

3. Upon information and belief, Defendant Merrick Engineering, Inc. is incorporated in the State of California, with a principal place of business at 1275 Quarry Street, Corona, California 92879.

JURISDICTION

4. This Court has original subject matter jurisdiction over the claims concerning patent infringement pursuant to 28 U.S.C. §§ 1331 and 1338(a) and 35 U.S.C. §§ 271 and 281.

5. This Court has personal jurisdiction over Merrick pursuant to the provisions of the Ohio Long Arm Statute, O.R.C. § 2307.382, and the laws of the United States.

6. Merrick has sold and offered for sale into this District products that infringe the '852 and '594 Patents. The products accused of infringing the '852 and '594 Patents as alleged below have been sold and offered for sale in this District at Target stores in Northeast Ohio. Upon information and belief, Merrick has derived substantial revenue and monies from the sale and offer for sale of the infringing product in this District. The infringing products are purposefully sold in this District through the stream of commerce and Merrick's distribution network. Merrick purposefully placed the infringing products into the stream of commerce with the intent of the infringing products being sold and offered for sale in this District.

7. Upon information and belief, Merrick maintains a distribution network in this District for offering for sale, selling and shipping into this District some or all of its products.

8. Upon information and belief, Merrick (a) solicits business in this District and sells products in this District including the infringing products; (b) is engaged in activities within this District, whether such activities are wholly within Ohio or otherwise; (c) enters into contracts with customers located in this District; and (d) derives substantial revenue from goods used or consumed in this District. Merrick can reasonably be expected to be hailed into court in Ohio.

9. Merrick’s infringement of the ‘852 and ‘594 Patents has tortiously injured InterDesign in this District.

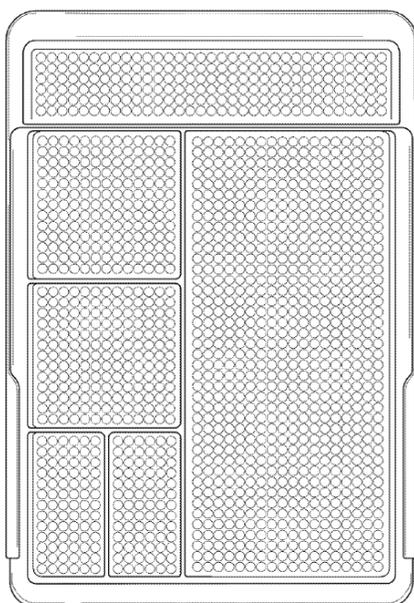
10. Venue is proper in this Court in accordance with 28 U.S.C. §§ 1391 and 1400(b).

BACKGROUND

11. Plaintiff InterDesign is a leading designer, producer and distributor of a wide variety of house-wares and home fashion products that are offered for sale in the retail market.

12. On July 15, 2014, United States Patent No. D708,852 entitled “Organizer” (“the ‘852 Patent”) was duly and legally issued to InterDesign as assignee. Since that date, InterDesign has been, and still is, the owner of all rights, title and interest in the ‘852 Patent, including the right to exclude Merrick from making, using, selling, offering to sell, or importing in this District and elsewhere into the United States the patented design(s) of the ‘852 Patent.

13. The ‘852 Patent covers an ornamental design for a clear plastic organizer. InterDesign has practiced the ‘852 Patent in connection with InterDesign’s DIMPLZ Expandable Drawer Organizer product, as shown in the side-by-side comparison below:



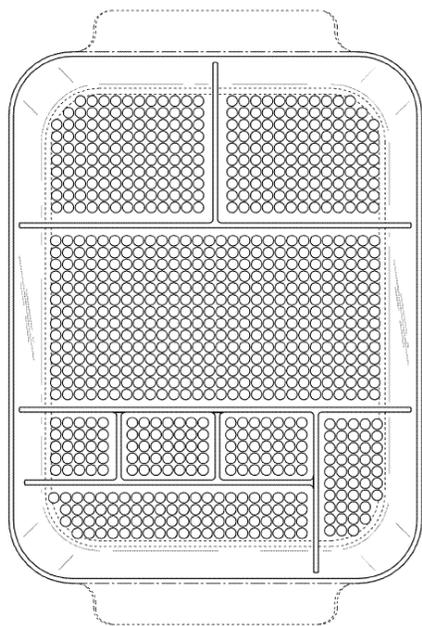
‘852 Patent



DIMPLZ Expandable Drawer Organizer

14. On January 5, 2016, United States Patent No. D746,594 entitled “Bin” (“the ‘594 Patent”) was duly and legally issued to InterDesign as assignee. Since that date, InterDesign has been, and still is, the owner of all rights, title and interest in the ‘594 Patent, including the right to exclude Merrick from making, using, selling, offering to sell, or importing in this District and elsewhere into the United States the patented design(s) of the ‘594 Patent.

15. The ‘594 Patent covers an ornamental design for a clear plastic organizer. InterDesign has practiced the ‘594 Patent in connection with its DIMPLZ Divided Cosmetic Bin product, as shown in the side-by-side comparison below:



‘594 Patent



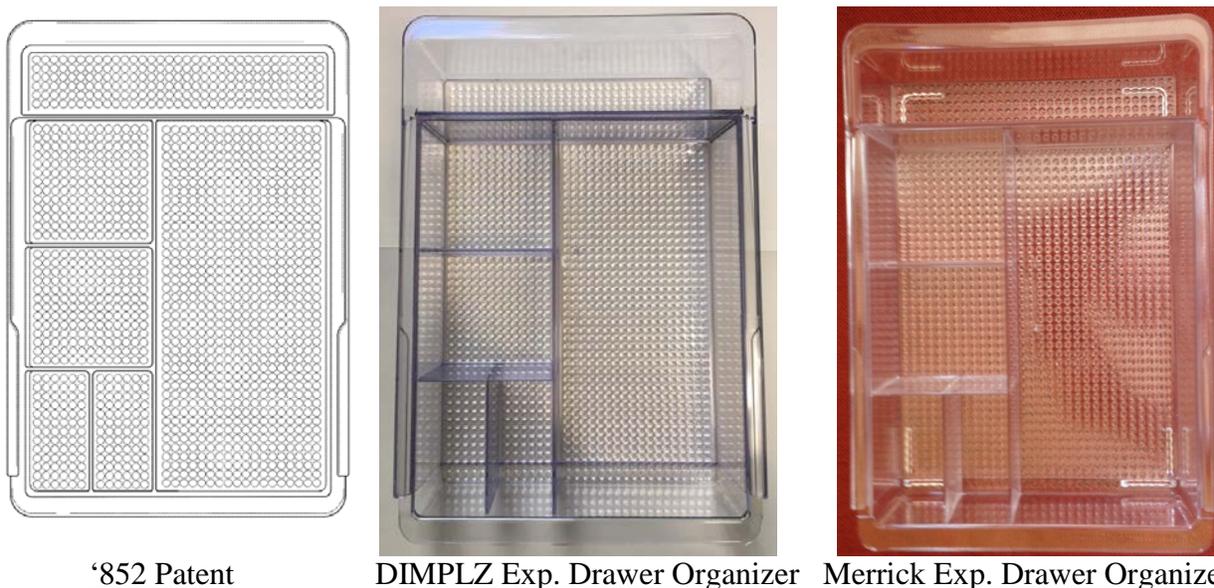
DIMPLZ Divided Cosmetic Bin

MERRICK’S INFRINGEMENT AND OTHER WRONGFUL CONDUCT

The ‘852 Patent

16. In recognition of the commercial success of the designs of the ‘852 Patent and InterDesign’s DIMPLZ Expandable Drawer Organizer product, Merrick began manufacturing and selling its own Expandable Drawer Organizer (UPC 13930407; DPCI 064-20-0037).

17. Merrick copied the Expandable Drawer Organizer design from the design of the '852 Patent and InterDesign's DIMPLZ Expandable Drawer Organizer product. Merrick's Expandable Drawer Organizer is very similar to InterDesign's DIMPLZ Expandable Drawer Organizer. A side-by-side comparison of the '852 Patent, InterDesign's DIMPLZ Expandable Drawer Organizer and a true and correct representative likeness of the Merrick Expandable Drawer Organizer is seen below:



18. The design of Merrick's Expandable Drawer Organizer is the same or substantially the same as the design of the '852 Patent and InterDesign's DIMPLZ Expandable Drawer Organizer product. The designs are so similar as to be nearly identical such that an ordinary observer, giving such attention as a purchaser usually gives, would be so deceived by the substantial similarity between the designs so as to be induced to purchase Merrick's products believing them to be substantially the same as the design protected by the '852 Patent.

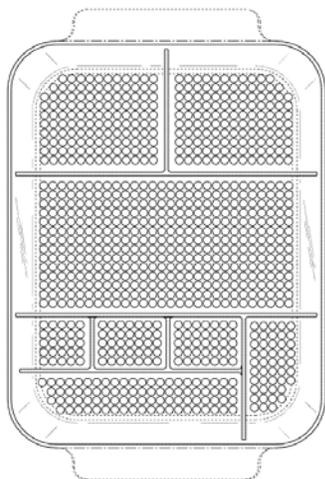
19. InterDesign has not granted a license or any other authorization to Merrick to make, use, offer for sale, sell or import products that embody the design patented in the '852

Patent and which is proprietary to InterDesign, particularly in relation to its DIMPLZ Expandable Drawer Organizer product.

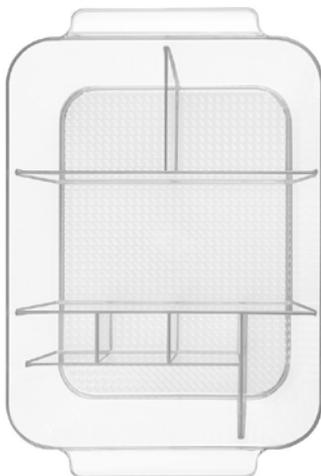
The '594 Patent

20. In recognition of the commercial success of the designs of the '594 Patent and InterDesign's DIMPLZ Divided Cosmetic Bin product, Merrick began manufacturing and selling its own Divided Cosmetic Bin (UPC 0 18643 25116 1; C25116-PT).

21. Merrick copied the Divided Cosmetic Bin design from the design of the '594 Patent and InterDesign's DIMPLZ Divided Cosmetic Bin product. Merrick's Divided Cosmetic Bin is very similar to InterDesign's DIMPLZ Divided Cosmetic Bin. A side-by-side comparison of the '594 Patent, InterDesign's DIMPLZ Divided Cosmetic Bin and the Merrick Divided Cosmetic Bin is seen below:



'594 Patent



DIMPLZ Divided Cosmetic Bin



Merrick Divided Cosmetic Bin

22. The design of the Merrick Divided Cosmetic Bin is the same or substantially the same as the design of the '594 Patent. The designs are so similar as to be nearly identical such that an ordinary observer, giving such attention as a purchaser usually gives, would be so deceived by the substantial similarity between the designs so as to be induced to purchase

Merrick's products believing them to be substantially the same as the design protected by the '594 Patent.

23. InterDesign has not granted a license or any other authorization to Merrick to make use, offer for sale, sell or import products that embody the design patented in the '594 Patent and which is proprietary to InterDesign, particularly in relation to its DIMPLZ Divided Cosmetic Bin product.

COUNT I - PATENT INFRINGEMENT (THE '852 PATENT)

35 U.S.C. § 271(a)

24. InterDesign restates the allegations set forth in paragraphs 1-23 and incorporates them by reference.

25. InterDesign provided actual notice to Merrick of its infringement at least as early as July 15, 2014, including, without limitation, letters to counsel for Merrick dated July 15, 2014, August 6, 2014, August 18, 2014, September 16, 2014, June 16, 2016, and the filing of this Complaint.

26. In a letter from Paul N. Conover, counsel for Merrick, dated August 28, 2014, Merrick admitted to shipping an unspecified number ("less than 8,000 units") of its Expandable Drawer Organizer after receiving actual notice of the '852 Patent's issuance on July 15, 2014, and Merrick's infringement thereof. In a subsequent letter from Mr. Conover dated September 23, 2014, Merrick represented that it had redesigned its Expandable Drawer Organizer; however, Merrick has not given InterDesign an accounting for its sales of the Expandable Drawer Organizer that infringe the '852 Patent.

27. Merrick has neither compensated InterDesign nor rendered InterDesign an accounting for its sales of the Expandable Drawer Organizer that infringe the '852 Patent between July 15, 2014 and at least August 28, 2014.

28. Merrick has infringed the '852 Patent by making, importing, using, offering to sell, or selling in the United States, including in the State of Ohio and within this District, products infringing the ornamental design covered by the '852 Patent in violation of 35 U.S.C. § 271, including but not limited to Merrick's Expandable Drawer Organizer product.

29. Merrick has infringed the '852 Patent because, inter alia, in the eye of an ordinary observer, giving such attention as a purchaser usually gives, the design of the '852 Patent and the designs of Merrick's products including, without limitation, the Expandable Drawer Organizer are substantially the same, the resemblance being such as to deceive such an ordinary observer, inducing him to purchase one supposing it to be the other.

30. Merrick's acts of infringement of the '852 Patent were undertaken without authority, permission or license from InterDesign. Merrick's infringing activities violate 35 U.S.C. § 271.

31. Merrick's infringement has damaged and injured InterDesign.

32. InterDesign is entitled to a complete accounting of all revenue and profits derived by Merrick from the unlawful conduct alleged herein, including without limitation, Merrick's total profit pursuant to 35 U.S.C. § 289.

33. Merrick's infringement has been willful, egregious, and in conscious disregard of InterDesign's rights entitling InterDesign to a trebling of damages pursuant to 35 U.S.C. § 284.

34. Merrick's infringing activities make this an exceptional case entitling InterDesign to the recovery of its reasonable attorneys' fees under 35 U.S.C. § 285 or other applicable law.

35. InterDesign is entitled to a permanent injunction preventing Merrick from further infringing the '852 Patent.

COUNT II - PATENT INFRINGEMENT (THE '594 PATENT)

35 U.S.C. § 271(a)

36. InterDesign restates the allegations set forth in paragraphs 1-35 and incorporates them by reference.

37. InterDesign provided actual notice to Merrick of its infringement at least as early as June 2016, including, without limitation, the filing of this Complaint.

38. Merrick's continued actions in spite of such notice and repeated infringing acts demonstrate a pattern of egregious misconduct beyond typical infringement.

39. Merrick has infringed and continues to infringe the '594 Patent by making, importing, using, offering to sell, or selling in the United States, including in the State of Ohio and within this District, products infringing the ornamental design covered by the '594 Patent in violation of 35 U.S.C. § 271, including but not limited to Merrick's Divided Cosmetic Bin product.

40. Merrick infringes the '594 Patent because, inter alia, in the eye of an ordinary observer, giving such attention as a purchaser usually gives, the design of the '594 Patent and the designs of Merrick's products including, without limitation, the Divided Cosmetic Bin are substantially the same, the resemblance being such as to deceive such an ordinary observer, inducing him to purchase one supposing it to be the other.

41. Merrick's acts of infringement of the '594 Patent were undertaken without authority, permission or license from InterDesign. Merrick's infringing activities violate 35 U.S.C. § 271.

42. Merrick's infringement has damaged and continues to damage and injure InterDesign. The injury to InterDesign is irreparable and will continue unless and until Merrick is enjoined from further infringement.

43. InterDesign is entitled to a complete accounting of all revenue and profits derived by Merrick from the unlawful conduct alleged herein, including without limitation, Merrick's total profit pursuant to 35 U.S.C. § 289.

44. Merrick's infringement has been, and is, willful, egregious, and in conscious disregard of InterDesign's rights entitling InterDesign to a trebling of damages pursuant to 35 U.S.C. § 284.

45. Merrick's infringing activities make this an exceptional case entitling InterDesign to the recovery of its reasonable attorneys' fees under 35 U.S.C. § 285 or other applicable law.

46. InterDesign is entitled to a permanent injunction preventing Merrick from further infringing the '594 Patent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff InterDesign prays for:

- A. A judgment that Merrick has infringed the '852 Patent;
- B. A judgment that Merrick has infringed the '594 Patent;
- C. A permanent injunction enjoining Merrick, its respective officers, directors, agents, and employees and all those in concert or participation with it who receive notice of judgment by personal service or otherwise, from:

(1) making, importing, using, selling, and offering to sell infringing products practicing the '852 Patent and from otherwise infringing, contributing to infringement of, and actively inducing infringement of the '852 Patent, and

(2) making, importing, using, selling, and offering to sell infringing products practicing the '594 Patent and from otherwise infringing, contributing to infringement of, and actively inducing infringement of the '594 Patent;

D. A judgment and order that Merrick deliver to InterDesign for destruction all plastic house-wares, moldings and production materials, packing and labeling materials, sales literature, customer literature, and other trade pieces used in the infringement of the '852 Patent and '594 Patent;

E. An order requiring Merrick to supply InterDesign with a complete list of entities to whom it has sold or offered for sale Merrick's Expandable Drawer Organizer, Divided Cosmetic Bin and any other product found to infringe the '852 and/or '594 Patents;

F. A judgment and order that Merrick make an accounting to InterDesign and pay over to InterDesign:

(1) the extent of Merrick's total profit and revenue realized and derived from its infringement of the '852 Patent, and actual damages to InterDesign in an amount not less than a reasonable royalty for InterDesign's infringement,

(2) the extent of Merrick's total profit and revenue realized and derived from its infringement of the '594 Patent, and actual damages to InterDesign in an amount not less than a reasonable royalty for InterDesign's infringement, and

(3) treble damages for Merrick's wanton, willful and deliberate infringement of the '852 and '594 Patents pursuant to 35 U.S.C. § 284;

G. An award of costs of this action together with InterDesign's reasonable attorneys' fees for this case being exceptional pursuant to 35 U.S.C. § 285;

H. An award of pre-judgment and post-judgment interest on its damages, as allowed by law; and

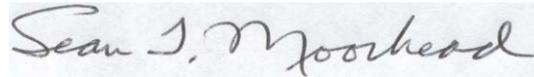
I. Such other and further relief as this Court may deem just, equitable, and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff InterDesign hereby demands a trial by jury of all issues so triable.

Dated: 12 October 2016

Respectfully submitted,



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