

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND**

TRISTAR PRODUCTS, INC.,

Plaintiff,

v.

TV DIRECT LLC,

Defendant.

C.A. No. 17-60

JURY TRIAL DEMANDED

**COMPLAINT**

Plaintiff, Tristar Products, Inc. (“Plaintiff” or “Tristar”), brings this action against defendant TV Direct LLC (“Defendant” or “TV Direct”), and in support thereof avers the following:

**INTRODUCTION**

1. Tristar is the maker and manufacturer of a variety of copper cookware including a number of copper square cooking pans.

2. Tristar’s copper cookware products (“Copper Chef Products”) bear various associated trademarks, including the work mark “COPPER CHEF®”, and the following design plus word trademark (the “Copper Chef Design”, collectively the “Copper Chef Trademarks”):



3. Tristar’s Copper Chef Products also include, among other products, a 9.5” copper colored square pan (the “Copper Chef Square Pan”) covered by U.S. United States Letters Patent

D777,506 for an ornamental design entitled “ROUND PAN” (the “’506 Patent”). A copy of the ’506 Patent is attached as **Exhibit A**.

4. Defendant knowingly and intentionally engages in a blatantly illegal business online that is built solely on the name and reputation of Tristar and Tristar’s Copper Chef Products. Defendant lists products on www.amazon.com using photographs of the Copper Chef Products which bear Copper Chef Trademarks. However, when a consumer purchases a product from Defendant expecting to receive a Copper Chef Product, they instead receive one of Defendant’s own knockoff pans (the “Accused Square Pan Product”).

5. Defendant’s brazen misuse of Tristar’s Copper Chef Trademarks cause irreparable harm to the name, reputation, and sales of Tristar and Tristar’s Copper Chef Products.

6. Further, Defendant infringes Tristar’s ’506 Patent by its importation, sale, and/or offering for sale of a round pan (the “Accused Round Pan Product”) (collectively, the “Accused Square Pan Product” and the “Accused Round Pan Products” are referenced as the “Accused Products”).

7. Tristar brings this Complaint for damages and injunctive relief to bring to an end and to seek redress for Defendant’s patent infringement, as well as Defendant’s false and fraudulent use of the Copper Chef Trademarks.

### **PARTIES**

8. Tristar is a Pennsylvania corporation that maintains its principal place of business at 492 Route 46 East, Fairfield, New Jersey 07004.

9. Tristar is the assignee of the ’506 Patent, protecting the design of a pan for use in cooking. Tristar utilizes the design that is protected by the ’506 Patent in its highly successful

Copper Chef Square Pan. The Copper Chef Square Pan has been the subject of extensive promotion and has attained immense success in the marketplace.

10. On information and belief, TV Direct LLC is a Limited Liability Company registered with the state of New York and having its principal place of business at 347 5<sup>th</sup> Ave Ste 1100, New York, NY 10016.

### **JURISDICTION AND VENUE**

11. This is an action for false designation of origin under the Lanham Act 15 U.S.C. §1125(a), false advertising under the Lanham Act 15 U.S.C. §1125(a), and patent infringement under the patent laws of the United States 35 U.S.C. § 101 *et seq.*, including §§ 271, 281, 283, 284, 285.

12. This Court has jurisdiction over this action pursuant to 15 U.S.C. § 1121(a) (Lanham Act), 28 U.S.C. §§ 1331 (federal question), and 1338 (patent actions).

13. This Court has personal jurisdiction over Defendant and venue is proper under 28 U.S.C. § 1391(b) and (c) and § 1400(b). Defendant markets, distributes, and/or sells products bearing the Copper Chef Trademarks throughout the United States, including to customers in Rhode Island. Further, Defendant has committed acts of infringement in this District, and this action arises from those acts. Upon information and belief, Defendant has regularly engaged in business in this State and District and purposefully availed itself of the privilege of conducting business in this District, for example, by offering for sale and selling the Accused Products in this District.

### **FACTUAL BACKGROUND**

14. Tristar manufactures, markets, and sells Copper Chef Products which bear, and are advertised using, the Copper Chef Trademarks.

15. Tristar has sought to register and has registered the Copper Chef Trademarks for its Copper Chef Products.

16. For example, on September 13, 2016, Tristar registered on the Principal Register of the U.S. Patent and Trademark Office Registration No. 5,042,933 for the Copper Chef Design for a stylized mark. *See* Paragraph 2. Tristar first used this mark as early as June 2016. A copy of the registration certificate for the Copper Chef Design is attached hereto as **Exhibit B**.

17. On September 6, 2016, Tristar registered on the Principal Register of the U.S. Patent and Trademark Office Registration No. 5,037,596 for the word mark “COPPER CHEF®”. Tristar first used this mark as early as June 2016. A copy of the registration certificate for the COPPER CHEF® mark is attached hereto as **Exhibit C**.

18. Tristar’s advertisements and marketing efforts with respect to the Copper Chef Products proudly display the Copper Chef Trademarks.

19. Tristar manufactures, markets, and sells the Copper Chef Products through a group of distributors and major retailers which do not include TV Direct.

20. Tristar’s marketing efforts and focus on superior quality with respect to the Copper Chef Products has resulted in the success of the Copper Chef Products including the Copper Chef Round Pan.

21. Further, Tristar has sought design patent protection on a number of its Copper Chef Products, including the Copper Chef Round Pan.

22. To that end, on November 29, 2016, inventors Keith Mirchandani and Mo-Tsan Tsai were duly and legally issued the ‘506 Patent.

23. Tristar is the co-owner by assignment of all rights, title, and interest in and to the '506 Patent with standing to enforce said patent, and is the co-owner thereof with Ke M.O. House Co., Ltd.

24. TV Direct is a direct competitor to Tristar who makes the Accused Products.

25. While Defendant has no rights in the Copper Chef Trademarks, Defendant sells the Accused Square Pan Product on www.amazon.com using photographs of the Copper Chef Products which bear Copper Chef Trademarks.

26. Further, products for sale on www.amazon.com are each given a unique "ASIN Number."

27. Defendant lists the Accused Square Pan Product under the ASIN Number that is designated for genuine Copper Chef Square Pans.

28. On January 6, 2017, Tristar placed an order with Defendant for the Accused Square Pan Product through a www.amazon.com listing titled "Copper Chef 9.5" Square Fry Pan." The "Copper Chef 9.5" Square Fry Pan" listing displayed the ASIN Number designated for genuine Copper Chef Square Pans. Further, images shown on the listing depicted genuine Copper Chef Square Pans and the Copper Chef Trademarks.

29. As a result of Tristar's order, instead of receiving a genuine Copper Chef Square Pan Tristar received the Accused Square Pan Product.

30. While the Accused Square Pan Product itself bears no trademarks, a label included within the product packaging reads "Copper Chef 9.5" Square Fry Pan."

31. Additionally, although the Accused Square Pan Product is sold on www.amazon.com as a Copper Chef Square Pan, the Accused Square Pan Product is packaged

with an insert that reads “Non-Stick Copper Pan” and identifies that the product is from Direct TV LLC.

32. Upon information and belief, Defendant intentionally created the Accused Square Pan Product at a materially cheaper price than the cost of purchasing a Copper Chef Square Pan directly from an authorized distributor of the Copper Chef Products. In doing so, Defendant deliberately evaded Tristar, or other legitimate sources of the Copper Chef Products, and chose instead to create and sell knock offs such as the Accused Square Pan Product.

33. Defendant knowingly supervised and controlled the distribution of the Accused Square Pan Product and had a direct financial interest in and stood to gain a direct financial benefit from their fraudulent representations to consumers that their Accused Square Pan Product was a genuine Copper Chef Square Pan.

34. Defendant is not authorized to use the Copper Chef Trademarks in any way and as a result, their continued use of the Copper Chef Trademarks creates confusion over the source of the Accused Square Pan Product.

35. Defendant, in appearing to offer Copper Chef Products for sale when in fact they are selling knockoffs, such as the Accused Square Pan Product, are trading off the goodwill associated with Tristar’s Copper Chef Products.



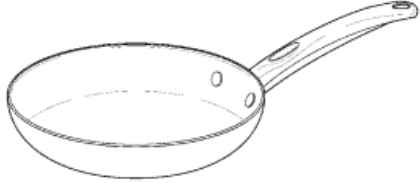
36. Defendant, in appearing to offer Copper Chef Products for sale when in fact they are selling knockoffs, such as the Accused Square Pan Product, are passing off a different product than one ordered by a consumer.

37. Defendant’s Accused Square Pan Product is inferior to Tristar’s Copper Chef Square Pan. The sale thereof further injures Tristar’s business reputation and the goodwill

associated with its Copper Chef Products by causing their known products to be confused or mistakenly associated with a group or series of products of lesser quality.

38. Further, the Accused Round Pan Product infringes the '506 Patent.

39. A side-by-side comparison of the products reveals the extent to which Tristar's protected design has been appropriated by Defendant and the infringing nature of the Accused Round Pan Product:

<b>Genuine Tristar Copper Chef Round Pan</b>	<b>Accused Round Pan Product</b>	<b>Design of '506 Patent</b>
		

40. Upon information and belief, Defendant has infringed, and continues to infringe, the '506 Patent.

### **COUNT I** **PATENT INFRINGEMENT**

41. Tristar incorporates by reference the allegations set forth above.

42. Upon information and belief, Defendant has infringed, and continues to infringe, the '506 Patent, in violation of 35 U.S.C. § 271(a) by making, using, offering for sale, selling and/or importing, within this judicial district and elsewhere in the United States, without license or authority from Tristar, products that fall within the scope of the '506 Patent including, at least, the Accused Round Pan Product.

43. Upon information and belief, Defendant has actively induced and is actively inducing infringement of the '506 Patent in violation of 35 U.S.C. § 271(b), by actively and knowingly aiding and abetting others to directly make, use, offer for sale, sell and/or import within this judicial district and elsewhere in the United States, without license or authority from Tristar, products falling within the scope of the '506 Patent, including at least the Accused Round Pan Product.

44. Tristar has and will continue to be injured by Defendant's past and continuing infringement of the '506 Patent and is without adequate remedy at law.

45. Upon information and belief, unless enjoined, Defendant will continue to infringe the '506 Patent, and Tristar will suffer irreparable injury as a direct and proximate cause of Defendant's conduct.

**COUNT II**  
**FEDERAL UNFAIR COMPETITION AND**  
**FALSE DESIGNATION OF ORIGIN, 15 U.S.C. § 1125(a)**

46. Tristar incorporates by reference the allegations set forth above.

47. Defendant's unauthorized use in interstate commerce of the Copper Chef Trademarks wrongly and falsely designates, describes or represents Defendant's products, and is likely to cause confusion, mistake, and deception as to the affiliation, connection, or association of Defendant's products with Tristar's Copper Chef Products, or as to the sponsorship or approval of said products by Tristar.

48. Defendant's unlawful, unauthorized, and unlicensed marketing of Copper Chef Products in connection with their sale of the Accused Square Pan Product, creates an express and implied misrepresentation that the Accused Square Pan Product was created, authorized, or approved by Tristar, all to Defendant's profit and to Tristar's great damage and injury.



49. Defendant's conduct therefore violates Lanham Act § 43(a), 15 U.S.C. § 1125(a), in that Defendant's use of Tristar's Copper Chef Trademarks in connection with its Accused Square Pan Product and related services in interstate commerce constitutes a false designation of origin.

50. Defendant's actions are likely to cause Tristar to suffer economic damage; are likely to result in unjust enrichment to Defendant; and have caused, and unless restrained by this Court will continue to cause, serious and irreparable harm, to which no adequate remedy at law exists.

**COUNT III**  
**TRADEMARK INFRINGEMENT, 15 U.S.C. §§ 1114 and 1117**

51. Tristar incorporates by reference the allegations set forth above.

52. The Copper Chef Trademarks are in full force and effect and Defendant sells merchandise using the Copper Chef Trademarks.

53. Defendant's unauthorized use of the Copper Chef Trademarks on inferior quality merchandise in interstate commerce and advertising relating to the same constitutes a false representation that the goods and services are manufactured, offered, sponsored, authorized, licensed by or otherwise connected with Tristar or come from the same source as Tristar's goods and are of the same quality as that assured by the Copper Chef Trademarks.

54. Defendant's display of the Copper Chef Trademarks constitutes the use of counterfeit marks within the meaning of 15 U.S.C. § 1116(d).

55. Defendant's use of the Copper Chef Trademarks is without Tristar's permission or authority and is in total disregard of Tristar's right to control its Copper Chef Trademarks.

56. Defendant's activities are likely to lead to and result in confusion, mistake or deception and are likely to cause the public to believe that Tristar has produced, sponsored,

authorized, licensed or is otherwise connected or affiliated with Defendant's commercial and business activities, all to the detriment of Tristar.

57. Upon information and belief, Defendant's acts are deliberate and intended to confuse the public as to the source of Defendant's goods or services and to injure Tristar and reap the benefit of Tristar's goodwill associated with the Copper Chef Trademarks.

58. As a direct and proximate result of Defendant's willful and unlawful conduct, Tristar has been injured and will continue to suffer injury to its business and reputation unless Defendant is restrained by this Court from infringing the Copper Chef Trademarks.

59. Defendant's acts have damaged and will continue to damage Tristar and Tristar has no adequate remedy at law.

60. In light of the foregoing, Tristar is entitled to injunctive relief prohibiting Defendant from using the Copper Chef Trademarks or any marks identical and/or confusingly similar thereto for any purpose, and to recover from Defendant all damages, including attorneys' fees, that Tristar has sustained and will sustain as a result of such infringing acts, and all gains, profits and advantages obtained by Defendant as a result thereof, in an amount not yet known, as well as the costs of this action pursuant to 15 U.S.C. § 1117(a), attorneys' fees and treble damages pursuant to 15 U.S.C. § 1117(b), and/or statutory damages pursuant to 15 U.S.C. § 1117(c).

#### **DEMAND FOR RELIEF**

**WHEREFORE**, Tristar respectfully requests that this Court enter judgment in its favor and against Defendant, and that it grant Tristar the following relief:

(a) A judgment under 35 U.S.C. § 271 that the Accused Round Pan Product infringes the '506 Patent;

(b) An order under 35 U.S.C. §283 preliminarily and permanently enjoining Defendant from infringing the '506 Patent;

(c) An order prohibiting Defendant from listing any product on www.amazon.com under an ASIN Number associated with a Copper Chef Product unless the product listed is a genuine Copper Chef Product;

(d) An order preliminarily and permanently enjoining and restraining Defendant, their agents, servants, employees, successors, assigns, and all those controlled by or in active concert or participation therewith, in accordance with Lanham Act § 34, 15 U.S.C. §1116, from:

(1) Placing any advertisement or making any offer for sale using the Copper Chef Trademarks or referencing Tristar;

(2) Making any statement or representation, or using any false designation of origin or false description, or performing any act, which can or is likely to lead the trade or public, or individual members thereof, to believe that any products sold by Defendant are in any manner associated or connected with Tristar, the Copper Chef Products, or the Copper Chef Square Pan, or are sold, manufactured, licensed, sponsored, approved, or authorized by Tristar;

(3) Any other use of the Copper Chef Trademarks by Defendant;

(4) Engaging in any other activity constituting unfair competition with Tristar, or constituting any dilution of Tristar's name, reputation or goodwill; and

(5) Importing into the United States, or admitting to entry at any customhouse of the United States, the Accused Products, marketed and/or sold by Defendant, pursuant to Lanham Act § 43(b), 15 U.S.C. §1125.

(e) Damages and/or restitution according to proof at trial, including exemplary damages where authorized by statute;

(f) An accounting of Defendant's profits, gains, and advantages realized from their unlawful conduct, including a reconciliation of purchases and sales of all cookware products, including products similar to the Accused Products, with documents relating to all the purchases and sales;

(g) An award of damages under 35 U.S.C. § 284 adequate to compensate Tristar for Defendant's infringement of the '506 Patent and an accounting to determine the proper amount of such damages;

(h) Enhanced damages as a result of Defendant's willful, wanton, and deliberate acts of infringement;

(i) An award, pursuant to 35 U.S.C. § 284 or otherwise, of costs, prejudgment, and post-judgment interest on Tristar's compensatory damages;

(j) An award pursuant to 35 U.S.C. § 285 of Tristar's attorneys' fees incurred in this action;

(k) An order requiring Defendant to deliver up for destruction all labels, signs, prints, packages, wrappers, receptacles, and advertisements in the possession of Defendant, bearing a word, term, name, symbol, device, combination therefore, designation, description, or representation related to, or likely to cause confusion as to an association with, Tristar or the Copper Chef Trademarks, in accordance with Lanham Act § 36, 15 U.S.C. §1118;

(l) An order directing the recall and destruction of any and all existing products of Defendant that infringe the '506 patent; and

(m) Such other and further relief as this Court deems just and proper.

**JURY DEMAND**

Tristar demands a trial by jury on all issues presented in this Complaint.

Dated: February 15, 2017

Respectfully submitted,

**PLAINTIFF TRISTAR PRODUCTS, INC.**

By its attorneys,

/s/ Jeffrey K. Techentin

Jeffrey K. Techentin [No. 6651]

[jtechentin@apslaw.com](mailto:jtechentin@apslaw.com)

Brenna Anatone Force [No. 8555]

[bforce@apslaw.com](mailto:bforce@apslaw.com)

ADLER POLLOCK & SHEEHAN P.C.

One Citizens Plaza, 8th Floor

Providence, RI 02903

Tel: 401-427-6147

Fax: 401-351-4607

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