

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RAGNER TECHNOLOGY CORPORATION)
and TRISTAR PRODUCTS, INC.,)
)
Plaintiffs,)
)
v.) C.A. _____
)
TELEBRANDS CORPORATION, TRUE) **JURY TRIAL DEMANDED**
VALUE COMPANY and SCOTT TRUE)
VALUE HARDWARE, INC.,)
)
Defendants.)

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs Ragner Technology Corporation and Tristar Products, Inc. file this complaint for patent infringement against Telebrands Corporation, True Value Company, and Scott True Value Hardware, Inc., and allege as follows:

SUMMARY OF ACTION

1. This is an action brought by the patent owner and assignee, Ragner Technology Corporation (“Ragner Technology”), and exclusive patent licensee, Tristar Products, Inc. (“Tristar”) of U.S. Patent No. 7,549,448 (the “’448 Patent”), to recover for damages resulting from Telebrands Corporation’s (“Telebrands”), True Value Company’s (“True Value”) and Scott True Value Hardware, Inc.’s (“Scott True Value”) infringement of the ’448 Patent.

2. Tristar, as the exclusive licensee of the ’448 Patent, has the right to bring suit with respect to retractable hoses for consumer use that practice methods covered by the ’448 patent. Tristar sells the “FLEXABLE HOSE” brand of hoses for consumer use, and is a direct competitor of Telebrands for sales of hoses for consumer use and for retail accounts that sell

hoses to consumers. Each sale by Telebrands represents a potential lost sale by Tristar of its competing hoses.

3. At least as early as Summer 2011, Telebrands attempted to obtain a patent license for the '448 Patent and related patents and patent applications. Upon information and belief, Telebrands, improperly and without Ragner Technology's consent, obtained a prototype of the MicroHose, which is an embodiment of the inventions claimed in the '448 Patent, from a third party who was under an obligation not to disclose it. After Ragner Technology became aware that the prototype had been obtained by Telebrands without the consent of Ragner Technology, Ragner Technology requested that Telebrands return the improperly obtained prototype. Telebrands never returned the improperly obtained prototype, but instead signed a non-disclosure agreement. Upon information and belief, months after the underlying technology of the MicroHose was obtained by Telebrands' representatives without Ragner Technology's consent, Telebrands failed to obtain a license and subsequently began advertising, making, testing, using and selling its own product, the "POCKET HOSE," which was adapted from Ragner Technology's MicroHose.

4. Telebrands engaged and continues to engage in extensive "AS SEEN ON TV" advertising, including in Delaware, in which it practices the claimed method and offers for sale low quality hoses at reduced prices with expedited delivery schedules, thereby capturing major retail accounts, including True Value and Scott True Value stores in Delaware. Telebrands sold over \$650 million worth of "POCKET HOSE" products in 2013 and 2014. Telebrands' hoses were of such poor quality that the Better Business Bureau revoked Telebrands' BBB accreditation in 2014 after numerous customer complaints. These sales damaged consumer

perceptions of the quality and usefulness of retractable consumer hoses, resulting in lower overall sales.

5. Defendants Telebrands, True Value, and Scott True Value sell “POCKET HOSE” products that can only be used to practice the method claims of the ’448 Patent.

6. Defendants Telebrands, True Value, and Scott True Value further encourage their retail customers and others to use the “POCKET HOSE” to infringe claims of the ’448 Patent through Telebrands’ television advertising, online video advertising, promotional packaging, and instructions contained in product packaging.

7. Defendants’ infringement and sales practices have caused Plaintiffs millions of dollars in damages, including damages resulting from lost profits, lost conveyed sales, and losses arising from price erosion.

PARTIES

8. Plaintiff Ragner Technology is a Delaware corporation with a place of business at 4340 NE 49th Avenue, Gainesville, Florida 32609.

9. Plaintiff Tristar is a Pennsylvania corporation with places of business at 720 Centre Avenue, Redding, Pennsylvania 19601 and 492 Route 46 East, Fairfield, New Jersey 07004.

10. On June 23, 2009, the United States Patent and Trademark Office issued the ’448 Patent, entitled “LINEARLY RETRACTABLE PRESSURE HOSE,” to Gary Dean Ragner (“Ragner”). Ragner is the founder of Ragner Technology and, Margaret C. Combs is the CEO of Ragner Technology, which owns the ’448 Patent. The ’448 Patent discloses the fundamental technology underlying linearly retractable pressure hoses. The pioneering technology, as claimed in the patent, is directed to methods and systems for transporting pressurized fluid

materials via a linearly retractable pressure hose. Only those claims directed to methods are asserted in this complaint. A true and correct copy of the '448 Patent is attached as Exhibit A.

11. Plaintiff Tristar is the exclusive licensee of the '448 Patent for consumers uses of retractable hoses. Tristar is responsible for the manufacture, import, use, sale, and retail distribution of hoses that practice the methods claimed in the '448 Patent. Tristar sells hoses under the brand name "FLEXABLE HOSE" including the "FLEXABLE TOUGH GRADE HOSE," "FLEXABLE HOSE EXTREME" and "FLEXABLE TOUGH GRADE PRO."

12. Defendant Telebrands is a New Jersey corporation with its headquarters located at 79 Two Bridges Road, Fairfield, New Jersey 07004. Telebrands' primary business consists of selling "AS SEEN ON TV" products, including but not limited to the "POCKET HOSE," "POCKET HOSE ULTRA," "POCKET HOSE DURA-RIB," and "POCKET HOSE TOP BRASS" (hereinafter, the "Pocket Hose(s)"), by making these products available for purchase directly to consumers online and by TV mail order, and by contracting to sell these products to companies for retail sales to consumers.

13. Defendant True Value is a Delaware corporation with a principal place of business at 8600 W. Bryn Mawr Avenue, Chicago, Illinois 60631. True Value is engaged in the offering of various goods and services, including Telebrands' Pocket Hoses, in connection with its approximately 5,000 member-shareholders, each of which operate a retail store or stores in various locations throughout the United States.

14. Defendant Scott True Value is a Delaware corporation, with its place of business in Delaware at 324 Lantana Drive, Hockessin, DE 19707. Scott True Value's business includes selling home gardening supplies, including Telebrands' Pocket Hoses, via a retail store that Scott True Value owns and operates in Delaware at 324 Lantana Drive, Hockessin, DE 19707.

JURISDICTION AND VENUE

15. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

16. Telebrands regularly conducts business throughout the United States, including in Delaware. On information and belief, over many years, Telebrands has regularly sold millions of dollars of “AS SEEN ON TV” products directly to retail customers in Delaware, as well as to retail accounts that sell such products to customers in Delaware. Telebrands also conducts extensive television advertising campaigns directed to residents in Delaware.

17. This Court has personal jurisdiction over Defendant Telebrands by virtue of its presence and regular business activities within this judicial district, including sales of the Telebrands Pocket Hoses to retail consumers residing in Delaware and to wholesale customers in Delaware that sell to retail customers residing in Delaware.

18. Defendants True Value and Scott True Value regularly conduct business in Delaware.

19. This Court has personal jurisdiction over Defendant True Value by virtue of its incorporation in Delaware, and its presence and regular business activities within this judicial district, including purchases and sales of the Telebrands Pocket Hoses.

20. This court has personal jurisdiction over Defendant Scott True Value by virtue of its incorporation in Delaware, its principal place of business in Delaware, and its presence and regular business activities within this judicial district, including its operation of a retail store in Delaware which sells and offers for sale the Telebrands Pocket Hoses, including the “POCKET

HOSE,” “POCKET HOSE ULTRA,” “POCKET HOSE DURA-RIB,” and “POCKET HOSE TOP BRASS.”

21. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b).

BACKGROUND

22. Gary Ragner, named inventor of the '448 patent and founder of Ragner Technology, developed the MicroHose, a linearly retractable pressure hose which uses the technology claimed in the '448 Patent. Ragner Technology is the assignee of intellectual property rights to the MicroHose, including both the '448 Patent and the “MICROHOSE” trademark rights. The MicroHose was featured in an article on the website flaglerlive.com, a news website available to the public on August 16, 2010. The article features a description and video of Ragner Technology’s MicroHose invention which practices the methods claimed in the '448 Patent. Flaglerlive, “Innovative Garden Hose Start-Up Swells Flagler Hopes for Economic Revival at the Airport,” Flaglerlive.com, August 10, 2010, available online at <http://flaglerlive.com/9296/mh-operations-flagler-county-airport-hoses/>. A printout of this article is attached as Exhibit B.

23. At least as early as Summer 2011, after issuance of the '448 Patent, Manish Israni, a Telebrands representative, attempted to obtain a patent license for Ragner Technology’s retractable hose technology. Telebrands thus had full knowledge of the '448 Patent at least as early as the summer of 2011.

24. Telebrands had actual notice of the '448 Patent since at least October 23, 2012, filing a Declaratory Judgment action in New Jersey against another competitor’s expandable hose patents, on that date. *See* Exhibit C. In that action, Telebrands alleged that U.S. Patent

Numbers 8,291,941 (the “’941 Patent”) and 8,291,942 (the “’942 Patent”), related to expandable hoses, were “[i]nvalid for failing to comply with the requirements of 35 U.S.C. §§ 102, 103, and/or 112.” The ’941 and ’942 Patent specifications specifically discuss the ’448 Patent in the Background of the Invention sections. *See* Exhibits D and E. Thus, Telebrands had actual knowledge of the ’448 Patent when it filed that 2012 suit.

25. Telebrands was not able to obtain a patent license from Ragner Technology. Upon information and belief, Telebrands began marketing the Telebrands Pocket Hoses in August 2012 based upon the MicroHose prototype (obtained improperly and without Ragner Technology’s consent from a third party who was under an obligation not to disclose it, and subject to after-the-fact confidentiality assurances by Telebrands). In fact, during litigation in Canada in 2014 involving Telebrands, the CEO of Telebrands, Ajit Khubani, testified at trial that he made a deal to market the Ragner (MicroHose) product. *See E. Mishan & Sons, Inc. v Supertek Canada Inc.*, 2014 FC 326, Dkt. No. T-1112-013 at 22, 28 (Can. Fed. Court 2014). However, Telebrands never had a valid patent license from Ragner Technology. Despite knowledge that Telebrands did not have a valid patent license, Telebrands sold and continued to sell and use Pocket Hoses.

26. Telebrands further admits that the Telebrands Pocket Hoses are adapted from the MicroHose technology. According to a Forbes interview of Mr. Khubani, Telebrands “created Pocket Hose by adapting the idea of an earlier product by another outfit, called MicroHose.” Dale Buss, “Pocket Hose Gushes Revenue for Direct-Response Leader TeleBrands”, Forbes, July 10, 2014, available online at: <http://www.forbes.com/sites/dalebuss/2014/07/10/pocket-hose-gushes-revenues-for-drtv-leader-telebrands/>. A printout of this article is attached as Exhibit F.

27. Telebrands thus knew of the '448 patent in 2011 and 2012, and knew that the methods performed in using, marketing and offering for sale of the Telebrands Pocket Hoses constituted patent infringement. Nonetheless, Telebrands willfully ignored the high probability of patent infringement that would result by using the patented methods in its advertising, and by developing, testing, using, advertising, selling and offering to sell, and actively inducing others to use, advertise, sell, and/or offer to sell hoses that practice the methods claimed in the '448 Patent, including at least the Telebrands Pocket Hoses.

28. Telebrands sold \$450 million of Pocket Hoses in 2013 and more than \$200 million in 2014 according to the Forbes article attached as Exhibit F. Upon information and belief, Telebrands continues to sell the Telebrands Pocket Hoses. Upon information and belief, Telebrands spent at least \$5 million dollars on advertising, including promotional television advertisements, for the Pocket Hose, in which Telebrands uses and demonstrates the patented methods to promote their sales.

29. To obtain these sales, Telebrands also engaged in activities such as offering reduced prices and expedited delivery schedules to retail store accounts for the Telebrands Pocket Hoses, thereby capturing major retail accounts and causing Tristar to lose sales of its hoses to those major retail accounts. In 2014, Mr. Khubani told Forbes magazine that Pocket Hose had an approximately 80 percent share of retractable hose sales.

30. Not only did Telebrands sell a large quantity of Pocket Hoses, Telebrands further provided retail customers and retail accounts low quality hoses and did not inform consumers about the proper operating limits of these hoses. According to Forbes, “[i]n the first year of the product, TeleBrands got lots of consumer complaints about Pocket Hoses, especially about bursting at the connections between the hose and the plastic fixtures.”

31. Telebrands' conduct, including its sales of poor quality hoses, resulted in the Better Business Bureau ("the BBB") revoking Telebrands' accreditation in 2014, after the BBB received more than 1200 complaints related to its products, including Pocket Hoses. A true and correct copy of the Telebrands' accreditation status with the BBB is attached as Exhibit G. These customer complaints to the BBB further document how Telebrands customers purchased Pocket Hoses and, pursuant to Telebrands packaging, instructions, and video advertising, used the Telebrands Pocket Hoses to directly infringe claims of the '448 Patent.

32. On July 13, 2015, Telebrands paid \$550,000 to New Jersey for settlement of fraud charges related to the sales of its Pocket Hoses, after allegations by the State that Telebrands had defrauded consumers by pushing more expensive items, shipping items that were never ordered, and engaging in misleading advertising. The New Jersey Attorney General was prompted to investigate the Pocket Hose and other Telebrands' products after receiving over 340 consumer complaints, resulting in the state filing the complaint for fraud against Telebrands in August of 2014. Jonathan Stempel, "As Seen on TV' Company Settles New Jersey Fraud Case," Reuters, July 13, 2015, available online at <http://www.reuters.com/article/2015/07/13/telebrands-asseenontv-settlement-idUSL2N0ZT27T20150713>. A copy of this article is attached as Exhibit H.

33. On information and belief, in response to the numerous complaints and problems purchasers had with the original "POCKET HOSE," Telebrands developed and began selling the "POCKET HOSE ULTRA" in early 2014. HighYa, "Pocket Hose Ultra Reviews," www.highya.com, June 2014, available online at <http://www.highya.com/pocket-hose-ultra-reviews>. A copy of this article is attached as Exhibit I.

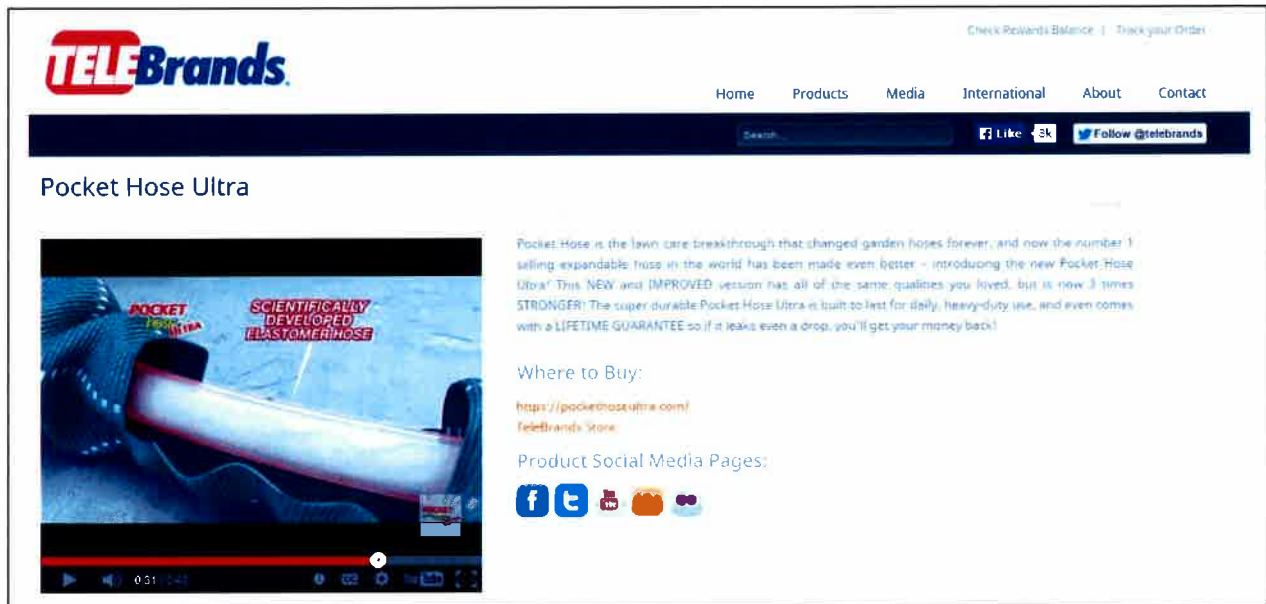
34. With its aggressive pricing practices, Telebrands has forced lower prices for retractable consumer hoses, resulting in lost profits to Tristar due to lost sales and price erosion for Plaintiffs' novel and patented hoses. Furthermore, Telebrands has damaged consumer perceptions of the quality and usefulness of retractable consumer hoses, resulting in lost profits to Tristar for Plaintiffs' novel and patented hoses.

35. Telebrands sells and offers to sell and actively induces others to use, sell, and/or offer to sell auxiliary products such as the "MIGHTY BLASTER FIREMAN'S NOZZLE," "POCKET HOSE HOSE HOLDER," and "POCKET HOSE ULTRA ELBOW CONNECTOR," which form a functional unit with the Telebrands Pocket Hoses (hereinafter, "Auxiliary Products"). The sale of these products foreseeably resulted in and continues to result in Plaintiffs' lost conveyed sales.

36. Telebrands and Tristar are direct competitors for sales of consumer hoses and for retail accounts that sell consumer hoses to their customers. Tristar and Ragner Technology are parties in ongoing lawsuits to obtain an injunction and damages from the other sellers of retractable hoses to consumers. Each sale by Telebrands represents a potential lost sale by Tristar of its competing hoses. No non-infringing alternative has been or is available in the marketplace. Tristar had and currently has the manufacturing and marketing capacity to sell the quantity of hoses sold by Telebrands. The lost sales suffered by Plaintiffs resulting from the Defendants' sales of the Telebrands Pocket Hoses that practice the claimed methods are reasonably foreseeable.

37. Telebrands, through its advertising, demonstrates the functionality of the "POCKET HOSE ULTRA" and uses the patented methods. The video further instructs users and consumers to use the Telebrands Pocket Hoses in a manner that infringes claims of the '448

Patent. The following is a screenshot of a Telebrands video advertisement describing the “POCKET HOSE ULTRA” that specifically highlights its features as a “retractable hose” with a “scientifically developed elastomer hose,” which performs the methods claimed in the ’448 Patent.



38. True Value and Scott True Value contract with Telebrands to purchase Telebrands’ Pocket Hoses for sale in True Value shareholder-member retail stores, including Scott True Value’s retail store, in Delaware, to retail consumers. A true and correct copy of a receipt showing the purchase of a Telebrands Pocket Hose, the “POCKET HOSE DURA-RIB” from Scott True Value’s retail store in Delaware on June 24, 2015 is attached as Exhibit J.

39. The promotional packaging of the POCKET HOSE DURA-RIB depicts images of the hose attached to a pressurized water source and explains that “The secret is the accordion design that automatically expands when the water is turned on,” and further explains that the hose when used “expands with water pressure” and “contracts for easy storage.”

40. The instructions accompanying the POCKET HOSE DURA-RIB instructs purchasers and users to “3. Attach the POCKET HOSE DURA-RIB Inlet to the water supply of

your home. (see Figure 2)” and “Turn on the tap from your home’s water supply and let the POCKET HOSE DURA RIB fully expand.” The instructions also state that “After use, turn off the tap for your home’s water supply. . . . As this happens, the POCKET HOSE DURA-RIB will shrink to its original size.”

41. Thus, True Value and Scott True Value sell Telebrands’ Pocket Hoses with promotional packaging and instructions that intentionally induce purchasers to use the Telebrands Pocket Hoses to infringe the method claims of the ’448 Patent. The True Value and Scott True Value website further offers for sale the Telebrands Pocket Hose online and further features Telebrands’ advertising video instructing customers to use the Telebrands Products to infringe the method claims of the ’448 Patent.

42. The Telebrands Pocket Hoses are garden hoses designed to transport pressurized fluid flow, and that retract and extend based on that pressurized fluid material. There is no substantial non-infringing use for the Telebrands Pocket Hoses.

43. Defendants’ infringement of the ’448 Patent has caused damage to Plaintiffs, including substantial lost profits. Their infringing actions will continue unless enjoined by this Court.

CLAIM FOR INFRINGEMENT OF THE ’448 PATENT

44. Plaintiffs Ragner Technology and Tristar incorporate and reallege the allegations set forth in paragraphs 1- 43 herein.

45. Upon information and belief, without authority or license from Plaintiffs, Defendant Telebrands, True Value, and Scott True Value have directly infringed and are still infringing, both literally and under the doctrine of equivalents, claims 13-15, 18 and 26 of the ’448 Patent by using the claimed methods in their advertising, testing the products practicing the

claimed methods, offering for sale use of the claimed methods, and offering for sale hoses that practice one or more methods claimed in the '448 Patent. Such hoses practicing the claimed methods include at least the "POCKET HOSE," "POCKET HOSE ULTRA," "POCKET HOSE DURA-RIB," and "POCKET HOSE TOP BRASS." Telebrands' infringement has been willful and with full knowledge of the '448 Patent. Defendants will continue their infringement unless enjoined by this court.

46. Upon information and belief, Defendant Telebrands has induced and continues to actively induce its customers, including True Value and Scott True Value, to directly infringe, both literally and under the doctrine of equivalents, the '448 Patent. Telebrands knew and knows of the '448 Patent, and that its sale of Telebrands' Pocket Hoses practicing the claimed methods constitutes infringement and would cause its customers to infringe claims 13-15, 18 and 26 of the '448 Patent. Through Telebrands extensive advertising of the Telebrands Pocket Hoses, Telebrands specifically encourages and instructs consumers and retail accounts to engage in uses of the Telebrands Products that infringe claims of the '448 Patent. Telebrands has done so with specific intent to infringe the '448 patent. As a result of Telebrands' advertising, Telebrands' customers did directly infringe and continue to infringe claims 13-15, 18 and 26 of the '448 Patent.

47. Upon information and belief, Defendants True Value and Scott True Value will be aware of the '448 Patent at least as early as the service of this Complaint and from that date will actively induce and continue to induce their customers to directly infringe the '448 Patent, because True Value and Scott True Value, through their in store and online advertising, use of video advertisements, and the hose packaging and labeling, specifically encourage and instruct customers to engage in uses of the Telebrands Pocket Hoses that infringe claims 13-15, 18, and

26 of the '448 Patent, with specific intent to infringe that patent. Upon information and belief, True Value and Scott True Value, with knowledge of the '448 patent, will continue to use, sell, distribute, and offer for sale hoses and components used to infringe claims 13-15, 18, and 26 of the '448 Patent. The Telebrands Pocket Hoses sold by True Value and Scott True Value can only be used by customers to directly infringe method claims of the '448 Patent and have no substantial non-infringing uses.

48. Upon information and belief, Telebrands, with knowledge of the '448 Patent, has made, imported, tested, distributed, used, sold, and offered for sale hoses and components and continues to test, import, distribute, use, offer for sale, and sell to retail customers and retail merchants, including True Value and Scott True Value, hoses and components that can only be used to infringe method claims of the '448 Patent, and such retail customers directly infringed claims 13-15, 18, and 26 of the '448 Patent by selling and using such hoses and components. These hoses can only be used by customers to directly infringe claims of the '448 Patent and have no substantial non-infringing uses. The Pocket Hoses are not staples of commerce. Telebrands has committed and continues to commit contributory infringement of claims 13-15, 18 and 26.

49. Upon information and belief, Telebrands sells and offers for sale additional Auxiliary Products, including but not limited to the "MIGHTY BLASTER FIREMAN'S NOZZLE," "POCKET HOSE HOSE HOLDER" and "POCKET HOSE ULTRA ELBOW CONNECTOR" which form a functional unit with the Telebrands Pocket Hoses, and which foreseeably result in the loss of conveyed sales to the plaintiff.

50. The Defendants' infringement of the '448 Patent has injured Plaintiffs. Plaintiffs are entitled to recover damages adequate to compensate them for such infringement, including

lost profits, lost conveyed sales, and losses resulting from price erosion, but in no event less than a reasonable royalty. Telebrands has injured Plaintiffs in an amount, estimated to be \$100 million (or such other greater or lesser amount as supported by the evidence).

51. Telebrands' commercial activities relating to the infringing hoses have continued and are continuing with knowledge of the '448 Patent, and with knowledge of its infringement of the '448 Patent. These commercial activities are, at a minimum, done with reckless disregard of Plaintiffs' rights under the '448 Patent. Telebrands' acts of infringement have therefore been intentional, deliberate, and willful.

52. This case is exceptional and, therefore, Plaintiffs are entitled to an award of attorneys' fees.

53. Plaintiffs have suffered irreparable harm as a result of lost market share, price erosion, consumer product confidence, and the direct competition between Plaintiffs and Defendants in this emerging market. Defendants further may be unable to satisfy money judgment. The Public Interest would not be harmed should an injunction be granted, as Plaintiffs have the manufacturing and marketing capacity to meet market demand, and the reduction in number of low quality Telebrands Pocket Hoses on the market would help, not harm the public.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Tristar and Ragner Technology ask this Court to enter judgment against Defendants Telebrands, True Value, and Scott True Value and to grant the following relief:

1. An award of damages after jury trial adequate to compensate them for Defendants' infringement, including lost profits, lost conveyed sales, losses arising from price erosion, and/or a reasonable royalty for past sales, together with prejudgment interest;

2. A finding of willful infringement by Telebrands and an award to Plaintiffs of enhanced damages pursuant to 35 U.S.C. § 284;

3. A finding that this case is exceptional and an award of Plaintiffs' attorneys' fees pursuant to 35 U.S.C. § 285;

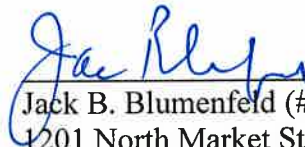
4. A permanent injunction under 35 U.S.C. § 283 prohibiting further infringement of the '448 Patent; and

5. Such other and further relief (including preliminary, equitable, an accounting and or preliminary injunction) as this Court may deem proper and just.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP



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