

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

BEAUMONT PRODUCTS, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	
WILLERT HOME PRODUCTS, INC.,	)	<b>JURY TRIAL DEMANDED</b>
	)	
Defendant.	)	
_____	)	

**COMPLAINT**

Plaintiff Beaumont Products, Inc. (“Beaumont”) states its Complaint against Defendant Willert Home Products, Inc. (“Defendant”), as follows:

1. This is an action for trade dress infringement and unfair competition under the trademark laws of the United States, Title 15, United States Code, Georgia’s Uniform Deceptive Trade Practices Act, O.C.G.A. § 10-1-371 *et. seq.*, and the common law; and for patent infringement arising under the patent laws of the United States, Title 35, United States Code.

### **JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction over all causes of action set forth herein pursuant to 15 U.S.C. § 1121, 28 U.S.C. § 1331, and 28 U.S.C. § 1338.

3. This Court has personal jurisdiction over Defendant because Defendant transacts business within the State of Georgia, has at least one employee with an office and residence in the State of Georgia, has infringed Beaumont's trade dress and patent rights within this State, and is continuing to infringe Beaumont's trade dress and patent rights within this State.

4. Venue is proper in this judicial district and division pursuant to 28 U.S.C. §§ 1391 and 1400.

### **THE PARTIES**

5. Plaintiff Beaumont is a Georgia Corporation having a principal place of business at 1560 Big Shanty Dr., Kennesaw, Georgia 30144.

6. Beaumont manufactures, markets, and sells air fresheners, odor eliminators, and related products in this judicial district and throughout the United States.

7. Beaumont is the owner of trade dress rights in and to the nonfunctional design features of certain air freshener and odor eliminator products.

8. Beaumont is the owner, by assignment, of all right, title, and interest in and to United States Patent No. D491,257 for “Container for Solid Air Freshener,” including the right to bring suit for patent infringement.

9. Defendant is a Missouri Corporation having a principal place of business at 4044 Park Ave., St. Louis, Missouri 63110.

10. Upon information and belief, Defendant has and continues to infringe Beaumont’s patent and trade dress rights in the State of Georgia, within this judicial district, and elsewhere throughout the United States. Upon information and belief, Defendant is subject to the personal jurisdiction of this Court.

### **THE CONTROVERSY**

11. For at least 13 years, Beaumont has marketed and sold solid air freshener and odor eliminator products that comprise disc-shaped plastic containers that are filled with an air freshener/odor eliminator composition in a cake format, including without limitation the “Citrus Magic”<sup>®</sup> air freshener products. Beaumont’s “Citrus Magic” air fresheners exhibit unique design features that comprise Beaumont’s trade dress. *See* Exhibit A.

12. Beaumont adopted a distinctive trade dress to market and sell air freshener/odor eliminator products, including without limitation Beaumont’s “Citrus Magic” air fresheners, which include at least the following trade dress

elements (referred to hereinafter as “Beaumont’s Air Freshener Packaging Trade Dress”):

- 1) a container for a solid air freshener in the shape of a disc, with a circular disc-shaped bottom with an upwardly projecting annular side wall;
- 2) a circular label on the bottom providing instruction and information about the product;
- 3) a lid for the container that includes a downwardly curved rim that snaps to an upper edge of the side wall of the container, such that the lid merges with the side wall ;
- 4) air circulation openings in the lid that are covered by and hidden by a removable label; and
- 5) the label is circular to match the shape of the lid and is of contrasting color with the material of the container.

The elements of Beaumont’s Air Freshener Packaging Trade Dress are depicted in the photographs and pictures attached as Exhibit A.

13. In addition, Beaumont adopted a distinctive trade dress shelf organizer/display to market and sell air freshener/odor eliminator products, including without limitation Beaumont’s “Citrus Magic” air fresheners, which includes at least the following trade dress elements (referred to hereinafter as “Beaumont’s Air Freshener Display Trade Dress”):

- 1) an open top elongated support tray for receiving six air freshener containers;

- 2) the tray maintains the containers in a neat edge standing alignment with one behind another, with the containers' respective labels facing forward;
- 3) the tray is configured to hold six of the containers; and
- 4) as each container is removed from the tray, the next container and its label are exposed for viewing.

The elements of Beaumont's Air Freshener Display Trade Dress are depicted in the photographs attached as Exhibit B.

14. Beaumont's Air Freshener Packaging Trade Dress and Air Freshener Display Trade Dress have been advertised and distributed continuously throughout the United States for at least approximately 13 years.

15. Beaumont first used its Air Freshener Packaging Trade Dress and Air Freshener Display Trade Dress on air freshener/odor eliminator products long before the Defendant first used the same trade dress on its products. Beaumont is the original owner of Beaumont's Air Freshener Packaging Trade Dress and Air Freshener Display Trade Dress.

16. The above-named elements of Beaumont's Air Freshener Packaging Trade Dress and Air Freshener Display Trade Dress are non-functional.

17. The above-named elements and the whole of Beaumont's Air Freshener Packaging Trade Dress and Air Freshener Display Trade Dress are highly distinctive.

18. Beaumont, through its significant effort, skill, and expertise, has acquired and now enjoys substantial goodwill and a valuable reputation under its distinctive trade dress. The maintenance of standards of quality and excellence by Beaumont has contributed to this valuable goodwill and reputation throughout the United States.

19. In addition to being inherently distinctive, as a result of Beaumont's long, exclusive, continuous, and wide-spread use and advertising of its Air Freshener Packaging Trade Dress and Air Freshener Display Trade Dress, Beaumont's Air Freshener Packaging Trade Dress and Air Freshener Display Trade Dress have become associated with Beaumont. Beaumont's customers and the general public associate Beaumont's Air Freshener Packaging Trade Dress and Air Freshener Display Trade Dress as denoting that the articles comprising such trade dress originate from a single source, *i.e.*, Beaumont.

20. Beaumont's Air Freshener Packaging Trade Dress has acquired secondary meaning as trade dress in relation to solid air fresheners, and has become an asset of substantial value as a symbol of Beaumont, its quality name, quality products, and goodwill.

21. After Beaumont established rights to its Air Freshener Packaging Trade Dress and Air Freshener Display Trade Dress, Defendant has adopted and is

using Beaumont's Air Freshener Packaging Trade Dress and Air Freshener Display Trade Dress on products of its own in Georgia and in interstate commerce for the sale of Defendant's air fresheners, particularly Defendant's "airBOSS Everyday Odor Eliminator" air freshener. Photographs and renderings of Defendant's "airBOSS Everyday Odor Eliminator" air freshener are attached hereto as Exhibit C. A photograph of Defendant's "airBOSS Everyday Odor Eliminator" air freshener and air freshener shelf organizer/display, as displayed and/or offered for sale in at least Meijer stores, are attached hereto as Exhibit D.

22. Defendant continues to market and sell air freshener/odor eliminator products having disc-shaped plastic containers that contain an air freshener composition in a gel- or cake-like format, including without limitation the "airBOSS Everyday Odor Eliminator" air freshener (referred to hereinafter as "Defendant's Infringing Products").

23. Defendant adopted at least the following product packaging trade dress elements for Defendant's Infringing Products:

- 1) a container for a solid air freshener in the shape of a disc, with a circular disc-shaped bottom with an upwardly projecting annular side wall;
- 2) a circular label on the bottom providing instruction and information about the product;

- 3) a lid for the container that includes a downwardly curved rim that snaps to an upper edge of the side wall of the container, such that the lid merges with the side wall;
- 4) air circulation openings in the lid that are covered by and hidden by a removable label; and
- 5) the label is circular to match the shape of the lid and is of contrasting color with the material of the container.

24. In addition, Defendant adopted at least the following shelf organizer/display trade dress elements:

- 1) an open top elongated support tray for receiving six air freshener containers;
- 2) the tray maintains the containers in a neat edge standing alignment with one behind another, with the containers' respective labels facing forward;
- 3) the tray is configured to hold six of the containers; and
- 4) as each container is removed from the tray, the next container and its label are exposed for viewing.

25. In addition to infringing the above elements of Beaumont's product packaging trade dress, Defendant has exactly copied the following elements of Beaumont's Citrus Magic product packaging:

- 1) the label being removable by a tab that protrudes outwardly from the face of the label;
- 2) the container holding 8 ounces of air freshening/odor eliminator product;



- 3) the container having an approximate diameter of 5.5 inches; and
- 4) the container having a height of approximately 1.75 inches.

26. Defendant has hired a former Beaumont employee, Mr. Garnell Lewis. Mr. Lewis was the Vice President of Sales-Key Accounts for Beaumont from August 2011 until October 2013. During that time, Mr. Lewis's office was at Beaumont's headquarters in Kennesaw, Georgia. At Beaumont, Mr. Lewis acquired intimate knowledge of, and was deeply involved with, the Citrus Magic<sup>®</sup> products. He presented features and benefits of the Citrus Magic products to key accounts, was a member of the Beaumont management team, and worked closely with both the Research & Development and Operations departments. In addition, Mr. Lewis knew the formula, pricing, costs, and prior litigation related to the Citrus Magic packaging trade dress. He was intimately involved in all aspects of the Citrus Magic product's trade secrets. As such, he was much more than a mere rank-and-file "employee."

27. In October 2013, Mr. Lewis left Beaumont to join Defendant as the Director of Sales, based out of Atlanta, Georgia. Upon information and belief, one of Mr. Lewis's responsibilities is the airBOSS brand that currently offers the infringing "airBoss Everyday Odor Eliminator" product. Additionally, it appears that this product was introduced substantially after Mr. Lewis joined Defendant.

28. As a result of hiring a former Beaumont employee over a year prior to the introduction of Defendant's Infringing Products, Defendant had actual and constructive knowledge of Beaumont's trade dress at the time of introduction of Defendant's Infringing Products and Defendant's infringement is therefore knowing and willful.

29. On June 8, 2004, United States Patent No. D491,257 ("the '257 patent") was duly and legally issued for "Container for Solid Air Freshener." Beaumont holds all rights and interest in the '257 patent. A true and correct copy of the '257 patent is attached hereto as Exhibit E.

30. Defendant has in the past and continues to make, have made, offer for sale, sell, use, and/or import into the United States one or more products in containers that infringe Beaumont's '257 patent in violation of 35 U.S.C. § 271, including, but not necessarily limited to, Defendant's air freshener/odor eliminator products marketed and sold under the designation "airBOSS Everyday Odor Eliminator."

**COUNT I:**  
**FEDERAL TRADE DRESS INFRINGEMENT (15 U.S.C. § 1125(a))**

31. Beaumont realleges and incorporates herein the allegations of paragraphs 1 through 30 of this Complaint as if fully set forth herein.

32. The adoption and use by Defendant of Beaumont's distinctive and non-functional Air Freshener Packaging Trade Dress and Air Freshener Display Trade Dress in the State of Georgia and across the United States for its air freshener/odor eliminator products creates a likelihood of consumer confusion, deception, and mistake, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

33. By Defendant's conduct, including but not limited to its unauthorized use of Beaumont's Air Freshener Packaging Trade Dress and Air Freshener Display Trade Dress, Defendant will receive the benefit of Beaumont's goodwill achieved over time and at great labor and expense by Beaumont. Defendant's use of Beaumont's Air Freshener Packaging Trade Dress and Air Freshener Display Trade Dress will unjustly enrich Defendant and will place Beaumont's valuable reputation and goodwill in the hands of Defendant, over whom Beaumont has no control.

34. Defendant's use of Beaumont's Air Freshener Packaging Trade Dress and Air Freshener Display Trade Dress falsely indicates to the consumer public

that Defendant and/or Defendant's goods are related, connected, sponsored, approved by, or affiliated with Beaumont and its goods.

35. Defendant's activities are likely to cause consumer confusion, mistake, and deception between Beaumont's goods and those of Defendant.

36. Upon information and belief, Defendant's infringement was, and continues to be, willful.

37. Upon information and belief, Defendant will, if not enjoined by this Court, continue its acts of trade dress infringement set forth above, which acts have caused, and will continue to cause, Beaumont immediate and irreparable harm. Pursuant to 15 U.S.C. § 1116 and Fed. R. Civ. P. 65(a), Beaumont is entitled to an Order of this Court enjoining Defendant's unlawful activities. Beaumont has no adequate remedy at law.

38. As a result of Defendant's conduct set forth above, Beaumont has been, and continues to be, irreparably damaged. Pursuant to 15 U.S.C. § 1117, Beaumont is entitled to a judgment for: (1) Defendant's profits; (2) damages sustained by Beaumont; (3) treble damages; (4) such sum as the Court deems just; (5) Beaumont's attorney's fees; (6) Beaumont's costs of this action; and (7) interest.

**COUNT II:**  
**FEDERAL UNFAIR COMPETITION (15 U.S.C. § 1125(a))**

39. Beaumont realleges and incorporates herein the allegations of paragraphs 1 through 30 of this Complaint as if fully set forth herein.

40. This is an action for trade dress infringement and unfair competition under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

41. The adoption and use by Defendant of Beaumont's distinctive and non-functional Air Freshener Packaging Trade Dress and Air Freshener Display Trade Dress in the State of Georgia and across the United States for its air freshener/odor eliminator products constitutes unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

42. By Defendant's above-noted conduct, Defendant will receive the benefit of Beaumont's goodwill achieved over time and at great labor and expense by Beaumont. Defendant's use of Beaumont's Air Freshener Packaging Trade Dress and Air Freshener Display Trade Dress will unjustly enrich Defendant and will place Beaumont's valuable reputation and goodwill in the hands of Defendant, over whom Beaumont has no control.

43. Defendant's above-noted conduct falsely indicates to the consumer public that Defendant and/or Defendant's goods are related, connected, sponsored, approved by, or affiliated with Beaumont and its goods.

44. Defendant's activities are likely to cause consumer confusion, mistake, and deception between Beaumont's goods and those of Defendant.

45. Defendant's conduct constitutes a false description or representation of Defendant's products, and is unlawful under 15 U.S.C. §1125(a).

46. Upon information and belief, Defendant's unfair competition was, and continues to be, willful.

47. Upon information and belief, Defendant will, if not enjoined by this Court, continue its acts of unfair competition set forth above, which acts have caused, and will continue to cause, Beaumont immediate and irreparable harm. Pursuant to 15 U.S.C. § 1116 and Fed. R. Civ. P. 65(a), Beaumont is entitled to an Order of this Court enjoining Defendant's unlawful activities. Beaumont has no adequate remedy at law.

48. As a result of Defendant's conduct set forth above, Beaumont has been, and continues to be, irreparably damaged. Pursuant to 15 U.S.C. § 1117, Beaumont is entitled to a judgment for: (1) Defendant's profits; (2) damages sustained by Beaumont; (3) treble damages; (4) such sum as the Court deems just; (5) Beaumont's attorney's fees; (6) Beaumont's costs of this action; and (7) interest.

**COUNT III:  
FALSE DESIGNATION OF ORIGIN AND  
FALSE DESCRIPTION OR REPRESENTATION UNDER  
GEORGIA'S UNIFORM DECEPTIVE TRADE PRACTICES ACT**

49. Beaumont realleges and incorporates herein the allegations of paragraphs 1 through 30 of this Complaint as if fully set forth herein.

50. This count is for trade dress infringement and unfair competition under Georgia's Uniform Deceptive Trade Practices Act, O.C.G.A. § 10-1-371 *et seq.*

51. The adoption and use by Defendant of Beaumont's Air Freshener Packaging Trade Dress and Air Freshener Display Trade Dress in the State of Georgia for its air freshener/odor eliminator products constitutes a deceptive trade practice in violation of O.C.G.A. § 10-1-372.

52. By Defendant's conduct, including but not limited to its unauthorized use of Beaumont's Air Freshener Packaging Trade Dress and Air Freshener Display Trade Dress, Defendant will receive the benefit of Beaumont's goodwill achieved over time and at great labor and expense by Beaumont. Defendant's use of Beaumont's Air Freshener Packaging Trade Dress and Air Freshener Display Trade Dress will unjustly enrich Defendant and will place Beaumont's valuable reputation and goodwill in the hands of Defendant, over whom Beaumont has no control.

53. Defendant's use of Beaumont's Air Freshener Packaging Trade Dress and Air Freshener Display Trade Dress causes a likelihood of confusion or of misunderstanding as to the source of Defendant's goods, or a likelihood of confusion or of misunderstanding as to the sponsorship, approval, or certification of Defendant's goods by Beaumont.

54. Defendant's activities cause a likelihood of confusion or of misunderstanding as to the affiliation, connection, or association with Beaumont, and a likelihood of confusion or of misunderstanding as to the certification by Beaumont of Defendant's goods.

55. Upon information and belief, Defendant's infringement was, and continues to be, willful.

56. Upon information and belief, Defendant will, if not enjoined by this Court, continue its acts of trade dress infringement set forth above, which acts have caused, and will continue to cause, Beaumont immediate and irreparable harm. Pursuant to O.C.G.A. § 10-1-373, Beaumont is entitled to an Order of this Court enjoining Defendant's unlawful activities. Beaumont has no adequate remedy at law.

57. As a result of Defendant's conduct set forth above, Beaumont has been, and continues to be, irreparably damaged. Pursuant to O.C.G.A. § 10-1-373,



Beaumont is entitled to a judgment for: (1) such sum as the Court deems just; (2) Beaumont's attorney's fees; (3) Beaumont's costs of this action; and (4) interest.

**COUNT IV:**  
**COMMON LAW MISAPPROPRIATION AND UNFAIR COMPETITION**

58. Beaumont realleges and incorporates herein the allegations of paragraphs 1 through 30 of this Complaint as if fully set forth herein.

59. The Defendant's aforesaid acts constitute misappropriation of Beaumont's trade dress and goodwill and are in violation of Georgia's Common Law of Unfair Competition since the Defendant's infringement of Beaumont's Air Freshener Packaging Trade Dress and Air Freshener Display Trade Dress is likely to cause confusion, mistake, and/or deception.

60. Defendant's conduct described herein is intentional and willful.

61. Beaumont reserves its right to proffer evidence and seek an award of punitive damages.

62. Absent entry of an injunction by this Court, Beaumont will continue to suffer irreparable injury to its goodwill and reputation. Beaumont has already suffered substantial damages as a result of the Defendant's acts of misappropriation and unfair competition.

**COUNT V:**  
**INFRINGEMENT OF U.S. PATENT NO. D491,257**

63. Beaumont realleges and incorporates herein the allegations of paragraphs 1 through 30 of this Complaint as if fully set forth herein.

64. On June 8, 2004, United States Patent No. D491,257 (“the ‘257 patent”) was duly and legally issued for “Container for Solid Air Freshener.” Beaumont holds all rights and interest in the ‘257 patent. A true and correct copy of the ‘257 patent is attached hereto as Exhibit F.

65. Beaumont has marked products covered by the ‘257 patent with the text “US Patent Number D491,257” or a variation thereof, pursuant to 35 U.S.C. § 287.

66. Upon information and belief, Defendant has infringed directly and/or indirectly and continues to infringe directly and/or indirectly the ‘257 patent by manufacturing, using, selling, importing, and/or offering for sale solid air freshener/odor eliminator products in containers that infringe the ‘257 patent, including, but not necessarily limited to, Defendant’s air freshener/odor eliminator products marketed and sold under the designation “airBOSS Everyday Odor Eliminator.”

67. An ordinary observer with knowledge of the prior art would find that Defendant’s Infringing Products are substantial similar to the ‘257 patent giving such attention as a purchaser usually gives.

68. The acts of infringement of the '257 patent by Defendant has caused damage to Beaumont, and Beaumont is entitled to recover from the Defendant the damages sustained by Beaumont as a result of its wrongful acts in an amount subject to proof at trial.

69. The infringement of Beaumont's exclusive rights under the '257 patent by the Defendant will continue to damage Beaumont, causing irreparable harm, for which there is no adequate remedy at law, unless enjoined by this Court.

**PRAYER FOR RELIEF**

WHEREFORE, Beaumont prays that the Court enter judgment in its favor and against Defendant follows:

a. That the elements of Beaumont's Air Freshener Packaging Trade Dress and Air Freshener Display Trade Dress be adjudged to be protectable and infringed by Defendant;

b. That Defendant be ordered to pay profits from its infringement of Beaumont's Air Freshener Packaging Trade Dress and Air Freshener Display Trade Dress, with interest;

c. That Defendant be ordered to pay all damages sustained by Beaumont on account of, *inter alia*, Defendant's trade dress infringement, unfair competition,

and injury to Beaumont's business reputation pursuant to 15 U.S.C. §1051 *et. seq.*, with interest;

d. That such damages assessed against Defendant be enhanced or trebled as provided by 15 U.S.C. § 1117;

e. That Defendant be required to pay to Beaumont monetary damages to be used for corrective advertising to be conducted by Beaumont;

f. That Defendant be ordered to pay Beaumont's attorneys' fees and costs resulting from Defendant's infringement of Beaumont's Air Freshener Packaging Trade Dress and Air Freshener Display Trade Dress, with interest;

g. That Defendant, its officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with it, be preliminarily and permanently enjoined and restrained from further infringement of Beaumont's Air Freshener Packaging Trade Dress and Air Freshener Display Trade Dress;

h. That Defendant be directed to file with the Court and serve on Beaumont, no later than thirty (30) days after the issuance of an injunction, a report in writing under oath setting forth in detail the manner and form in which Defendant has complied with the injunction;

i. That Defendant be ordered to immediately recall and deliver up for destruction all of its goods bearing Beaumont's Air Freshener Packaging Trade Dress and Air Freshener Display Trade Dress;

j. That an accounting be conducted and judgment be rendered against Defendant for:

(a) all profits received by Defendant, directly or indirectly, from its sales and/or advertising of any under air freshener, odor remover, and other similar products bearing Beaumont's Air Freshener Packaging Trade Dress and Air Freshener Display Trade Dress, or any other trade dress confusingly similar to Beaumont Products' Air Freshener Packaging Trade Dress and Air Freshener Display Trade Dress;

(b) all damages sustained by Beaumont on account of, *inter alia*, Defendants' unfair competition, false designation of origin, false description or representation, trademark infringement, patent infringement, injury to Beaumont Products' business reputation, counterfeiting of Beaumont Products' mark, and/or dilution of Beaumont's mark pursuant to 15 U.S.C. §1117 *et. seq.*, Defendants' violation of 35 U.S.C. § 292, and Defendants' deceptive trade practices and false advertising under Georgia law; and

(c) actual compensatory damages in an amount not presently known, but to be computed during the pendency of this action; and

k. That Defendant be ordered to pay damages adequate to compensate Beaumont for Defendant's infringement of Beaumont's United States Patent No. D491,257, pursuant to 35 U.S.C. § 284;

l. That Defendant be ordered to pay enhanced or treble damages, and attorneys' fees, pursuant to 35 U.S.C. §§ 284 and 285;

m. That Defendant be enjoined from further infringement of Beaumont's United States Patent No. D491,257, pursuant to 35 U.S.C. § 283;

n. That Defendant be ordered to pay prejudgment and post-judgment interest; and

o. That Beaumont be granted such other and additional relief as the Court deems just, equitable, and proper.

### **DEMAND FOR JURY TRIAL**

Pursuant to Fed. R. Civ. P. 38(b), Beaumont demands a trial by jury of all issues triable of right by a jury.

This 10<sup>th</sup> day of February, 2017.

/s/Cynthia J. Lee  
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