

Solomon Rubin, Esq.
Law Offices of Jan Meyer and Associates, P.C.
1029 Teaneck Road, 2nd Floor
Teaneck NJ 07666
Telephone: (201) 862-9500

Thomas J. Donovan, Esq.
Barnes & Thornburg LLP
One North Wacker Drive, Suite 4400
Chicago IL 60606-2833
Telephone: (312) 214-8329

Niall MacLeod, Esq.
Barnes & Thornburg LLP
225 South 6th Street, Suite 2800
Minneapolis MN 55402-4662
Telephone: (612) 367-8704

Attorneys for Plaintiff EMI Yoshi, Inc.

Document Filed Electronically

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

EMI YOSHI, INC.,

Plaintiff,

vs.

MARYLAND PLASTICS, INC.,

Defendant.

:

:

:

:

:

:

:

:

:

:

X

Civil Action No.

District Judge

Magistrate Judge

JURY TRIAL DEMANDED

**COMPLAINT FOR PATENT
INFRINGEMENT, TRADE DRESS INFRINGEMENT, AND ACTS OF UNFAIR
COMPETITION**

Plaintiff EMI Yoshi, Inc. ("EMI"), by its undersigned attorneys, brings this Complaint against Defendant Maryland Plastics, Inc. ("Maryland Plastics") to stop and remedy Maryland Plastics' willful infringement of EMI's United States patent rights relating to its ornamental

tableware and related products. EMI also brings this Complaint to stop and remedy Maryland Plastics' intentional infringement of EMI's distinctive trade dress in its Squares brand product line, and to stop and remedy various acts of unfair competition by Maryland Plastics. EMI alleges as follows:

PARTIES

1. Plaintiff EMI is a corporation organized and existing under the laws of the State of New Jersey, having its principal place of business at 1200 Jersey Avenue, North Brunswick, New Jersey 08902.

2. Defendant Maryland Plastics, Inc. is a corporation organized and existing under the laws of the State of Maryland, having its principal place of business at 251 East Central Avenue, Federalsburg, Maryland 21632.

JURISDICTION AND VENUE

3. This action arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, the federal Lanham Act, 15 U.S.C. § 1051 *et seq.*, and New Jersey statutory and common law. This Court has subject matter jurisdiction over the federal law claims under 28 U.S.C. §§ 1331, 1338(a), 1338(b), and 15 U.S.C. § 1121. This Court has supplemental jurisdiction over the New Jersey state-law claims under 28 U.S.C. § 1367(a).

4. Under the New Jersey Long Arm Rule 4:4-4(b)(1), this Court has personal jurisdiction over Maryland Plastics because, among other reasons, Maryland Plastics has conducted business in New Jersey which have given rise to the acts of patent infringement, trade dress infringement and unfair competition within New Jersey, the products accused herein of patent infringement, trade dress infringement and unfair competition are sold in New Jersey, and the conduct complained of herein has caused injury to EMI in New Jersey. Further, upon

information and belief, Maryland Plastics transacts and solicits substantial business in New Jersey, and Maryland Plastics has at all relevant times purposely, systematically and continuously directed contacts to and conducted business in New Jersey.

5. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

BACKGROUND FACTS TO ALL CLAIMS FOR RELIEF

EMI's "Squares" Product Line

6. EMI develops, manufactures, imports, sells, and markets upscale plastic disposable tableware and related products, under several brands and product lines. Over the years, EMI has gained a national and international reputation for its products, including their distinctive and ornamental designs.

7. EMI's Squares brand product line is characterized by a square-shaped design theme and an ornamental square-shaped design for each individual product. EMI's square-shaped products having the ornamental square design include dessert plates, salad plates, dinner plates, soup bowls, dessert bowls, shot glasses, tumblers, wine glasses, martini glasses, champagne flutes, and coffee mugs. A screenshot of EMI's Squares brand products from EMI's website (<http://www.emiyoshi.com/OurBrands/Squares.aspx>) is attached as Exhibit A.

8. The design of EMI's Squares product line is characterized by a consistent overall square look, which is an inherent and acquired distinctive trade dress. The square-shaped theme of the products in the Squares product line is not dictated by function.

9. As a result of its efforts, EMI has developed considerable consumer recognition and goodwill in its Squares product line. The design of EMI's Squares product line is well known in the marketplace.

10. The design of EMI's Squares product line has not changed materially since at least 2007, and the extensive long-term use of the design in interstate commerce has caused consumers to associate EMI's distinctive trade dress in its Squares product line with EMI.

EMI's Design Patents

11. EMI has also applied for and been issued patents for its distinctive, novel, and ornamental designs in its Squares product line, including U.S. Design Patent Nos. D607,695, D607,694, D607,693, D609,049, and D623,900.

12. On January 12, 2010, U.S. Patent No. D607,695 (the '695 patent) was duly and lawfully issued naming Saul Wolhendler as the inventor. A true copy of the '695 patent is attached as Exhibit B.

13. EMI is and has been at all pertinent times the owner by assignment of the '695 patent, and has all right, title, and interest in the '695 patent. EMI has the right to bring this action for infringement of the '695 patent, injunctive relief and damages.

14. On January 12, 2010, U.S. Patent No. D607,694 (the '694 patent) was duly and lawfully issued naming Saul Wolhendler as the inventor. A true copy of the '694 patent is attached as Exhibit C.

15. EMI is and has been at all pertinent times the owner by assignment of the '694 patent, and has all right, title, and interest in the '694 patent. EMI has the right to bring this action for infringement of the '694 patent, injunctive relief and damages.

16. On January 12, 2010, U.S. Patent No. D607,693 (the '693 patent) was duly and lawfully issued naming Saul Wolhendler as the inventor. A true copy of the '693 patent is attached as Exhibit D.

17. EMI is and has been at all pertinent times the owner by assignment of the '693 patent, and has all right, title, and interest in the '693 patent. EMI has the right to bring this action for infringement of the '693 patent, injunctive relief and damages.

18. On February 2, 2010, U.S. Patent No. D609,049 (the '049 patent) was duly and lawfully issued naming Saul Wolhendler as the inventor. A true copy of the '049 patent is attached as Exhibit E.

19. EMI is and has been at all pertinent times the owner by assignment of the '049 patent, and has all right, title, and interest in the '049 patent. EMI has the right to bring this action for infringement of the '049 patent, injunctive relief and damages.

20. On September 21, 2010, U.S. Patent No. D623,900 (the '900 patent) was duly and lawfully issued naming Saul Wolhendler as the inventor. A true copy of the '900 patent is attached as Exhibit F.

21. EMI is and has been at all pertinent times the owner by assignment of the '900 patent, and has all right, title, and interest in the '900 patent. EMI has the right to bring this action for infringement of the '900 patent, injunctive relief and damages.

Maryland Plastics' Infringement and Unfair Competition

22. Maryland Plastics manufactures and sells disposable tableware products in competition with EMI.

23. After EMI's Squares brand product line acquired its distinctive trade dress and obtained recognition in the marketplace and an association with EMI, Maryland Plastics introduced its "Simply Squared" brand. Like EMI, Maryland Plastics' Simply Squared has a square-shaped design theme.

24. Maryland Plastics' Simply Squared products having the square-shaped design include dessert plates, salad plates, dinner plates, soup bowls, dessert bowls, shot glasses, tumblers, wine glasses, martini glasses, champagne flutes, and coffee mugs. A screenshot of Maryland Plastics' Simply Squared brand products from Maryland Products' website (<http://www.marylandplastics.com/mdpsite/squareplates.html>) is attached as Exhibit G.

25. Maryland Plastics' Simply Squared products are, in many cases, identical to EMI's Squares brand products, including EMI's patented products.

26. Maryland Plastics' use of EMI's distinctive trade dress and copying of individual products is likely to cause consumer confusion as to the origin, association, sponsorship or approval of Maryland Plastics' products with EMI.

27. Furthermore, upon information and belief, in at least one instance, a photograph of one of EMI's Squares brand square-shaped bowls has been used and is being used to pass or palm off the EMI's Squares brand square-shaped bowl as a Maryland Products' Simply Squared bowl. A screenshot of that instance is attached as Exhibit H.

28. On January 18, 2012, EMI's attorneys sent a letter to Maryland Plastics' President notifying Maryland Plastics that its Simply Squared product line infringed EMI's trade dress, and that Maryland Plastics' products infringed EMI's '695, '694, '693, '049, and '900 patents. A copy of the January 18, 2012 letter to Maryland Plastics is attached as Exhibit I.

29. Maryland Plastics did not respond to the January 18, 2012 letter from EMI.

FIRST CLAIM FOR RELIEF

Infringement of U.S. Patent Design No. D607,695

30. EMI repeats and realleges the allegations set forth above as if set forth in full herein.

31. Maryland Plastics makes, uses, offers to sell, and sell items that infringe the '695 patent, directly or indirectly, including Maryland Plastics' Square Champagne Flutes, Item No. SQ80046.

32. Maryland Plastics infringement of the '695 patent has been and continues to be willful.

33. Maryland Plastics will continue to infringe, actively induce others to infringe, and/or contribute to infringement of the '695 patent unless and until it is enjoined by this Court.

34. EMI has suffered damages and irreparable harm as a result of Maryland Plastics' infringement of the '695 patent and will continue to be damaged and harmed unless Maryland Plastics is enjoined from future infringing activities.

35. EMI has no adequate remedy at law for Maryland Plastics' infringement.

SECOND CLAIM FOR RELIEF

Infringement of U.S. Patent Design No. D607,694

36. EMI repeats and realleges the allegations set forth above as if set forth in full herein.

37. Maryland Plastics makes, uses, offers to sell, and sell items that infringe the '694 patent, directly or indirectly, including Maryland Plastics' Square Martini Glass, Item No. SQ80036.

38. Maryland Plastics infringement of the '694 patent has been and continues to be willful.

39. Maryland Plastics will continue to infringe, actively induce others to infringe, and/or contribute to infringement of the '694 patent unless and until it is enjoined by this Court.

40. EMI has suffered damages and irreparable harm as a result of Maryland Plastics infringement of the '694 patent and will continue to be damaged and harmed unless Maryland Plastics is enjoined from future infringing activities.

41. EMI has no adequate remedy at law for Maryland Plastics' infringement.

THIRD CLAIM FOR RELIEF

Infringement of U.S. Patent Design No. D607,693

42. EMI repeats and realleges the allegations set forth above as if set forth in full herein.

43. Maryland Plastics makes, uses, offers to sell, and sell items that infringe the '693 patent, directly or indirectly, including Maryland Plastics' Square Wine Glass, Item No. SQ80026.

44. Maryland Plastics infringement of the '693 patent has been and continues to be willful.

45. Maryland Plastics will continue to infringe, actively induce others to infringe, and/or contribute to infringement of the '693 patent unless and until it is enjoined by this Court.

46. EMI has suffered damages and irreparable harm as a result of Maryland Plastics infringement of the '693 patent and will continue to be damaged and harmed unless Maryland Plastics is enjoined from future infringing activities.

47. EMI has no adequate remedy at law for Maryland Plastics' infringement.

FOURTH CLAIM FOR RELIEF

Infringement of U.S. Patent Design No. D609,049

48. EMI repeats and realleges the allegations set forth above as if set forth in full herein.

49. Maryland Plastics makes, uses, offers to sell, and sell items that infringe the '049 patent, directly or indirectly, including Maryland Plastics' Square Wine Glass, Item No. SQ80026, Maryland Plastics' Square Martini Glass, Item No. SQ80036, and Maryland Plastics' Square Champagne Flute, Item No. SQ80046.

50. Maryland Plastics infringement of the '049 patent has been and continues to be willful.

51. Maryland Plastics will continue to infringe, actively induce others to infringe, and/or contribute to infringement of the '049 patent unless and until it is enjoined by this Court.

52. EMI has suffered damages and irreparable harm as a result of Maryland Plastics infringement of the '049 patent and will continue to be damaged and harmed unless Maryland Plastics is enjoined from future infringing activities.

53. EMI has no adequate remedy at law for Maryland Plastics' infringement.

FIFTH CLAIM FOR RELIEF

Infringement of U.S. Patent Design No. D623,900

54. EMI repeats and realleges the allegations set forth above as if set forth in full herein.

55. Maryland Plastics makes, uses, offers to sell, and sell items that infringe the '900 patent, directly or indirectly, including Maryland Plastics' Square Coffee Mugs, Item Nos. SQ80016, SQ80011, and SQ80010.

56. Maryland Plastics infringement of the '900 patent has been and continues to be willful.

57. Maryland Plastics will continue to infringe, actively induce others to infringe, and/or contribute to infringement of the '900 patent unless and until it is enjoined by this Court.

58. EMI has suffered damages and irreparable harm as a result of Maryland Plastics infringement of the '900 patent and will continue to be damaged and harmed unless Maryland Plastics is enjoined from future infringing activities.

59. EMI has no adequate remedy at law for Maryland Plastics' infringement.

SIXTH CLAIM FOR RELIEF

Unfair Competition: Trade Dress Infringement Under 15 U.S.C. § 1125(a)

60. EMI repeats and realleges the allegations set forth above as if set forth in full herein.

61. Maryland Plastics' Simply Squared product line infringes EMI's distinctive trade dress in EMI's Squares brand product line and is likely to cause confusion among consumers, in violation of 15 U.S.C. § 1125(a).

62. Maryland Plastics' infringement of EMI's trade dress has been and continues to be willful.

63. Maryland Plastics' infringement of EMI's trade dress will continue unless and until it is enjoined by the Court.

64. Maryland Plastics' infringement of EMI's trade dress has caused and continues to cause damages and irreparable harm to EMI, for which EMI has no adequate remedy at law.

SEVENTH CLAIM FOR RELIEF

Unfair Competition: False Designation of Origin Under 15 U.S.C. § 1125(a)

65. EMI repeats and realleges the allegations set forth above as if set forth in full herein.

66. Maryland Plastics' deliberate passing or palming off of EMI's Squares brand bowl as its own is intended to lead the public to believe that Maryland Plastics designed and

manufactured the EMI plate, and to confuse and deceive purchasers as to the origin of the EMI plate, in violation of 15 U.S.C. § 1125(a).

67. Maryland Plastics' deliberate passing or palming off of EMI's Squares brand bowl as its own will continue unless and until it is enjoined by the Court.

68. Maryland Plastics' deliberate passing or palming off of EMI's Squares brand bowl as its own has caused and continues to cause damages and irreparable harm to EMI, for which EMI has no adequate remedy at law.

EIGHTH CLAIM FOR RELIEF

Unfair Competition Under N.J.S.A § 56:4-1

69. EMI repeats and realleges the allegations set forth above as if set forth in full herein.

70. Maryland Plastics' Simply Squared product line infringes EMI's distinctive trade dress in EMI's Squares brand product line and is likely to cause confusion among consumers, in violation of N.J.S.A. § 56:4-1.

71. Maryland Plastics' infringement of EMI's trade dress has been and continues to be willful.

72. Maryland Plastics' infringement of EMI's trade dress will continue unless and until it is enjoined by the Court.

73. Maryland Plastics' infringement of EMI's trade dress has caused and continues to cause damages and irreparable harm to EMI, for which EMI has no adequate remedy at law.

NINTH CLAIM FOR RELIEF

Common Law Unfair Competition

74. EMI repeats and realleges the allegations set forth above as if set forth in full herein.

75. Maryland Plastics acts set forth above, including its infringement of EMI's trade dress, copying of EMI's products, and passing off of EMI's products as its own, constitutes unfair competition and unfair business practices under the laws of New Jersey.

76. The unfair competition and unfair business practices of Maryland Plastics have been willful.

77. The unfair competition and unfair business practices of Maryland Plastics have caused EMI monetary damages in an amount to be determined.

78. The unfair competition and unfair business practices have caused and will continue to cause injury and irreparable harm to EMI unless enjoined by this Court.

79. EMI has no adequate remedy at law.

WHEREFORE, EMI respectfully requests the following relief on this claim:

A. To enter judgment that Maryland Plastics has infringed the '695 patent, the '694 patent, the '693 patent, the '049 patent, and the '900 patent;

B. To enter an order preliminarily and permanently enjoining Maryland Plastics, and its officers, agents, servants, and employees, and all persons in active concert or participation with any of them, from infringing the '695 patent, the '694 patent, the '693 patent, the '049 patent, and the '900 patent;

C. To enter judgment that Maryland Plastics has infringed EMI's trade dress in its Squares brand product line in violation of 15 U.S.C. § 1125(a);

D. To enter an order preliminarily and permanently enjoining Maryland Plastics, and its officers, agents, servants, and employees, and all persons in active concert or participation with any of them, from infringing EMI's trade dress;

E. To enter judgment for EMI on its Seventh Claim for relief, Unfair Competition: False Designation of Origin Under 15 U.S.C. § 1125(a);

F. To enter and order preliminarily and permanently enjoining Maryland Plastics, and its officers, agents, servants, and employees, and all persons in active concert or participation with any of them, from further violation of 15 U.S.C. § 1125(a);

G. To enter judgment that Maryland Plastics has infringed EMI's trade dress in its Squares brand product line in violation of N.J.S.A. § 56:4-1;

H. To enter and order preliminarily and permanently enjoining Maryland Plastics, and its officers, agents, servants, and employees, and all persons in active concert or participation with any of them, from further violation of N.J.S.A. § 56:4-1;

I. To enter judgment for EMI on its Ninth Claim For Relief, Common Law Unfair Competition;

J. To award EMI damages, including profits for the sale of any and all infringing products under 35 U.S.C. § 289, including pre-judgment and post judgment interests and costs pursuant to 35 U.S.C. § 284;

K. To award EMI's damages and Maryland Plastics' profits for violation of 15 U.S.C. § 1125(a);

L. To award EMI's damages and Maryland Plastics' profits for violation of N.J.S.A. § 56:4-1;

M. To treble the damages awarded to EMI for infringement of the '695 patent, the '694 patent, the '693 patent, the '049 patent, and the '900 patent;

N. To declare this case "exceptional" under 35 U.S.C. § 285 and to award EMI its attorneys' fees, expenses and costs;

O. To order an accounting of Maryland Plastics' profits resulting from the acts complained of herein; and

P. Such other and further relief as the Court may deem just and proper.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), EMI hereby demands a trial by a jury on all issues so triable.

Respectfully submitted,

Dated: February 23, 2012

/s/ Solomon Rubin

Solomon Rubin, Esq.
Law Offices of Jan Meyer and Associates, P.C.
1029 Teaneck Road, 2nd Floor
Teaneck NJ 07666
Telephone: (201) 862-9500

Thomas J. Donovan, Esq. (*pro hac vice pending*)
Barnes & Thornburg LLP
One North Wacker Drive, Suite 4400
Chicago IL 60606-2833
Telephone: (312) 214-8329

Niall MacLeod, Esq. (*pro hac vice pending*)
Barnes & Thornburg LLP
225 South 6th Street, Suite 2800
Minneapolis MN 55402-4662
Telephone: (612) 367-8704

Attorneys for Plaintiff EMI Yoshi, Inc.

CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2

The undersigned attorney for Plaintiff EMI Yoshi, Inc. hereby certifies, pursuant to Local Civil Rule 11.2, that to the best of his knowledge, the matter in controversy is not the subject of any other action pending in any court or agency or any arbitration.

Dated: February 23, 2012

/s/ Solomon Rubin

Solomon Rubin, Esq.
Law Offices of Jan Meyer and Associates, P.C.
1029 Teaneck Road, 2nd Floor
Teaneck NJ 07666
Telephone: (201) 862-9500

Thomas J. Donovan, Esq. (*pro hac vice pending*)
Barnes & Thornburg LLP
One North Wacker Drive, Suite 4400
Chicago IL 60606-2833
Telephone: (312) 214-8329

Niall MacLeod, Esq. (*pro hac vice pending*)
Barnes & Thornburg LLP
225 South 6th Street, Suite 2800
Minneapolis MN 55402-4662
Telephone: (612) 367-8704

Attorneys for Plaintiff EMI Yoshi, Inc.