. accused Plaintiff Schroeder & Tremayne, Inc. of patent infringement despite knowing that U.S. Patent No. 7,328,523 is invalid and not infringed by Plaintiff;
- g. For a preliminary and permanent injunction enjoining Just Perfect, Inc. and all of its officers, agents, employees, representatives and counsel, and all persons in active concert or participation with any of them, directly or indirectly, from charging infringement or instituting any action for infringement of U.S. Patent No. 7,328,523 against Plaintiff and/or any of its customers;

- h. For a preliminary and permanent injunction enjoining Just Perfect, Inc. and all of its officers, agents, employees, representatives and counsel, and all persons in active concert or participation with any of them, directly or indirectly, from charging infringement or instituting any action for trade dress infringement or false advertising, in the future against Plaintiff or any of its customers or contractors;
- i. For costs of suit and reasonable attorneys' fees pursuant to the "exceptional case" provision of 15 U.S.C. § 1117 and other applicable law;
- j. For an order requiring Just Perfect, Inc. to produce to Plaintiff a list of all those to whom letters or other communications containing statements about Just Perfect, Inc.'s alleged patent or trademark rights and/or Plaintiff's alleged infringement of those rights or false advertising;
- k. For damages in favor of Plaintiff Schroeder & Tremayne, Inc. and against Just Perfect, Inc. sufficient to compensate Schroeder & Tremayne, Inc for the economic and non-economic damages sustained by Schroeder & Tremayne, Inc as a result of Just Perfect, Inc.'s actions as alleged herein, along with treble damages; and
- l. For an award of punitive damages against Just Perfect, Inc. in favor of Schroeder & Tremayne, Inc;
- m. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all issues so triable.

Dated: May 21, 2010

Respectfully submitted,

POLSINELLI SHUGHART PC

By: /s/ Keith J. Grady _____

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