

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
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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 3:08CV406 on the following Patents or Trademarks:

DOCKET NO. 1	DATE FILED 11/6/08	U.S. DISTRICT COURT Southern District of Ohio, Western Division at Dayton, Ohio
PLAINTIFF Crown Equipment Corporation		DEFENDANT E-P Equipment USA Corporation
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 3,356,101	12/18/07	Crown Equipment Corporation
2 3,214,895	03/06/07	Crown Equipment Corporation
3 3,356,104	12/18/07	Crown Equipment Corporation
4 3,356,106	12/18/07	Crown Equipment Corporation
5 3,390,669	03/04/08	Crown Equipment Corporation

In the above—entitled case, the following patent(s)/ trademark(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
1 3,484,1857	
2 3,484,858	
3 3,484,863	
4	
5	

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

DECISION/JUDGEMENT

CLERK James Bonini	(BY) DEPUTY CLERK	DATE 11/12/08
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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

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION (DAYTON)

FILED
JAMES BONINI
CLERK
NOV-6 PM 2:42
U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
WESTERN DIV. DAYTON

CROWN EQUIPMENT CORPORATION
40 South Washington Street
New Bremen, Ohio 45869

CASE NO.

3 : 08 cv 0406

Plaintiff,

WALTER HERBERT RICE

**COMPLAINT FOR TRADEMARK
INFRINGEMENT, UNFAIR
COMPETITION AND PRELIMINARY
INJUNCTIVE RELIEF**

v.

E-P EQUIPMENT USA, CORP.
1770 Campton Road
Inman, South Carolina 29349

**(JURY DEMAND ENDORSED
HEREON)**

Defendant.

Crown Equipment Corporation ("Crown") brings this Complaint against E-P Equipment USA, Corp. ("E-P Equipment") for trademark infringement and unfair competition under the Trademark Act of 1946, as amended (Lanham Act, 15 U.S.C. § 1051 et seq.) and related causes of action under the laws of the state of Ohio. Crown alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Crown is a corporation organized and existing under the laws of Ohio, with its principal office at 40 South Washington Street, New Bremen, Ohio 45869. Crown regularly transacts business in this judicial district, and has an affiliated branch in this judicial district that sells and services Crown lift trucks and other equipment. The Crown affiliated branch does business at 750 Center Drive, Vandalia, Ohio 45477.

2. Defendant E-P Equipment is, upon information and belief, a corporation organized and existing under the laws of Delaware with its principal place of business at 1770 Campton Road, Inman, South Carolina 29349.

3. This is an action for trademark infringement and unfair competition under the Trademark Act of 1946, as amended (Lanham Act, 15 U.S.C. § 1051 *et seq.*) and related causes of action under the laws of the state of Ohio, arising from Defendant E-P Equipment's unauthorized use of the color beige as applied to hand pallet trucks and pallet stacker equipment in violation of Crown's rights.

4. This Court has jurisdiction over this action pursuant to 15 U.S.C. §§ 1121 and 28 U.S.C. § 1331, 1338(a). Venue is proper in this District under 28 U.S.C. § 1391(b) and 1391(c) because a substantial part of the events or omissions giving rise to the allegations in this Complaint occurred in this judicial district. Equipment manufactured by Defendant E-P Equipment and the subject of this action has been sold and delivered to the Crown affiliate branch in this judicial district.

COUNT I

(Infringement of Federally Registered Mark)

5. This Count arises under the trademark laws of the United States, namely, Title 15 of the United States Code, and more particularly, 15 U.S.C. § 1114 and 15 U.S.C. §§ 1116–18, inclusive.

6. Crown is the owner of several trademarks consisting of the color beige applied to certain parts of pallet trucks, forklifts and other types of material handling equipment (hereinafter "the Mark" or "Crown's Mark").

7. Crown has used the Mark continuously in the United States for over forty (40) years in connection with material handling equipment.

8. As the result of the consistent high-quality of Crown's goods, the millions of dollars spent by Crown to market both the Mark and its products, and the sales success enjoyed by Crown in the marketplace for materials handling equipment, the Mark has become widely and favorably known to warehouse personnel throughout the United States, with the result that Crown's Mark and its goods have become associated in the minds of Crown's customers and prospective customers.

9. Crown is the owner of enormously valuable goodwill in the Mark, and owns the following federal trademark registrations:

- (a) U.S. Reg. No. 3,356,101 issued December 18, 2007, for the Mark in connection with hand pallet trucks. This registration is valid and in full force and effect. A copy of the registration certificate is attached hereto as Exhibit A.
- (b) U.S. Reg. No. Reg. No. 3,214,895 issued March 6, 2007, for the Mark in connection with fork lift trucks. This registration is valid and in full force and effect. A copy of the registration certificate is attached hereto as Exhibit B.
- (c) U.S. Reg. No. 3,356,104 issued December 18, 2007, for the Mark in connection with fork lift trucks. This registration is valid and in

full force and effect. A copy of the registration certificate is attached hereto as Exhibit C.

- (d) U.S. Reg. No. 3,356,106 issued December 18, 2007, for the Mark in connection with pallet trucks. This registration is valid and in full force and effect. A copy of the registration certificate is attached hereto as Exhibit D.
- (e) U.S. Reg. No. 3,390,669 issued March 4, 2008, for the Mark in connection with pallet trucks. This registration is valid and in full force and effect. A copy of the registration certificate is attached hereto as Exhibit E.
- (f) U.S. Reg. No. 3,484,857 issued August 12, 2008, for the Mark in connection with fork lift trucks. This registration is valid and in full force and effect. A copy of the registration certificate is attached hereto as Exhibit F.
- (g) U.S. Reg. No. 3,484,858 issued August 12, 2008, for the Mark in connection with fork lift trucks. This registration is valid and in full force and effect. A copy of the registration certificate is attached hereto as Exhibit G.
- (h) U.S. Reg. No. 3,484,863 issued August 12, 2008, for the Mark in connection with fork lift trucks. This registration is valid and in

full force and effect. A copy of the registration certificate is attached hereto as Exhibit H.

10. Defendant E-P Equipment manufactures and sells material handling equipment. Among E-P Equipment's goods are hand pallet trucks and pallet stacker equipment that use the color beige, which is identical to Crown's Mark. Copies of pages from E-P Equipment's website advertising their beige-colored hand pallet trucks and pallet stackers are attached as Exhibit I.

11. Defendant E-P Equipment's advertisement and sale of hand pallet trucks that use the color beige as applied to hand pallet trucks and pallet stacker equipment constitutes infringement of Crown's Mark.

12. Upon information and belief, Defendant E-P Equipment had knowledge of Crown's Mark prior to the manufacture and sale of the hand pallet trucks and pallet stacker equipment with Crown's Mark and E-P Equipment has sold and continues to sell hand pallet trucks and pallet stacker equipment with Crown's Mark in a bad faith attempt to wrongly profit from the enormously valuable goodwill in Crown's Mark.

13. On October 31, 2008, Defendant E-P Equipment was provided with notice that its unauthorized sale and distribution of material handling equipment with the use of the color beige violated Crown's rights. A copy of the October 31, 2008 letter is attached as Exhibit J. E-P Equipment has ignored the notice and, upon information and belief, continues to manufacture and sell the hand pallet trucks and pallet stacker equipment with Crown's Mark.

14. Defendant E-P Equipment's activities have caused and are likely to cause confusion or mistake or deception as to the origin of the hand pallet trucks and pallet stacker equipment it offers for sale. E-P Equipment's activities have also caused and are likely to cause confusion or mistake or deception as to the existence of any relationship or affiliation between Crown and E-P Equipment. Attached as Exhibit K is a side-by-side photograph of a beige-colored hand pallet truck as trademarked by Crown with the nearly identical hand pallet being distributed and sold by E-P Equipment and a photograph of a hand pallet manufactured by E-P Equipment with a paint card showing the identical beige-colored paint as Crown's Mark.

15. Crown has no control over the quality of the goods sold by Defendant E-P Equipment, and because of likely confusion as to source engendered by E-P Equipment, Crown's valuable goodwill in its Mark is at the whim of E-P Equipment.

16. The goodwill of Crown's business under its Mark is of enormous value, and Crown has suffered and will continue to suffer irreparable harm should infringement be allowed to continue to the detriment of its trade reputation and goodwill.

17. Defendant E-P Equipment's infringement will continue unless enjoined by this Court.

COUNT II

(False Designation of Origin Under 43(a) of the Lanham Act)

18. Crown repeats and realleges, as if fully set forth herein, the allegations contained in paragraphs 1 through 17 of this Complaint.

19. Defendant E-P Equipment's use of the color beige in connection with the manufacture and sale of hand pallet trucks and pallet stacker equipment constitutes a false designation of origin as to the goods sold by E-P Equipment and a false and misleading representation in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). The similarity between E-P Equipment's beige-colored hand pallet trucks and pallet stacker equipment and Crown's goods bearing the Mark is likely to create confusion and to cause mistake. E-P Equipment's use of the color beige as applied to hand pallet trucks and pallet stacker equipment has deceived and is likely to deceive customers and prospective customers into believing that E-P Equipment's products are those of Crown.

20. Defendant E-P Equipment's unlawful conduct will continue to damage Crown unless enjoined by this Court, and Crown has no adequate remedy at law.

COUNT III

(Common Law Trademark Infringement and Unfair Competition)

21. Crown repeats and realleges, as if fully set forth herein, the allegations contained in paragraphs 1 through 20 of this Complaint.

22. By committing the acts herein alleged, Defendant E-P Equipment has engaged in unfair competition, deceptive advertising and unfair trade practices, in violation of the Ohio common law of unfair competition causing Crown damage and loss of profits. E-P Equipment's unlawful conduct will continue to damage Crown unless enjoined by this Court, and Crown has no adequate remedy at law.

COUNT IV

(Deceptive Trade Practices, Ohio Rev. Code § 4165.01, et seq.)

23. Crown repeats and realleges, as if fully set forth herein, the allegations contained in paragraphs 1 through 22 of this Complaint.

24. Crown's federal trademark registrations are trademarks as defined by Ohio Rev. Code § 4165.01(F).

25. Defendant E-P Equipment's unlawful use of Crown's trademarks are likely to cause confusion or misunderstanding as to the sources of the material handling equipment or the certification of it by Crown.

26. Defendant E-P Equipment's conduct has violated, and will continue to violate Ohio Rev. Code § 4165.02(A)(1)-(3).

27. As a direct and proximate result of E-P Equipment's conduct, Crown is entitled to injunctive relief, damages and the recovery of its attorneys' fees pursuant to Ohio Rev. Code § 4165.03.

INJURY

28. As a direct and proximate cause of Defendant E-P Equipment's acts alleged in the allegations contained in paragraphs 1 through 27 of this Complaint, Crown has suffered and will continue to suffer damage to its business, reputation and goodwill.

29. Defendant E-P Equipment's unauthorized use of the Mark caused and will continue to cause, until enjoined, irreparable injury as to which it has no adequate remedy at law.

30. Defendant E-P Equipment's infringements are willful.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays:

- (a) that this Court permanently enjoin and restrain E-P Equipment and its directors, officers, agents, servants, employees, subsidiaries and affiliates from using the color beige as applied to hand pallet trucks and pallet stacker equipment, from using Crown's Mark, or any other mark similar to Crown's Mark, and from otherwise engaging in unfair competition with Crown;
- (b) that this Court order E-P Equipment to deliver for destruction all goods, labels, signs, prints, packages, wrappers, receptacles and advertisements in their possession bearing the Mark intended for distribution, and all plates, molds, matrices and other means of making the same;
- (c) that E-P Equipment be required to account to Crown for any and all profits derived from the sale of their infringing goods and for all damages sustained by Crown by reason of said acts of infringement and unfair competition complained of herein;
- (d) that this Court award Crown treble the amount of actual damages suffered by Crown;

- (e) that the costs of this action be awarded to Crown, and that Crown be awarded attorney fees pursuant to 15 U.S.C. § 1117 and Ohio Rev. Code § 4165.03(B);
- (f) that this Court grant Crown such other and further relief as it shall deem just and proper.

Respectfully submitted,



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JURY DEMAND

Plaintiff demands trial by jury on all claims triable to a jury.



D. Jeffrey Ireland