AO 120 (Rev. 3/04)

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	**REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK**

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court 8/21/08 on the following ☐ Patents or X Trademarks:

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT
1:08-cv-567	8/21/08	Southern Ohio - Western Division (Cinti)

PLAINTIFF	DEFENDANT
Georgia-Pacific Consumer Products, LP	Nextep, Inc., et al

	PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1	940,243		See attached complaint.
2	1,062,207		
3	2,165,829		
4	2,929,823		
5	2,875,601		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY Amendment ☐ Answer ☐ Cross Bill ☐ Other Pleading		
	PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1	2,949,299		
2	2,635,343		
3	2,766,328		
4	3,420,118		
5			

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK	(BY) DEPUTY CLERK	DATE
JAMES BONINI		August 26, 2008

Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

GEORGIA-PACIFIC CONSUMER PRODUCTS, LP,	)	Case No. 1:08-cv-567
	)	Judge
Plaintiff,	)	
	)	Magistrate Judge
v.	)	
	)	**Jury Demand Endorsed Hereon**
NEXTEP, INC. and SAMUEL L. PAUL,	)	
	)	
Defendants.	)	
	)	

COMPLAINT

Plaintiff Georgia-Pacific Consumer Products, LP ("Georgia Pacific" or "Plaintiff") states its Complaint against Nextep, Inc. and Samuel L. Paul (collectively "Nextep" or "Defendants") as follows:

Nature of the Action

1. This is an action for misrepresentation of source, false advertising, and unfair competition under the Federal Trademark Act of 1946, 15 U.S.C. §§ 1051, *et seq.* (the "Lanham Act") and under the laws of Ohio and of the several states in which Defendants conduct activities; for deceptive trade practices under Ohio Revised Code §§ 4165.01-4165.03 (the "Ohio Deceptive Trade Practices Act") and the unfair and deceptive trade practices acts of the several states in which Defendants conduct activities; for common law unfair competition, and for cancellation of United States Trademark Registration No. 940,243.

2. Georgia-Pacific is one of the world's leading producers and distributors of paper and paper-related products, including BRAWNY® paper towels. Together, Georgia-Pacific and

its predecessors-in-interest have sold billions of dollars worth of BRAWNY® paper towels since 1974. Using the strength and popularity of the BRAWNY® trademark, Plaintiff has extended this brand to a number of other consumer products, including a wide variety of household cleaning tools and related goods, such as sponges, gloves, scrubbers, brushes, brooms, and cloths. Plaintiff's extensive use of the BRAWNY mark, in multiple retail channels over many years, has caused consumers to associate the BRAWNY mark exclusively with Plaintiff as applied to such household goods.

3. Defendants, with full knowledge of the fame of Plaintiff's mark, have intentionally sought to trade on Plaintiff's goodwill in its Brawny mark. In 2003, Defendants entered into an invalid assignment to acquire a trademark registration to market related products (*e.g.*, plastic trash bags and freezer storage bags) under an identical "BRAWNY" mark. Knowing that consumers are likely to confuse these identical marks, Defendants instructed their public relations firm that they wished to capitalize on Georgia-Pacific's BRAWNY® brand strength. At the same time, Defendants moved into overlapping product lines and channels of trade; and marketed their BRAWNY brand -- which is a value brand -- as a premium brand knowing that Plaintiff's BRAWNY® is a premium brand. In so doing, Defendants expected that consumers would attribute to Defendants' BRAWNY products the same high quality and goodwill those customers have long attributed to Plaintiff's BRAWNY® premium products. Thus, Defendants intentionally misrepresented the source of their goods and blurred the lines between the goods associated with Plaintiff's famous BRAWNY mark and Defendants' goods. Accordingly, Defendants' advertising and sales under their "BRAWNY" designation constitute a deliberate misuse of that mark and of Plaintiff's famous BRAWNY mark.

4. Moreover, Defendants' advertising has falsely represented the nature, qualities, and characteristics of their products in an attempt to defraud and deceive the consuming public. Among other things, Defendants have misrepresented the strength of their trash bags and the comparability of their products to premium brands as part of their scheme improperly to position their BRAWNY product as a premium brand, in order to connect it in consumers' minds with the Georgia-Pacific BRAWNY® brand.

5. Thus, Defendants intentionally have traded on Plaintiff's goodwill, palmed off their products as Plaintiff's, created the impression that their goods are affiliated with Plaintiff, misrepresented the source of their goods, blurred the lines between their goods and Plaintiff's, and engaged in false advertising.

Subject Matter Jurisdiction

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338 and 15 U.S.C. § 1121 because it arises under 15 U.S.C. § 1125. Jurisdiction is also proper under 28 U.S.C. § 1332 because this action is between citizens of different states in which the amount in controversy exceeds $75,000.00. Additionally, this Court has jurisdiction over Plaintiff's state-law claims pursuant to 28 U.S.C. § 1338(b) because they are joined with substantial and related federal trademark claims and pursuant to the doctrine of supplemental jurisdiction under 28 U.S.C. § 1367.

Venue

7. Venue is proper pursuant to 28 U.S.C. § 1391 because, *inter alia*, a substantial part of the events giving rise to Plaintiff's claims have occurred and, unless enjoined, will continue to occur within this district. In addition, Defendant Nextep "resides" in this judicial district pursuant to 28 U.S.C. § 1391(c).

Description Of Parties and Personal Jurisdiction

8. Plaintiff Georgia-Pacific is a limited partnership organized under the laws of the State of Delaware, with its principal place of business in Atlanta, Georgia.

9. Defendant Nextep is a corporation organized under the laws of the State of Nevada, with its principal place of business in Reno, Nevada. Personal jurisdiction over Nextep is proper because it has made the representations that are the subject of this Complaint to potential customers, including The Kroger Company ("Kroger"), in this district, has sold the products that are the subject of those representations and this Complaint in this district, and has otherwise undertaken activities that form the basis of this Complaint in this judicial district. Nextep also is subject to the jurisdiction of this Court pursuant to Ohio's long-arm statute, Ohio Revised Code Section 2307.382.

10. Defendant Samuel L. Paul is a resident of the State of Nevada who directs and controls Defendant Nextep. Jurisdiction over Defendant Paul is proper because he has directed Nextep's activities and has personally undertaken tortuous activities related to Plaintiff's claims in this district. Specifically, Defendant Paul has, among other things, solicited and conducted business with a grocery customer, Kroger, located in this judicial district. Paul also is subject to the jurisdiction of this Court pursuant to Ohio's long-arm statute, Ohio Revised Code Section 2307.382.

FACTUAL BACKGROUND

Georgia-Pacific's BRAWNY Marks

11. Georgia-Pacific is a leading manufacturer and distributor of household consumer products, including tissue, paper towels, napkins, cups and tableware. Consumers recognize and associate Georgia-Pacific with such products.

12. Georgia-Pacific is the owner of, *inter alia*, the following United States registrations and applications (collectively, the " BRAWNY Marks"):

Mark	Registration or Serial No.	Goods	Date of First Use
BRAWNY	1062207	Paper Towels	10/2/1974
BRAWNY and Design	2165829	Paper Towels	1975
Brawny	2929823	Paper towels and napkins	10/15/2003
BRAWNY MAN	2875601	Paper Goods Namely, Calendars	04/18/2003
BRAWNY PROFESSIONAL	2849299	Paper Towels	09/30/1999
BRAWNY	2635343	Paper Products Namely, Paper Napkins	01/21/2002
DO YOU KNOW A BRAWNY MAN?	2766328	Paper Towels and Paper Napkins	06/10/2002
BRAWNY	3420118	Disposable wipes not impregnated with chemicals or compounds	09/13/2004
BRAWNY INDUSTRIAL	78/726,372	Cellulose wipers; Disposable wipes not impregnated with chemicals or compounds.	03/2005

Mark	Registration or Serial No.	Goods	Date of First Use
BRAWNY	78/443,780	Household cleaning implements, namely, scrub brush, broom, dust pan, grout brush, squeegee and plunger	12/29/2004
BRAWNY	78/404,561	Dust cloths	07/30/2004
BRAWNY	78/402,314	Household gloves made of rubber and cotton knit for general use, and disposable latex gloves, cleaning pads, scrubber sponges	12/20/2004
BRAWNY	78/356,377	Scrub Sponges for cleaning, namely copper fiber Scrubbers, Stainless steel scrubbers, Plastic scrubbers, Nylon Scrubbers, Foam for General use, Disposable Latex Gloves	07/19/2004
BRAWNY	78/307,184	Household cleaning Cloths	10/20/2006
BRAWNY	78/307,174	Toilet bowl brush	06/24/2006
BRAWNY	78/307,171	Pre-Moistened Hand and Facial Wipes	03/10/2003
BRAWNY	78/720,415	Disposable wipes impregnated with chemicals or compounds for household cleaning	
BRAWNY ELITE	78/451,230	Paper Towels and Paper Napkins	
BRAWNY	77/331,154	Laundry detergent in powder and liquid form, fabric softeners	
BRAWNY	77/331,153	Full line of household cleaning preparations	
BRAWNY	77/031,093	Paper Towel Dispenser	

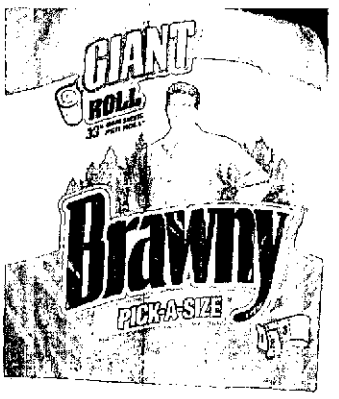
Mark	Registration or Serial No.	Goods	Date of First Use
BRAWNY	77/272660	Paper Towels	02/04/2008
BRAWNY	77/396714	Paper Towels	02/04/2008
BRAWNY	77/397045	Wipes	

13. Collectively, Georgia-Pacific, its predecessors, affiliates, and licensees have used the BRAWNY Marks for over thirty years.

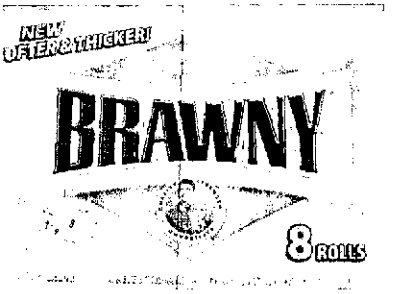
14. Among the products that Plaintiff and its licensees have sold under the BRAWNY Marks are a wide range of household products used in the kitchen and in cleaning, including:

- paper towels

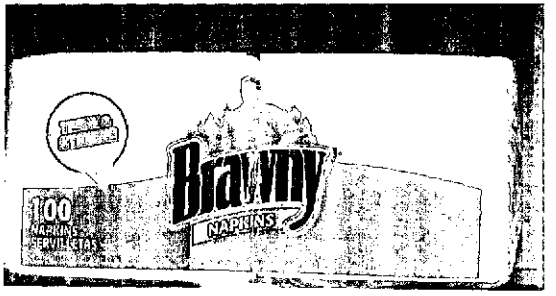
former product packaging



new product packaging



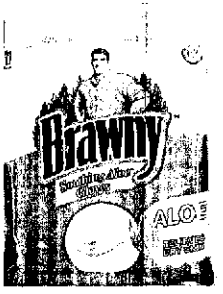
- napkins



- wipes

- sponges

- gloves



and other products, including brushes, brooms, and scrubbers. Photos of these and other representative packaging for Plaintiff's BRAWNY® products are attached hereto as Exhibits A through I. The fact that Plaintiff has previously distributed this variety of products demonstrates that Plaintiff's BRAWNY brand naturally extends into a wide scope of household goods.

15. Over the years, Plaintiff and its predecessors have spent tens of millions of dollars advertising and promoting their products under the BRAWNY Marks. As a result of these efforts, Plaintiff and its predecessors have sold billions of dollars of products under the BRAWNY Marks.

16. Consumer research shows that Plaintiff's BRAWNY® brand is perceived by consumers as a premium brand. Thus, Georgia-Pacific not only has invested heavily in promoting the brand, but it has also spent hundreds of millions of dollars in maintaining and

continually improving the quality of BRAWNY® branded products so that consumers continue to associate the brand with high quality.

17. As a result of Plaintiff's longstanding use of the BRAWNY Marks, extensive sales enjoyed under them, widespread advertising and promotion, and multiple federal registrations, Plaintiff has developed substantial value and goodwill in the BRAWNY Marks. The public recognizes the BRAWNY Marks as source identifiers for Plaintiff's goods and assumes that goods sold in connection with those marks will be of the high quality and reliability for which Plaintiff's goods are known.

Defendants' Wrongful Acts

18. On or about August 22, 2003, Nextep executed an agreement with a company called Brawny Plastics, Inc., which purported to assign to Nextep ownership of Brawny Plastics Inc.'s U.S. Registration No. 940,243 for the "BRAWNY" mark for "polyethylene bags" (hereinafter, the "BPI BRAWNY mark"). Defendants did not acquire any customer data or information about Brawny Plastics' business, products, or marketing. Defendants did not acquire any trade secrets, product formulas, patents, or product specifications; nor did they acquire any physical assets or inventory, in connection with the purported trademark assignment. In short, Defendants did not acquire anything other than purported rights to Brawny Plastics' BRAWNY name.

19. In connection with this claimed trademark assignment, Defendants collaborated with Brawny Plastics for it to file an "intent to use" application for the BPI BRAWNY mark for use in connection with trash receptacles (Application Serial No. 78/268,015). Defendants had Brawny Plastics agree to transfer the application to Nextep after Nextep had begun using the mark. The Agreement between Brawny Plastics and Nextep is attached as Exhibit J.

20. At or about the time of this purported assignment, Defendants engaged the public relations firm that they knew promoted Plaintiff's BRAWNY® brand products to assist Defendants in launching products under the BPI BRAWNY brand.

21. Defendants then contacted Georgia-Pacific marketing representatives and traveled to Plaintiff's headquarters in Atlanta, Georgia in an attempt to capitalize on their purported acquisition of the BPI BRAWNY registration. Defendants sought a license to use Georgia-Pacific's BRAWNY Man design mark, proposed an unreasonable business arrangement, informed Georgia-Pacific that they had engaged its public relations firm, and suggested to Georgia-Pacific that they intended to trade on Georgia-Pacific's goodwill in its BRAWNY Marks with or without Georgia-Pacific's consent.

22. In the course of the parties' communications about Defendants' proposal, Defendants acquired sensitive, confidential, competitive information about Plaintiff's plans to expand its use of the BRAWNY Marks. Defendants also learned from Georgia-Pacific that consumers strongly associate the color red (which Georgia-Pacific has long used in its BRAWNY® brand product packaging) with Georgia-Pacific's BRAWNY Mark.

23. As part of Defendants' scheme to obtain an unfair competitive advantage and trade on Georgia-Pacific's goodwill, Defendant Paul used Plaintiff's confidential prospective expansion plans to file a series of "intent to use" applications (Application Serial Nos. 78/301,844, 78/301,863, 78/301,840, 78/350,666, 78/340,495, and 78/301,859) to register the BPI BRAWNY mark for a wide variety of products, including products associated specifically with the kitchen and with household cleaning and organizing in general. Defendant Paul filed these applications without the statutorily required bona fide intent to use the BPI BRAWNY mark in connection with many of the covered products. Rather, his purpose was to

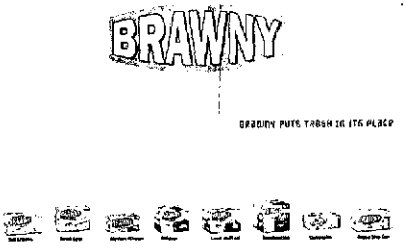
assert priority over Plaintiff and prevent Georgia-Pacific from acquiring rights in connection with its planned brand extension. Defendant Paul intended to use these applications as leverage in negotiating with Georgia-Pacific.

24. In the late fall of 2003, Georgia-Pacific learned of Defendant Paul's surreptitious applications, questionable business dealings, and the inferior quality of Defendants' existing consumer trash-bag products. Around the same time, Defendants failed to provide adequate financial and operational information that Georgia-Pacific had requested to substantiate Defendants' business proposal. These events convinced Georgia-Pacific that it should not conduct business with Defendants. Therefore, when Defendants subsequently presented an ultimatum to respond to their proposal, Georgia-Pacific allowed the deadline to pass, and the parties ceased discussing any potential business arrangement.

25. Sometime the following year, Defendants launched the sale of plastic bags under the BRAWNY name. In so doing, Defendants adopted a packaging design that, as shown below, displayed "BRAWNY" in bold lettering on a red banner:

Defendants prominently used the color red in their package design even though they had learned from Georgia-Pacific that, due to Georgia-Pacific's longstanding prominent use of red in its packaging, consumers associated Georgia-Pacific's BRAWNY® brand with that color. Defendants also utilized marketing materials intended to trade on Plaintiff's goodwill. For example, Defendants distributed the following marketing brochure, the contents of which

referred to Defendants' product as having "the strength of a premium-brand" and "the most powerful name on the market today":



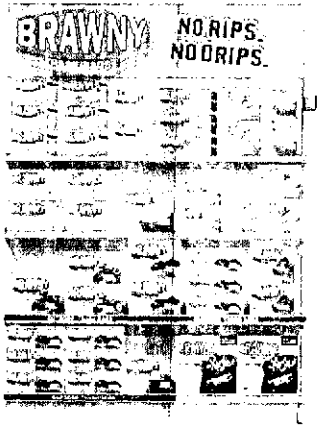
(A true and correct copy of the complete brochure is attached as Exhibit K). Defendants' BRAWNY bags, however, are not "premium" and do not have the strength of premium trash bags, but Plaintiff's products are considered premium. Moreover, the BPI BRAWNY trash bags' name is not "the most powerful name on the market today"; rather, Georgia Pacific's BRAWNY® name is the powerful name in the market.

26. Defendants' marketing materials also referenced "maintaining the BRAWNY position as national value leader,":

> Not satisfied simply to offer a complete line of trash bags. We know that product innovation is critical to maintaining the Brawny position as national value leader. We developed, for instance, the industry's first patented trash can/liner system and other patented products such as SacSaver™ and SacSor™, which help consumers easily organize and recycle plastic shopping bags. What's more, our versatile manufacturing process ensures that we always have exciting new products in the works.

However, Defendants' brand has never held the position of a national "leading" brand, but Georgia-Pacific's BRAWNY® brand is well-known as a national leading brand.

27. Finally, Defendants' marketing materials also refers to BRAWNY plastic bags as being "thicker and stronger" than competitive products, when they are not, and Defendants tout that their products have "no rips or drips", when there is no basis for this claim.



Defendants have used such false claims to misrepresent their products' source and to capitalize on Plaintiff's BRAWNY Marks, as Plaintiff has long advertised its papers towels as being thick, strong, and durable.

28. In addition, Defendants have advertised their BRAWNY products on their websites, including <www.brawnytough.com> and <brawnyproducts.com>, as shown in Exhibit L. Like the brochures, Defendants' websites contain a number of statements intended to mislead potential purchasers and trade on Plaintiff's goodwill, including the following statements:

"The strength of the Brawny name promises everything and delivers even more":

home of the brawny trash bag

The strength of the Brawny name promises everything and delivers even more
Guaranteed strength, guaranteed value: Brawny is sure to be the best trash
bag you ever buy.

"Brawny means strength," and "No brand offers a more powerful value position than Brawny":

No brand offers a
more powerful value
position than Brawny.

Defendants' website also claims their brand is "the national value-brand leader." However, Defendants' BRAWNY brand is largely unknown, is not strong, lacks a powerful market position, and has never been a "leading" brand. Defendants have made these statements to mislead consumers and to cause consumers to erroneously associate Defendants' products with Plaintiff's BRAWNY® brand. Unlike Defendants' products, plaintiff's BRAWNY® brand is widely known, is strong, does have a powerful market position, and is recognized as a national leading brand. Defendants have made the statements to create the incorrect impression that Plaintiff's BRAWNY® brand is the source of Defendants' products.

29. The advertising on Nextep's websites also contains false and deceptive statements regarding the nature, qualities, and characteristics of Nextep's BRAWNY brand products. Defendants claim that their BRAWNY trash bags are "thicker than . . . Glad and Hefty bags" when they are not. The packaging for eight (8) different Nextep BRAWNY trash bags depicted

on the websites prominently claims "no rips or drips," when there is no basis for such a claim, and statements throughout the website tout the trash bags' strength. Nextep has used such terminology to capitalize falsely on Plaintiff's BRAWNY Marks and brand because Nextep knows that Plaintiff's products were known for their strength and high quality.

30. Furthermore, Georgia-Pacific learned recently from Nextep's former Vice President of marketing that Defendants deliberately developed these marketing messages intentionally to misrepresent the nature, quality and characteristics of their products and to link Nextep's new BRAWNY brand trash bags to Plaintiff's long-established BRAWNY® brand paper towels in consumers' minds.

31. Indeed, Georgia-Pacific has learned that Defendants expected to benefit from consumer confusion and to capitalize on Georgia-Pacific's BRAWNY® brand strength. With this expectation, Defendants did not identify themselves as the source of their product when they undertook television advertising, choosing instead only to refer to the BRAWNY name. Defendants even communicated to their public relations firm that they wished to capitalize on Georgia-Pacific's BRAWNY® brand strength. Accordingly, Defendants intentionally have marketed their trash bags to create a connection with Georgia-Pacific's brand and to cause consumers to believe that Defendants' trash bags have the same attributes as Georgia-Pacific's BRAWNY® brand products. Defendants have continued this conduct even after third parties have questioned the veracity of Defendants' marketing statements.

32. In sum, Defendants: (a) expected consumers to associate their BRAWNY brand trash bags with Plaintiff's BRAWNY® brand products, (b) intended to capitalize on Plaintiff's brand strength, and (c) intentionally used marketing materials invoking Plaintiff's brand's strength and reputation for premium quality in order to misrepresent the source of their goods

and to blur the lines between Georgia-Pacific and Nextep. As a result of their actions, Defendants have succeeded in misleading consumers, falsely representing the source of their goods, falsely advertising their goods, and blurring the distinctions between their brand and Plaintiff's.

COUNT I

Federal Unfair Competition

Lanham Act (15 U.S.C. § 1125)

33. Plaintiff realleges and incorporates by reference the allegations contained in Paragraphs 1 through 32 above.

34. Defendants have made and are making false or misleading representations about their BRAWNY products.

35. Defendants' false representations are likely to create the misleading impression that Defendants' BRAWNY products are manufactured, distributed, or authorized by Plaintiff, or are affiliated, connected, or associated with Plaintiff, or have the sponsorship, endorsement or approval of Plaintiff.

36. Defendants have made these false representations in a deliberate attempt to palm off their products as Plaintiff's or to create in consumers' minds the false impression that Plaintiff is the source of Defendants' products.

37. Defendants' actions violate 15 U.S.C. § 1125(a) and, unless enjoined by this Court, Defendants will continue to usurp Plaintiff's goodwill to Plaintiff's detriment.

38. Defendants have acted intentionally, with actual notice of Plaintiff's BRAWNY Marks, and with the willful and malicious intent to usurp the goodwill associated with Plaintiff's BRAWNY Marks to the great and irreparable injury of Plaintiff.

39. Defendants are causing injury to the public and to Plaintiff. Georgia-Pacific is entitled to injunctive relief and should be awarded Defendants' profits as well as Plaintiff's actual and trebled damages, costs, and reasonable attorneys' fees, pursuant to 15 U.S.C. §§ 1116, 1117, and 1125(a).

COUNT II

Federal False Advertising

Lanham Act (15 U.S.C. § 1125)

40. Plaintiff realleges and incorporates by reference the allegations of Paragraphs 1 through 39 above.

41. Defendants have made false statements and misrepresentations of facts in promoting and offering for sale Defendants' BRAWNY products in interstate commerce.

42. Defendants' false statements misrepresent the nature and qualities of Defendants' products.

43. Defendants' false statements and misrepresentations actually deceive or tend to deceive a substantial portion of the purchasers of Plaintiff's and Defendants' products.

44. Defendants' false statements and misrepresentations are material because they influence consumers' purchasing decisions.

45. Defendants have acted intentionally, willfully, and in bad faith.

46. Defendants' false statements and misrepresentations have caused, and will continue to cause, substantial injury to the public and to Plaintiff. Plaintiff is entitled to injunctive relief and to recover Defendants' profits, Plaintiff's actual and trebled damages, costs, and reasonable attorney fees under 15 U.S.C. §§ 1125, 1116, and 1117.

COUNT III

Cancellation of Registration No. 940,243

Lanham Act (15 U.S.C. §§ 1064 and 1119)

47. Plaintiff realleges and incorporates by reference the allegations of Paragraphs 1 through 46 above.

48. Defendants' 2003 agreement with Brawny Plastics purporting to assign to Nextep ownership of Registration No. 940,243 did not transfer any of the goodwill associated with Brawny Plastics' BRAWNY mark.

49. Accordingly, this 2003 agreement constitutes an assignment in gross and is invalid.

50. By purporting to assign it rights in U.S. Registration No. 940,243 without the transfer of goodwill, Brawny Plastics abandoned any and all rights it might previously have possessed in said registration and the BRAWNY mark.

51. As a further result, Defendants possess none of Brawny Plastics' rights to the BPI BRAWNY mark, including those rights accompanying federal registration and Brawny Plastics' alleged date of first use, and the Court should cancel Defendants' registration pursuant to 15 U.S.C. §§ 1064(3) and 1119

COUNT IV

Unfair and Deceptive Trade Practices Under State Law

52. Plaintiff realleges and incorporates by reference the allegations of Paragraphs 1 through 51 above.

53. Defendants have (a) passed off their BRAWNY products as those of Plaintiff, (b) represented that their BRAWNY goods have the sponsorship or approval of Plaintiff, and (c) misrepresented the quality of their goods.

54. Defendants' acts constitute unlawful, unfair and fraudulent business acts or practices in violation of The Ohio Deceptive Trade Practices Act, Ohio Revised Code §§ 4165.01, *et seq.*, and of the laws of the several states in which Defendants are conducting their activities. Plaintiff is thereby entitled to obtain injunctive relief, damages, and attorneys' fees under applicable law.

55. Because Defendants have acted knowingly and willfully, Plaintiff is entitled further to recover enhanced damages under the laws of Ohio .

COUNT V

False Advertising Under State Law

56. Plaintiff realleges and incorporates by reference the allegations of Paragraphs 1 through 55 above.

57. Defendants' acts constitute false advertising in violation of The Ohio Deceptive Trade Practices Act, Ohio Revised Code §§ 4165.01, *et seq.*, and of the several states in which Defendants have disseminated their marketing material. Plaintiff is thereby entitled to obtain injunctive relief, damages, and attorneys' fees under applicable law.

COUNT VI

Common Law Unfair Competition

58. Plaintiff realleges and incorporates by reference the allegations of Paragraphs 1 through 57 above.

59. Defendants' acts constitute unfair competition in violation of the common law of Ohio and of the several states in which Defendants have conducted their activities. Plaintiff are thereby entitled to obtain injunctive relief and damages.

Prayer For Relief

WHEREFORE, Plaintiff prays for judgment in its favor and against Defendants that:

1. Defendants, their officers, agents, servants, affiliates, employees, parent and subsidiary corporations, attorneys and representatives, and all those in privity or acting in concert with Defendants, are permanently enjoined from directly or indirectly:

a. Using the marketing materials shown in Exhibits K and L and any other materials that make similar false or misleading statements;

b. Misrepresenting the source of Defendants' products that are the subject of this Complaint (the "Products");

c. Making statements that constitute or imply false designation of origin, false descriptions, false advertising, or false representations respecting the Products;

d. Using the BPI BRAWNY mark;

e. Using the color red in Defendants' packaging for the Products;

f. Engaging in unfair business or deceptive trade practices or competing unfairly with Plaintiff, including, but not limited to:

i. Making any misleading statements implying or suggesting an affiliation between Defendants or their Products and Plaintiff or Plaintiff's products;

ii. Making any misleading statements implying or suggesting sponsorship of Defendants' Products by Plaintiff;

iii. Making any misleading representations of fact regarding Defendants' Products; and

iv. Representing that Defendants' Products are of a particular standard or quality when they are of another.

2. Defendants are required to destroy all copies of marketing materials shown in Exhibit K and any other marketing materials that violate the terms of Paragraph 1 of the Prayer for Relief

3. Defendants are required to remove all content from their websites that violates the terms of Paragraph 1 of the Prayer for Relief.

4. Defendants are ordered to pay Plaintiff all profits realized by Defendants by reason of the unlawful acts set forth in this Complaint.

5. Defendants are ordered to pay Plaintiff all damages suffered by reason of Defendants' unfair competition.

6. Defendants are ordered to pay Plaintiff treble damages or profits pursuant to 15 U.S.C. § 1117(b).

7. Defendants are required to pay to Plaintiff its litigation expenses, including reasonable attorneys' fees and the costs of this action, pursuant to 15 U.S.C. § 1117(a).

8. A declaration from the Court that Defendants' 2003 agreement with Brawny Plastics, purporting to assign to Nextep ownership of Brawny Plastics Inc.'s U.S. Registration No. 940,243, is invalid as an assignment in gross.

9. That the Court cancel Registration No. 940,243 pursuant to 15 U.S.C. § 1119.

10. Defendants are required to pay Plaintiff exemplary and punitive damages in an amount according to proof.

11. Defendants are required to serve on counsel for Plaintiff, within thirty (30) days after the entry of judgment, a written report under oath setting forth in detail the manner in which the Defendants have complied with the injunction ordered by this Court.

12. Plaintiff is entitled to such other and further relief as the Court may deem just and proper.

Respectfully submitted,

s/ Bryan R. Faller

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