

<b>TO: Mail Stop 8</b> Director of the U.S. Patent & Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	<b>REPORT ON THE                  FILING OR DETERMINATION OF AN                  ACTION REGARDING A PATENT OR                  TRADEMARK</b>
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In Compliance with 35 § 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 Northern District of California on the following  Patents or  Trademarks:

DOCKET NO. CV 08-03931 RS	DATE FILED 8/18/2008	U.S. DISTRICT COURT 280 South First Street, Rm 2112, San Jose, CA 95113
PLAINTIFF AXIS IMEX, INC.		DEFENDANT SUNSET BAY RATTAN, INC.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 3,212,252		SEE ATTACHED COMPLAINT
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In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK Richard W. Wicking	(BY) DEPUTY CLERK Betty Walton	DATE August 19, 2008
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E-filing

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**FILED**  
AUG 18 2008  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

File  
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ISS  
ADD

7 Attorneys for AXIS IMEX, INC.

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA - SAN FRANCISCO

10 AXIS IMEX, INC.,

Case No.: **C08-03931** PS

11 Plaintiff,

COMPLAINT FOR UNFAIR  
COMPETITION, TRADEMARK  
INFRINGEMENT, INFRINGEMENT OF  
TRADE DRESS, FALSE ADVERTISING,  
DILUTION, BREACH OF CONTRACT,  
BREACH OF THE COVENANT OF GOOD  
FAITH AND FAIR DEALING,  
MISAPPROPRIATION OF TRADE  
SECRETS, AND INTENTIONAL  
INTERFERENCE WITH PROSPECTIVE  
ECONOMIC ADVANTAGE

12 vs.

13 SUNSET BAY RATTAN, INC., BLAIR  
14 RUBEL, and DOES 1 through 20, inclusive,

15 Defendants.

18 Plaintiff, Axis Imex, Inc. alleges:

1. **Jurisdiction.** This court has subject matter jurisdiction over this matter under 15 U.S.C. § 1121 and § 1125(d) and 28 U.S.C. §§ 1331 and 1338 (a) and (b). This civil action includes counts for infringement of trademark and dilution under section 43(a) of the Lanham Act. This action also includes counts for related claims of breach of contract, trade dress infringement, misappropriation of trade secrets, unfair competition, and intentional interference with prospective economic advantage. This court has supplemental jurisdiction over this matter pursuant to 28 U.S.C. § 1367(a) as to the breach of contract, misappropriation of trade secrets, unfair competition, and intentional interference with prospective economic advantage claims

27 **COMPLAINT FOR UNFAIR COMPETITION, TRADEMARK INFRINGEMENT,**  
28 **INFRINGEMENT OF TRADE DRESS, FALSE ADVERTISING, DILUTION, BREACH OF**  
**CONTRACT, BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING,**  
**MISAPPROPRIATION OF TRADE SECRETS, AND INTENTIONAL INTERFERENCE W**  
CASE NO.:

CO 44 SEC. N  
NOTICE OF ASSIGNMENT  
TO MAGISTRATE JUDGE SEINF

1 that are related to foregoing claims in the action within the court's original jurisdiction, since  
2 they form part of the same case or controversy under Article III of the United States  
3 Constitution.

4 2. **Venue.** Venue is proper in the Northern District of California pursuant to 28  
5 U.S.C. § 1391(b) and (c).

6 3. Plaintiff demands a jury trial. Fed. R. Civ. Pro. § 38(b); Federal CRC 3-6.

7 4. **General Allegations.** Since at least 2002, Plaintiff, Axis Imex, Inc., a  
8 corporation duly organized and existing under the laws of the State of California ("Plaintiff")  
9 has used, the federally registered trademark "STORAGE SENSE" in connection with the  
10 production, sale, and distribution of decorative storage containers ("Plaintiff's Trademark").

11 5. Defendant Blair Rubel ("Rubel") is and was an individual residing in New York  
12 City, New York.

13 6. Defendant Sunset Bay Rattan, Inc. ("Sunset Bay") is and was a corporation duly  
14 organized under the laws of the State of New York, doing business under the name and mark  
15 "Andrea Baskets," and having a principal headquarters in Suffolk County, New York.

16 7. Plaintiff is a renowned leader in the decorative storage container industry and has  
17 gained national recognition in the mark STORAGE SENSE. As a result, Plaintiff's mark has  
18 earned valuable goodwill.

19 8. As a result of Plaintiff's substantial advertising and promotional efforts for  
20 Plaintiff's goods and services, as well as its dedication to providing quality services, Plaintiff's  
21 marks are widely and favorably recognized and relied upon by the relevant trade and consuming  
22 public as indicating high quality goods and services originating exclusively from Plaintiff. Due  
23 to such efforts, Plaintiff's Trademark has earned valuable goodwill.

24 9. In order to protect the extensive goodwill symbolized by Plaintiff's trademark, on  
25 February 27, 2007, Plaintiff obtained a federal registration for its mark STORAGE SENSE in  
26 connection with, among other items, "decorative storage containers" (U.S. Reg. No. 3,212,252).

1 10. Among the items produced and distributed nationwide under Plaintiff's  
2 STORAGE SENSE mark are a set of five nesting boxes that coordinate in style with other items  
3 in Plaintiff's line of storage wares.

4 11. Plaintiff has continuously used a distinctive trade dress consisting of a  
5 combination of features, including the 5-nesting box feature, color matching scheme between  
6 the boxes and the ribbons, and the shape, size and placement of the bows and ribbons to  
7 distinguish its products.

8 12. This arrangement and overall image and the like is of such an unusual design that  
9 a customer would immediately rely on it to differentiate the source of the services. Moreover,  
10 the arrangement and overall image and the like have been used in interstate and intrastate  
11 commerce and in connection with the advertising, promotion, offering, and provision of its  
12 products and services consistently and continuously by Plaintiff.

13 13. Plaintiff has offered its products under its unique trademark STORAGE SENSE  
14 and trade dress, and such trademark and trade dress have continuously appeared in Plaintiff's  
15 advertising and promotional activities. Plaintiff has extensively used and promoted the  
16 trademarks and trade dress such that they are closely identified with the products of STORAGE  
17 SENSE and have gained widespread public recognition.

18 14. Plaintiff's trademark and trade dress have received widespread public recognition  
19 throughout the United States. Plaintiff's trademark and trade dress have been promoted and  
20 featured in many significant national Federated Department Stores such as Bed, Bath & Beyond,  
21 and Mervyn's and at other national chain stores including Michael's Arts and Crafts.

22 15. Plaintiff's trademark and trade dress are valid and subsisting and are evidence of  
23 Plaintiff's exclusive right to use said trademarks and trade dress in commerce throughout the  
24 United States for decorative storage containers and other goods related thereto.

25 16. Due to the care and skill employed by Plaintiff in the conduct of its business, the  
26 high quality of the products offered under its trademark and trade dress, and the unique nature of

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28 COMPLAINT FOR UNFAIR COMPETITION, TRADEMARK INFRINGEMENT,  
INFRINGEMENT OF TRADE DRESS, FALSE ADVERTISING, DILUTION, BREACH OF  
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MISAPPROPRIATION OF TRADE SECRETS, AND INTENTIONAL INTERFERENCE W  
CASE NO.:

1 the trademarks and trade dress and the extensive advertising, sale and promotion of Plaintiff's  
2 products, the trademarks and trade dress are either inherently distinctive or have acquired strong  
3 secondary meaning. The trademark and trade dress identify Plaintiff's popular products as those  
4 of Plaintiff exclusively, and distinguish them from the products of others. The distinct  
5 trademarks and trade dress are well known and symbolize the goodwill that Plaintiff has created  
6 by its offering of its products.

7 **FIRST COUNT**

8 **Unfair Competition**  
9 **(Against All Defendants)**

10 17. Plaintiff realleges and incorporates by reference each and every allegation  
11 contained in paragraphs 1 through 16 of the Complaint with the same force and effect as if fully  
12 set forth at length herein.

13 18. Plaintiff hired Rubel as an independent contractor on or about October 2, 2005.  
14 Rubel was retained to present and sell Axis Imex's products to various Federated Department  
15 Stores.

16 19. On October 2, 2005, Rubel and Plaintiff entered into an Agent Representative  
17 Agreement ("Agreement") whereby Rubel agreed to keep information he learned in the course  
18 of his employment confidential and not to disclose confidential information to Axis Imex  
19 competitors for a period of six months after termination of his employment.

20 20. During the course of his employment, Rubel learned confidential information  
21 about Axis Imex, including proprietary information about their nesting boxes and other goods,  
22 and worked with Axis Imex and manufacturers including a Hong Kong based company,  
23 MultiTarget International Ltd. ("MultiTarget") to refine the production of those goods.

24 21. Axis Imex terminated Rubel's services in or about December 2005.

25 22. On information and belief, shortly after Rubel's services were terminated by Axis  
26 Imex, Rubel approached Waverly Fabrics (Plaintiff's fabric supplier for its nesting boxes and

1 other trademarked goods) regarding the prospect of starting a China-to-China business  
2 association similar to the one that Axis has with Waverly. Waverly declined Rubel's request.

3 23. On information and belief, Rubel thereafter began working with a new company,  
4 Defendant Sunset Bay, which was manufacturing decorative storage containers under the mark  
5 ANDREA BASKETS. Certain features of Andrea Baskets boxes resembled Plaintiff's products,  
6 namely the five nesting box feature, color matching scheme between the boxes and the ribbons,  
7 and the shape, size and placement of the bows and ribbons.

8 24. On information and belief, since Sunset Bay began producing its version of Axis  
9 Imex's nesting boxes, it has had them manufactured by MultiTarget.

10 25. Sunset Bay's version of the five nesting box is very similar in appearance to  
11 Plaintiff's nesting box design, but Sunset Bay's design includes numerous inferior elements.  
12 The Sunset Bay boxes are not finished as well, resulting in sloppy seams and folds, uneven and  
13 poorly affixed paper interiors, and bows which are tied in a messy and unprofessional manner.  
14 Sunset Bay uses a lighter gauge of cardboard for its boxes, which results in a lighter overall  
15 product which feels less sturdy and which may warp or twist during the manufacturing phase  
16 due to application of glue to affix fabric and paper adornment. The resulting impression is that  
17 whereas Plaintiff's boxes are finely and carefully finished and are of good quality, Sunset Bay's  
18 boxes are a cheaper version.

19 26. In or about May 2008, Plaintiff was informed by Dorothy Ho of MultiTarget that  
20 one of the orders shipped to Plaintiff's customer, HomeGoods, in or about October 2007,  
21 included Sunset Bay products created for the ANDREA BASKETS mark, but which bore  
22 STORAGE SENSE hangtags. On information and belief, Dorothy Ho informed Sunset Bay  
23 about the incident, but Sunset Bay made no effort to recall the product or take other corrective  
24 action, and the Sunset Bay product was sold under the STORAGE SENSE mark.

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1 27. Upon learning of Rubel's violation of the non-disclosure agreement, Sunset Bay's  
2 infringement of Plaintiff's trade dress and its inaction to correct the actions of Multi Target,  
3 Plaintiff sent a cease and desist letter to both defendants on August 14, 2008.

4 28. The use by Sunset Bay of such colorable imitations of Plaintiff's trade dress is  
5 likely to cause confusion, mistake, or deception to members of the consuming public.  
6 Consumers may mistakenly believe that said products were connected with Plaintiff's  
7 STORAGE SENSE trademark and trade dress, when in fact they are not.

8 29. Plaintiff has invested substantial time, skill and money in developing its property,  
9 which includes its trademark and trade dress.

10 30. Defendants appropriated and used Plaintiff's trade dress at little or no cost to  
11 Defendants.

12 31. On information and belief, Defendants have knowingly permitted their imitation  
13 goods to be sold under Plaintiff's Trademark.

14 32. Defendants' use of Plaintiff's trade dress was without the authorization or consent  
15 of Plaintiff.

16 33. Plaintiff has been injured by Defendants' conduct because Defendants' use of  
17 Plaintiff's trade dress to create inferior products has interfered with Plaintiff's ability to market  
18 its STORAGE SENSE products. This in turn has had the effect of reducing, or eliminating  
19 Plaintiff's profits.

20 34. As a direct and proximate result of the foregoing, Plaintiff has sustained  
21 damages, the exact amount of which is not yet known to Plaintiff but which exceeds the  
22 minimum jurisdiction of this court.

23 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

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28 **COMPLAINT FOR UNFAIR COMPETITION, TRADEMARK INFRINGEMENT,  
INFRINGEMENT OF TRADE DRESS, FALSE ADVERTISING, DILUTION, BREACH OF  
CONTRACT, BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING,  
MISAPPROPRIATION OF TRADE SECRETS, AND INTENTIONAL INTERFERENCE W  
CASE NO.:**



1 extensive goodwill, including using Plaintiff's trademarks and trade dress to draw customers to  
2 purchase their products and unlawfully profit.

3 43. Plaintiff's trade dress and marks are wholly associated with STORAGE SENSE  
4 due to their longstanding use, and as such Plaintiff is entitled to have its trade dress and marks  
5 adequately protected with respect to the conduct of its business.

6 44. By the aforesaid acts, Defendants have infringed upon Plaintiff's federal  
7 trademark rights in its trade dress described above in violation of Section 32 of the Lanham Act,  
8 15 U.S.C. § 1125(a).

9 45. Defendants' acts have been willful and in conscious disregard of the trade dress  
10 rights of Plaintiff.

11 46. As a direct and proximate result of Defendants' actions, Plaintiff has been  
12 damaged, the exact amount of which is not yet known to Plaintiff but which exceeds the  
13 minimum jurisdiction of this court.

14 WHEREFORE, Plaintiff pray for judgment as hereinafter set forth.

15 **FOURTH COUNT**

16 **False Advertising**  
17 **(Against Sunset Bay and Does 1 through 20, inclusive)**

18 47. Plaintiff realleges and incorporates by reference each and every allegation  
19 contained in paragraphs 1 through 26 of the Complaint with the same force and effect as if fully  
20 set forth at length herein.

21 48. On information and belief, Sunset Bay made a false representation about the  
22 origin of its nesting boxes by permitting them to be sold under Plaintiff's STORAGE SENSE  
23 mark.

24 49. On information and belief, Sunset Bay's goods bearing Plaintiff's Trademark  
25 were sold to the consuming public through retail establishments.

1 50. On information and belief, the sale of Sunset Bay's goods bearing Plaintiff's  
2 Trademark benefited Sunset Bay and did material damage to Plaintiff, in that it caused  
3 consumers to associate Sunset Bay's inferior nesting box product with Plaintiff's Trademark.

4 51. Any continuation or repetition of this behavior will further damage Plaintiff and  
5 the goodwill associated with its STORAGE SENSE mark.

6 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

7 **FIFTH COUNT**

8 **Dilution**  
9 **(Against Sunset Bay and Does 1 through 20, inclusive)**

10 52. Plaintiff realleges and incorporates by reference each and every allegation  
11 contained in paragraphs 1 through 51 of the Complaint with the same force and effect as if fully  
12 set forth at length herein.

13 53. Plaintiff has offered its products under its unique trademark STORAGE SENSE  
14 and trade dress, and such trademarks and trade dress have continuously appeared in Plaintiff's  
15 advertising and promotional activities. Plaintiff has extensively used and promoted the  
16 trademarks and trade dress such that they are closely identified with the products of STORAGE  
17 SENSE and have gained widespread public recognition.

18 54. Plaintiff's trademark and trade dress have received widespread public recognition  
19 throughout the United States. Plaintiff's trademark and trade dress have been promoted and  
20 featured in many significant national chain stores including HomeGoods, Marshall's, TJ Maxx,  
21 Ross Stores, Tuesday Morning, and others.

22 55. Plaintiff has made use of STORAGE SENSE as a trademark and has used its  
23 aforementioned trade dress in connection with goods sold and transported in interstate  
24 commerce.

25 56. Plaintiff's mark and trade dress are strong and distinctive and have become  
26 famous and are evidence of Plaintiff's exclusive right to use said trademarks and trade dress in

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28 **COMPLAINT FOR UNFAIR COMPETITION, TRADEMARK INFRINGEMENT,  
INFRINGEMENT OF TRADE DRESS, FALSE ADVERTISING, DILUTION, BREACH OF  
CONTRACT, BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING,  
MISAPPROPRIATION OF TRADE SECRETS, AND INTENTIONAL INTERFERENCE W  
CASE NO.:**

1 commerce throughout the United States for decorative storage containers and other goods  
2 related thereto.

3 57. Sunset Bay's acts were commenced after Plaintiff's mark became famous.

4 58. Sunset Bay has made use of Plaintiff's trade dress in connection with goods it has  
5 sold under the name "Andrea Baskets" and transported in United States interstate commerce.

6 59. Sunset Bay's use of Plaintiff's trade dress creates a likelihood of association with  
7 Plaintiff's famous mark STORAGE SENSE arising from the nearly exact identity in appearance  
8 of Defendant's inferior products.

9 60. Defendant's acts are in violation of Lanham Act § 43(c) in that they are likely to  
10 cause dilution by blurring by impairing the distinctiveness of Plaintiff's famous mark to the  
11 detriment of Plaintiff.

12 61. Defendant's acts are in violation of Lanham Act § 43(c) in that they are likely to  
13 cause dilution by tarnishment of the reputation of Plaintiff's famous mark to the detriment of  
14 Plaintiff.

15 62. Defendant committed these acts willfully with the intent to create an association  
16 with Plaintiff's famous marks. Defendant further willfully intended to trade on the recognition  
17 of Plaintiff's famous marks and to harm the reputation of the famous marks.

18 63. As a direct and proximate result of Defendants' actions, Plaintiff has been  
19 damaged, the exact amount of which is not yet known to Plaintiff but which exceeds the  
20 minimum jurisdiction of this court.

21 WHEREFORE, Plaintiff pray for judgment as hereinafter set forth.

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COMPLAINT FOR UNFAIR COMPETITION, TRADEMARK INFRINGEMENT,  
INFRINGEMENT OF TRADE DRESS, FALSE ADVERTISING, DILUTION, BREACH OF  
CONTRACT, BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING,  
MISAPPROPRIATION OF TRADE SECRETS, AND INTENTIONAL INTERFERENCE W  
CASE NO.:

**SIXTH COUNT**

**Breach of Contract  
(Against Blair Rubel)**

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4 64. Plaintiff realleges and incorporates by reference each and every allegation  
5 contained in paragraphs 1 through 26 of the Complaint with the same force and effect as if fully  
6 set forth at length herein.

7 65. Pursuant to the last paragraph of the Agreement entered into by Plaintiff and  
8 Rubel on October 2, 2005, Rubel agreed not to disclose any confidential information about  
9 Plaintiff to any competitors, prospects or customers for a period of six months after termination  
10 of the agreement. Rubel also agreed not to disclose any confidential information, trade secrets,  
11 designs, and or various manufacture contacts for all products currently being sold by Plaintiff in  
12 addition to any sample products developed by Rubel on behalf of Plaintiff. See Exhibit A.

13 66. Upon information and belief, less than six months after Rubel's employment with  
14 Axis Imex terminated, he began working with Sunset Bay, which was manufacturing decorative  
15 storage containers under the name ANDREA BASKETS.

16 67. On information and belief, Rubel disclosed confidential and proprietary  
17 information which he was contractually bound to keep confidential to Sunset Bay, including the  
18 method of manufacture of Plaintiff's nesting boxes, its manufacturers and distributors, and how  
19 to achieve elements of its trade dress.

20 68. Plaintiff has complied with all of its obligations under the Agreements it has with  
21 Rubel and all conditions of Rubel's obligations under the agreements have occurred or been  
22 waived.

23 69. As a direct and proximate result of Rubel's wrongful disclosure, Plaintiff has  
24 been greatly damaged.

25 WHEREFORE, Plaintiff pray for judgment as hereinafter set forth.

1 **SEVENTH COUNT**

2 **Breach of the Covenant of Good Faith and Fair Dealing**  
3 **(Against Blair Rubel)**

4 70. Plaintiff realleges and incorporates by reference each and every allegation  
5 contained in paragraphs 1 through 26 and 64 through 69 of the Complaint with the same force  
6 and effect as if fully set forth at length herein.

7 71. Under the terms of the Agreement, Rubel owed to Plaintiff an implied duty of  
8 good faith and fair dealing in his relationship with Plaintiff for the presentation and sale of  
9 Plaintiff's STORAGE SENSE products.

10 72. Under the terms of the Agreement, Rubel also owed to Plaintiff an implied duty  
11 of good faith and fair dealing as to his transition out of his business relationship with Plaintiff  
12 for a period of six months after the termination of the Agreement.

13 73. Rubel has breached his duty of good faith and fair dealing by disclosing  
14 Plaintiff's confidential information to Sunset Bay and possibly others.

15 74. Rubel has also breached his duty of good faith and fair dealing by disclosing  
16 Plaintiff's manufacture contacts, specifically Waverly and Multi Target to Sunset Bay and  
17 possibly others.

18 75. As a direct and proximate result of Rubel's breaches, Plaintiff has been damaged,  
19 the exact amount of which is not yet known to Plaintiff but which exceeds the minimum  
20 jurisdiction of this court.

21 WHEREFORE, Plaintiff pray for judgment as hereinafter set forth.

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COMPLAINT FOR UNFAIR COMPETITION, TRADEMARK INFRINGEMENT,  
INFRINGEMENT OF TRADE DRESS, FALSE ADVERTISING, DILUTION, BREACH OF  
CONTRACT, BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING,  
MISAPPROPRIATION OF TRADE SECRETS, AND INTENTIONAL INTERFERENCE W  
CASE NO.:

**EIGHTH COUNT**

**Misappropriation of Trade Secrets  
(Against All Defendants)**

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4 76. Plaintiff realleges and incorporates by reference each and every allegation  
5 contained in paragraphs 1 through 75 of the Complaint with the same force and effect as if fully  
6 set forth at length herein.

7 77. Plaintiff was in possession of trade secret information consisting of its secret  
8 design, pattern and technique for assembly of its STORAGE SENSE decorative storage boxes.

9 78. Plaintiff's secret design, pattern and technique for assembly of its STORAGE  
10 SENSE decorative storage boxes had economic value in that its use resulted in the creation of a  
11 unique decorative storage box with exceptional quality. Plaintiff made reasonable efforts to  
12 insure that the secret design, pattern and technique for assembly of its STORAGE SENSE  
13 decorative storage boxes remained a secret by entering into the non-disclosure Agreement with  
14 Rubel, and generally keeping its design, pattern and technique for assembly of its STORAGE  
15 SENSE decorative storage boxes secret and unavailable to others.

16 79. On information and belief, in early 2006, Defendants Rubel and Sunset Bay  
17 misappropriated the above-described trade secret of Plaintiff by using Plaintiff's secret design,  
18 pattern and technique for assembly of its STORAGE SENSE decorative storage boxes to be  
19 sold under the name ANDREA BASKETS.

20 80. Rubel acquired knowledge of Plaintiff's trade secret under circumstances giving  
21 rise to a duty to maintain its secrecy or limit its use since he was an independent contractor of  
22 Plaintiff and based on his Agreement with Plaintiff, and Sunset Bay derived its knowledge of  
23 Plaintiff's trade secret from Rubel who owed a duty to Plaintiff.

24 81. As a proximate result of the use by Defendants Rubel and Sunset Bay of  
25 Plaintiff's secret design, pattern and technique for assembly of its STORAGE SENSE decorative  
26 storage boxes, Plaintiff has suffered actual damages. As a further proximate result of the

1 misappropriation, Sunset Bay was unjustly enriched by obtaining contracts to sell its goods to  
2 major retail stores.

3 82. Plaintiff is informed and believes and thereon alleges that the aforementioned  
4 acts of the defendant were willful and malicious in that Defendants misappropriated Plaintiff's  
5 secret design, pattern and technique for assembly of its STORAGE SENSE decorative storage  
6 boxes with the deliberate intent to injure Plaintiff's business and improve its own. Plaintiff is  
7 therefore entitled to punitive damages. Plaintiff is also entitled to reasonable attorney's fees.

8 WHEREFORE, Plaintiff pray for judgment as hereinafter set forth.

9 **NINTH COUNT**

10 **Intentional Interference With Prospective Economic Relationship**  
11 **(Against All Defendants)**

12 83. Plaintiff realleges and incorporates by reference each and every allegation  
13 contained in paragraphs 1 through 82 of the Complaint with the same force and effect as if fully  
14 set forth at length herein.

15 84. Between 2000 and the present, Plaintiff enjoyed a commercial relationship with  
16 HomeGoods, a subsidiary of TJX Companies. Between 2000 and 2007, Plaintiff sold in excess  
17 of \$14,000,000.00 worth of goods to HomeGoods, including Plaintiff's nesting boxes and other  
18 decorative storage items designed to coordinate with the nesting boxes. In 2003, Plaintiff and  
19 HomeGoods were due to discuss further sales by Plaintiff to HomeGoods for the year.

20 85. Defendants knew of the above described relationship existing between Plaintiff  
21 and HomeGoods. Rubel was aware of the volume of sales that Plaintiff had achieved to  
22 HomeGoods in 2005 and the positive relationship that Plaintiff enjoyed with HomeGoods  
23 buyers.

24 86. On information and belief, Defendants intentionally targeted HomeGoods as a  
25 buyer of Sunset Bay's inferior, competing product, based on confidential knowledge of  
26 HomeGoods buyers' interest in Plaintiff's product and sought to displace Plaintiff first by

1 undercutting Plaintiff on pricing and later by permitting Sunset Bay's inferior products to be  
2 sold under Plaintiff's STORAGE SENSE mark, leading to a customer perception that Plaintiff's  
3 products had decreased in quality and durability and were no longer desirable.

4 87. Defendants' misconduct as alleged in paragraph 79, above, constituted an unfair  
5 trade practice in violation of Business and Professions Code Section 17200.

6 88. In 2008, HomeGoods has decreased its orders from Plaintiff by more than 80%,  
7 citing decreased customer interest in Plaintiff's products. HomeGoods has continued to stock  
8 ANDREA BASKETS marked products.

9 89. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered  
10 great damage and will continue to suffer damage in the future if it cannot revive its relationship  
11 with HomeGoods and other retailers.

12 90. The aforementioned acts of Defendants, and each of them, were willful,  
13 oppressive, fraudulent and malicious. Plaintiff is therefore entitled to punitive damages.

14 WHEREFORE, plaintiff prays for judgment against Defendants as follows:

15 1. For damages, including but not limited to a disgorgement of profits, in an amount  
16 to be proven at trial.

17 2. For exemplary and punitive damages, based on Defendants' intentionally  
18 wrongful conduct.

19 3. For an order requiring Defendants, and each of them, to show cause, if any they  
20 have, why they should not be enjoined as set forth below, during the pendency of this action;

21 4. For a temporary restraining order, a preliminary injunction, and a permanent  
22 injunction, all enjoining Defendants from continuing to sell their infringing product, from  
23 labeling any of their goods with the STORAGE SENSE mark or with any other indicia  
24 associated with or confusingly similar to Plaintiff's marks or dress in any of its goods, and from  
25 disclosing information about Plaintiff's goods and business to third parties.

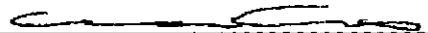
26 5. For costs incurred; and

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6. For any other and further relief as the court may deem proper.

Dated: August 18, 2008

FITZGERALD ABBOTT & BEARDSLEY LLP

By   
William E. Adams  
Attorneys for AXIS IMEX, INC.