

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO,
EASTERN DIVISION, YOUNGSTOWN

XTREME PLASTICS, LLC.)	
1052 Mahoning Avenue, N.W.)	Civil Action No. 4:16-cv-2521
Warren, OH 44483)	
)	
Plaintiff)	
)	
v.)	
)	
G & G LANDSCAPE AND HARDSCAPE,)	AMENDED COMPLAINT FOR
INC.)	PATENT AND DESIGN PATENT
GUALBERTO GARCIA)	INFRINGEMENT
9653 Langdon Avenue)	
North Hills, CA 91343)	
)	
CATCHY, INC.)	
MIGUEL RAMOS)	
9653 Langdon Avenue)	
North Hills, CA 91343)	
)	
Defendants)	

Plaintiff, Xtreme Plastics, LLC (“Xtreme Plastics”), for its Amended Complaint for Patent Infringement against G & G Landscape and Hardscape, Inc. (“G & G”) and Catchy, Inc. (“Catchy”), alleges as follows:

PARTIES

1. Plaintiff Xtreme Plastics is an Ohio corporation having its principal place of business at 1052 Mahoning Avenue, N.W., Warren, Ohio 44483.
2. On information and belief, Defendant G & G Landscape is a California corporation with its principal place of business at 9653 Langdon Avenue, North Hills, California 91343.
3. On information and belief, Defendant Catchy is a California corporation with its principal

place of business at 9653 Langdon Avenue, North Hills, California 91343.

4. On information and belief, Defendants are engaged in the design, manufacture, sale within the United States, offering for sale in the United States, use within the United States, importation into the United States, and/or sale after importation into the United States of outdoor refuse containers. On information and belief, Defendants market and sell these containers in the State of California and seek to expand distribution through various retailers including retail stores and company websites.

JURISDICTION AND VENUE

5. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code.
6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).
7. On information and belief, Defendants are subject to personal jurisdiction in the Northern District of Ohio (the “District”), consistent with the principles of due process and the Long Arm Statute, because defendants have sufficient minimum contact with the forum state through the attempted transacting of business in this District and through the below described partnership agreement discussion. Further, Defendants have placed infringing products and/or have contracted or plan to contract for the placement of infringing products into the stream of commerce through established distribution channels with the expectation that such products will be purchased by residents of this District.
8. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(c) and 1400(b).

9. David H. Miller, Inventor of the involved patents, has since assigned all rights in the patents at issue to Xtreme Plastics, LLC.

FACTUAL BACKGROUND AND PATENT INFRINGEMENT COUNTS

10. Xtreme Plastics became aware of the infringement of G & G and Catchy Can as early as November 2015.
11. Xtreme Plastics sought to reach an amicable and mutually beneficial resolution to the infringement of G & G and Catchy Can through a sales partnership agreement and geographical/sales location restrictions.
12. Despite the good faith efforts to resolve G & G and Catchy's on-going infringement of Xtreme Plastics patents, Defendants rejected proposals, terminated communications, and persisted in their improper course of action through continued production, advertising, and sale of infringing products.
13. Xtreme Plastics, LLC. Is the owner of all right, title and interest in U.S. Patent No. D 520,702 (the "'702 patent"), U.S. Patent No. D 542,000 (the "'000 patent"), U.S. Patent No. 7,185,783 (the "'783 patent"), U.S. Patent No. 7,469,798 (the "'798 patent"), U.S. Patent No. D 575,020 (the "'020 patent"), U.S. Patent No. 8,152,019 (the "'019 patent"), and U.S. Patent No. 8,523,007 (the "'007 patent")(collectively, the "Xtreme Plastics Patents"), which Defendants are infringing and/or inducing others to infringe by making using, offering to sell, and/or selling in the United States, and/or importing into the United States, products or processes that practice one or more inventions claimed in the Xtreme Plastics Patents.

14. In spite of repeated notices, G & G and Catchy have engaged in a pattern of conduct demonstrating their awareness of Xtreme Plastics' patents, the extreme likelihood that their actions constitute patent infringement, and that the Xtreme Plastics patents are valid and enforceable;
15. Defendants have profited through infringement of the Xtreme Plastics patents. As a result of Defendants' unlawful infringement of the Xtreme Plastics patents, Xtreme Plastics has suffered and will continue to suffer damage. Xtreme Plastics is entitled to recover from Defendants the damages suffered by Xtreme Plastics as a result of Defendants' unlawful acts.
16. On information and belief, Defendants' infringement of one or more of the Xtreme Plastics patents is willful and deliberate, entitling Xtreme Plastics to enhanced damages and reasonable attorney fees and costs.
17. On information and belief, Defendants intend to continue their unlawful infringing activity, and Xtreme Plastics continues and will continue to suffer irreparable harm—for which there is no adequate remedy at law—from such unlawful infringing activity unless Defendants are enjoined by this Court.

COUNT I

INFRINGEMENT OF U.S. DESIGN PATENT NO. D 520,702

18. Xtreme Plastics realleges and incorporates by reference the allegations set forth in paragraphs 1-17.
19. Xtreme Plastics provided actual notice to G & G and Catchy of their infringement on repeated occasions at least as early as August 2016, including without limitation the filing

of this complaint.

20. Xtreme Plastics is the owner of all right, title, and interest in the '702 patent, entitled "Outdoors Refuse Container," duly and properly issued by the U.S. Patent and Trademark Office on May 9, 2006. A copy of the '702 patent is attached as Exhibit A.
21. Defendants have been and/or are directly infringing and/or inducing infringement of and/or contributorily infringing the '702 patent by, among other things, making, using, offering to sell or selling in the United States or importing into the United States, products that are substantially the same as the ornamental design of the '702 patent.
22. G & G and Catchy infringe upon this '702 patent because, in the eye of an ordinary observer, giving such attention as a purchaser usually gives, the flat edge and ramp design are substantially the same, the resemblance being substantial such as to deceive an ordinary observer, inducing him to purchase one supposing it to be the other.
23. Defendants' actions constitute infringement of the '702 design patent in violation of 35 U.S.C. §271.

COUNT II

INFRINGEMENT OF U.S. DESIGN PATENT NO. D 542,000

24. Xtreme Plastics realleges and incorporates by reference the allegations set forth in paragraphs 1-23.
25. Xtreme Plastics is the owner of all right, title, and interest in the '000 patent, entitled "Outdoor Refuse Container," duly and properly issued by the U.S. Patent and Trademark Office on May 1, 2007. A copy of the '000 patent is attached as Exhibit B.
26. Defendants have been and/or are directly infringing and/or inducing infringement of

and/or contributorily infringing the '000 patent by, among other things, making, using, offering to sell or selling in the United States or importing into the United States, products and/or services that are substantially the same as the ornamental design of the '000 patent.

27. G & G and Catchy infringe upon this '000 patent because, in the eye of an ordinary observer, giving such attention as a purchaser usually gives, the flat edge and ramp design are substantially the same, the resemblance being substantial such as to deceive an ordinary observer, inducing him to purchase one supposing it to be the other.

28. Defendants' actions constitute infringement of the '000 design patent in violation of 35 U.S.C. §271.

COUNT III

INFRINGEMENT OF U.S. DESIGN PATENT NO. D 575,020

29. Xtreme Plastics realleges and incorporates by reference the allegations set forth in paragraphs 1-29.

30. Xtreme Plastics is the owner of all right, title, and interest in the '020 patent, entitled "Outdoor Refuse Container," duly and properly issued by the U.S. Patent and Trademark Office on August 12, 2008. A copy of the '020 patent is attached as Exhibit C.

31. Defendants have been and/or are directly infringing and/or inducing infringement of and/or contributorily infringing the '020 patent by, among other things, making, using, offering to sell or selling in the United States or importing into the United States, products and/or services that are substantially the same as the ornamental design of the '020 patent.

32. G & G and Catchy infringe upon this '020 patent because, in the eye of an ordinary observer, giving such attention as a purchaser usually gives, the flat edge and ramp design are substantially the same, the resemblance being substantial such as to deceive an ordinary observer, inducing him to purchase one supposing it to be the other.

33. Defendants' actions constitute infringement of the '020 design patent in violation of 35 U.S.C. §271.

COUNT IV

INFRINGEMENT OF U.S. PATENT NO. 7,185,783

34. Xtreme Plastics realleges and incorporates by reference the allegations set forth in paragraphs 1-33.

35. Xtreme Plastics is the owner of all right, title, and interest in the '783 patent, entitled "Fastcan," duly and properly issued by the U.S. Patent and Trademark Office on March 6, 2007. A copy of the '783 patent is attached as Exhibit D.

36. Defendants have been and/or are directly infringing and/or inducing infringement of and/or contributorily infringing the '783 patent by, among other things, making, using, offering to sell or selling in the United States or importing into the United States, products and/or services that are covered by at least claims 1, 3, 4, 8, and 16 of the '783 patent, including, by the way of example and not limitation, the Catchy Can refuse container.

COUNT V

INFRINGEMENT OF U.S. PATENT NO. 7,469,798

37. Xtreme Plastics realleges and incorporates by reference the allegations set forth in

paragraphs 1-36.

38. Xtreme Plastics is the owner of all right, title, and interest in the ‘798 patent, entitled “Wheeled Refuse Container,” duly and properly issued by the U.S. Patent and Trademark Office on December 30, 2008. A copy of the ‘798 patent is attached as Exhibit E.
39. Defendants have been and/or are directly infringing and/or inducing infringement of and/or contributorily infringing the ‘798 patent by, among other things, making, using, offering to sell or selling in the United States or importing into the United States, products and/or services that are covered by at least claims 1, 2, 3, 4, 8, and 13 of the ‘798 patent, including, by the way of example and not limitation, the Catchy Can refuse container.

COUNT VI

INFRINGEMENT OF U.S. PATENT NO. 8,152,019

40. Xtreme Plastics realleges and incorporates by reference the allegations set forth in paragraphs 1-39.
41. Xtreme Plastics is the owner of all right, title, and interest in the ‘019 patent, entitled “Reinforced Dust Pan and Refuse Container,” duly and properly issued by the U.S. Patent and Trademark Office on April 10, 2012. A copy of the ‘019 patent is attached as Exhibit F.
42. Defendants have been and/or are directly infringing and/or inducing infringement of and/or contributorily infringing the ‘019 patent by, among other things, making, using, offering to sell or selling in the United States or importing into the United States, products and/or services that are covered by at least claims 18, 19, and 20 ‘019 patent,

including, by the way of example and not limitation, the Catchy Can refuse container.

COUNT VII

INFRINGEMENT OF U.S. PATENT NO. 8,523,007

43. Xtreme Plastics realleges and incorporates by reference the allegations set forth in paragraphs 1-42.

44. Xtreme Plastics is the owner of all right, title, and interest in the '007 patent, entitled "Reinforced Dust Pan and Refuse Container," duly and properly issued by the U.S. Patent and Trademark Office on September 3, 2013. A copy of the '007 patent is attached as Exhibit G.

45. Defendants have been and/or are directly infringing and/or inducing infringement of and/or contributorily infringing the '007 patent by, among other things, making, using, offering to sell or selling in the United States or importing into the United States, products and/or services that are covered by at least claims 12, 13, and 14 of the '007 patent, including, by the way of example and not limitation, the Catchy Can refuse container.

DEMAND FOR JURY TRIAL

46. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Xtreme Plastics respectfully requests a trial by jury of all issues properly triable by jury.

PRAYER FOR RELIEF

WHEREFORE, Xtreme Plastics prays for relief as follows:

- A. For a judgment declaring that Defendants have infringed each of the Xtreme Plastics patents;
- B. For a judgment declaring that Defendants' infringement of Xtreme Plastics patents has been willful and deliberate;
- C. For a judgment awarding Xtreme Plastics compensatory damages as a result of Defendants' infringement of the Xtreme Plastics patents, together with interest and costs, and in no event less than a reasonable royalty;
- D. For a judgment awarding Xtreme Plastics treble damages and pre-judgment interest under 35 U.S.C. § 284 as a result of Defendants' willful and deliberate infringement of the Xtreme Plastics patents;
- E. For a judgment declaring that this case is exceptional and awarding Xtreme Plastics its expenses, costs, and attorneys fees in accordance with 35 U.S.C. §§ 284 and 285 and Rule 54(d) of the Federal Rules of Civil Procedure;
- F. For a grant of a permanent injunction pursuant to 35 U.S.C. § 283, enjoining the Defendants from further acts of infringement;
- G. For a judgment and order that Defendants deliver to Xtreme Plastics for destruction, all plastic refuse container molds, refuse containers already produced, any sales or customer literature, and any other trade pieces used in the infringement of the Xtreme Plastics patents
- H. For such other and further relief as the Court deems just and proper.

Date: November 14, 2016

/s/ Kevin P. Murphy

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CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2016, a copy of the foregoing Amended Complaint was filed electronically. All parties will be served by certified mail, return receipt requested, to be prepared by the U.S. Northern District of Ohio, Clerk's Office. Parties may also access this filing through the Court's system.

/s/ Kevin P. Murphy

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