

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

**RUBBERMAID INCORPORATED d/b/a
RUBBERMAID MEDICAL SOLUTIONS,**

Plaintiff,

v.

CAPSA SOLUTIONS LLC,

Defendant.

Civil Action No. _____

Judge _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Rubbermaid Incorporated d/b/a Rubbermaid Medical Solutions (“Rubbermaid”), for its complaint against Defendant Capsa Solutions LLC (“Capsa”), seeking damages, injunctive relief, and other relief for patent infringement, trade dress infringement, and unfair competition, alleges as follows:

NATURE OF ACTION

1. This is an action for (1) patent infringement arising under Title 35 of the United States Code, seeking monetary damages and injunctive relief against Capsa due to its violation of Rubbermaid’s rights in U.S. Design Patent No. D504,259 and U.S. Design Patent No. D504,260; (2) federal trade dress infringement, unfair competition, and false designation of origin pursuant to the Lanham Act, 15 U.S.C. § 1051, *et seq.*; and (3) unfair competition pursuant to N.C. Gen. Stat. § 75-1, *et seq.*, and the common law of North Carolina.

PARTIES

2. Rubbermaid is a corporation organized and existing under the laws of the State of Ohio, having a principal place of business at 8935 North Pointe Executive Park Drive, Huntersville, NC 28078.

3. On information and belief, Capsa is limited liability company organized and existing under the laws of the State of Delaware, having a principal place of business at 4800 Hilton Corporate Drive, Columbus, OH 43232.

4. On information and belief, Capsa is engaged, *inter alia*, in the business of making, using, offering to sell, and/or selling, throughout the United States and in this district, carts of various dimensions, including, without limitation, the carts that Capsa identifies by the product names “MX Series Medication Workstation” and “MX Series Bin Transfer Cart” (the “Accused Products”).

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1337(a), 1338(a), and 1367(a).

6. This Court has personal jurisdiction over Capsa because, on information and belief, Capsa transacts business within this district, including, without limitation, offering the Accused Products for sale.

7. Upon information and belief, venue in this district is proper pursuant to 28 U.S.C §§ 1391(b) and (c) and 1400(b).

PATENTS-IN-SUIT

8. On February 23, 2004, a design patent application entitled “Drawer Face” was filed in the United States Patent and Trademark Office, which application resulted in the granting

of United States Design Patent No. D504,259, issued on April 26, 2005 (“the ’259 patent”). A true and accurate copy of the ’259 patent, which is valid and subsisting, is attached as Exhibit A and incorporated by reference.

9. On February 23, 2004, a design patent application entitled “Drawer Face” was filed in the United States Patent and Trademark Office, which application resulted in the granting of United States Design Patent No. D504,260, issued on April 26, 2005 (“the ’260 patent”). A true and accurate copy of the ’260 patent, which is valid and subsisting, is attached as Exhibit B and incorporated by reference.

10. Rubbermaid is the owner by assignment of all rights, title and interest in and to the ’259 patent and the ’260 patent and possesses all rights of recovery thereunder, including the right to sue for infringement and recover past damages.

COUNT I
(Infringement of U.S. Design Patent No. D504,259)

11. Rubbermaid hereby incorporates by reference the allegations contained in paragraphs 1 through 10 of this Complaint as if stated herein.

12. Capsa, without Rubbermaid’s authorization and in violation of 35 U.S.C. § 271, has made, used, offered to sell and/or sold in the United States the Accused Products having a drawer face that infringes upon the ’259 patent and will continue to do so unless enjoined by this Court.

13. To the extent that the facts learned in discovery show that Capsa’s infringement of the ’259 patent is or has been willful, Rubbermaid reserves the right to request such a finding at the time of trial.

14. Capsa's infringement of the '259 patent has caused damage to Rubbermaid, including deprivation of rights, remunerations and profits which would have otherwise come to Rubbermaid but for the infringement, and Rubbermaid is entitled to recover damages.

15. Capsa's continuing infringement of the '259 patent will continue to damage Rubbermaid, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by the Court.

16. As a result of Capsa's wrongful conduct, Rubbermaid is entitled to injunctive relief.

COUNT II
(Infringement of U.S. Design Patent No. D504,260)

17. Rubbermaid hereby incorporates by reference the allegations contained in paragraphs 1 through 16 of this Complaint as if stated herein.

18. Capsa, without Rubbermaid's authorization and in violation of 35 U.S.C. § 271, has made, used, offered to sell and/or sold in the United States the Accused Products having a drawer face that infringes upon the '260 patent and will continue to do so unless enjoined by this Court.

19. To the extent that the facts learned in discovery show that Capsa's infringement of the '260 patent is or has been willful, Rubbermaid reserves the right to request such a finding at the time of trial.

20. Capsa's infringement of the '260 patent has caused damage to Rubbermaid, including deprivation of rights, remunerations and profits which would have otherwise come to Rubbermaid but for the infringement, and Rubbermaid is entitled to recover damages.

21. Capsa's continuing infringement of the '260 patent will continue to damage Rubbermaid, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by the Court.

22. As a result of Capsa's wrongful conduct, Rubbermaid is entitled to injunctive relief.

COUNT III
(Trade Dress Infringement, Unfair Competition, and False Designation of Origin
under 15 U.S.C. § 1125(a))

23. Rubbermaid hereby incorporates by reference the allegations contained in paragraphs 1 through 22 of this Complaint as if stated herein.

24. Since 2004, Rubbermaid has continuously sold medication carts featuring a unique and distinctive trade dress consisting of, among other elements:

- (a) One or more drawers, which are housed in a forward-facing storage module mounted on a wheeled cart and, in the case of multiple drawers, which are arrayed in a column and/or row design;
- (b) made from a distinctive blue-colored plastic;
- (c) having a rectangular face;
- (d) having handles that are rounded on the bottom extending downward and outward from the top of the drawer face; and
- (e) having a rectangular impression on the face of the handle

(in the aggregate, the "Rubbermaid Medication Cart Trade Dress").

25. Since 2004, Rubbermaid has continuously sold transfer and exchange carts featuring a unique and distinctive trade dress consisting of, among other elements:

- (a) Multiple drawers, which are housed in a forward-facing wheeled cabinet;

- (b) arrayed in a column and/or row design;
- (c) made from a distinctive blue-colored plastic;
- (d) having a rectangular face;
- (e) having handles that are rounded on the bottom extending downward and outward from the top of the drawer face; and
- (f) having a rectangular impression on the face of the handle

(in the aggregate, the “Rubbermaid Transfer Cart Trade Dress”; together with the Rubbermaid Medication Cart Trade Dress, the “Rubbermaid Trade Dress”).

26. The Rubbermaid Trade Dress is distinctive and is used throughout Rubbermaid’s line of medication cart products and transfer cart products. See Exhibit C.

27. The distinctive elements and overall commercial impression of the Rubbermaid Trade Dress was created and intended to identify and distinguish Rubbermaid’s medication cart products and transfer cart products from the products of other sellers.

28. The Rubbermaid Trade Dress is unique, original, non-functional, and proprietary to Rubbermaid, and has acquired secondary meaning.

29. Rubbermaid has widely advertised its medication cart products and transfer cart products in print and on the internet. Such advertisements depict the Rubbermaid Trade Dress and further describe the high quality of the products, including without limitation their durability and reliability.

30. Rubbermaid has sold millions of dollars in medication cart products and transfer cart products displaying the Rubbermaid Trade Dress since 2004.

31. As a result of Rubbermaid’s continuous and extensive use, sales, advertising and promotion of products featuring the Rubbermaid Trade Dress, consumers have come to associate

the Rubbermaid Trade Dress with Rubbermaid and its high-quality medication carts and transfer carts. The Rubbermaid Trade Dress has become synonymous with high-quality medication cart products and transfer cart products; when encountering the Rubbermaid Trade Dress on medication cart and transfer cart products, customers and potential customers expect superior quality products based on Rubbermaid's substantial reputation and goodwill in the marketplace.

32. Consequently, through such usage and recognition, Rubbermaid has acquired rights in the Rubbermaid Trade Dress, which rights extend, without limitation, to the exclusive right to use the Rubbermaid Trade Dress in the United States in conjunction with medication carts and transfer carts.

33. Thus, the Rubbermaid Trade Dress has become an extremely valuable and important asset belonging exclusively to Rubbermaid, symbolizing Rubbermaid's highly successful products and the goodwill appurtenant thereto.

34. Capsa began participating in the manufacture of Rubbermaid's transfer cart product line on Rubbermaid's behalf in 2007. The drawers used in Rubbermaid's transfer carts that display the Rubbermaid Transfer Cart Trade Dress were manufactured on Rubbermaid's behalf by a third party. The drawers were then shipped to Capsa for inclusion in finished Rubbermaid transfer carts. Thus, since 2007, Capsa has been closely familiar with the Rubbermaid Transfer Cart Trade Dress, and upon information and belief, all the Rubbermaid Trade Dress.

35. In approximately July 2012, Capsa publicly announced its plans to manufacture and sell its own line of competing medication cart products.

36. In approximately September 2012, Capsa cancelled its relationship with Rubbermaid and is no longer participating in the manufacture of Rubbermaid transfer cart products on Rubbermaid's behalf.

37. Capsa is now offering for sale and/or selling the Accused Products, which display a trade dress confusingly similar to the Rubbermaid Trade Dress in an attempt to confuse consumers and trade on Rubbermaid's goodwill and valuable reputation.

38. Specifically, the MX Series Medication Workstation medication carts being sold and/or offered for sale by Capsa include elements that are identical or nearly identical to those used in the Rubbermaid Medication Cart Trade Dress, including without limitation:

- (a) One or more drawers, which are housed in a forward-facing storage module mounted on a wheeled cart and, in the case of multiple drawers, which are arrayed in a column and/or row design;
- (b) made from a substantially similar blue-colored plastic;
- (c) having a rectangular drawer face;
- (d) having a handle that is rounded on the bottom extending downward and outward from the top of the drawer face; and
- (e) having a rectangular impression on the face of the handle.

39. Moreover, the MX Series Bin Transfer Carts being sold and/or offered for sale by Capsa include elements that are identical or nearly identical to those used in the Rubbermaid Transfer Cart Trade Dress, including without limitation:

- (a) Multiple drawers, which are housed in a forward-facing wheeled cabinet;
- (b) arrayed in a column and/or row design;
- (c) made from a distinctive blue-colored plastic;

- (d) having a rectangular face;
- (e) having handles that are rounded on the bottom extending downward and outward from the top of the drawer face; and
- (f) having a rectangular impression on the face of the handle

40. Upon information and belief, Capsa specifically designed the Accused Products to be confusingly similar to the Rubbermaid Trade Dress. Capsa's choice of drawers with a substantially similar blue color and design manifests an intent and willful attempt to trade upon the goodwill created by, and subsisting in, the Rubbermaid Trade Dress. See Exhibit D.

41. Capsa has not been authorized by Rubbermaid to use the Rubbermaid Trade dress, or any colorable imitations thereof, in connection with the Accused Products.

42. The medication cart and transfer cart products sold and/or offered for sale by Capsa under the Rubbermaid Trade Dress are so similar to Rubbermaid's products in nature that Capsa's unauthorized use of the Rubbermaid Trade Dress is likely to cause confusion and to deceive and mislead consumers into becoming interested in and/or acquiring Capsa's products believing the products are offered for sale under the control or with the authorization of Rubbermaid.

43. Capsa's unlawful activities have resulted in irreparable harm and injury to Rubbermaid in that, among other things, they deprive Rubbermaid of its absolute right to determine the manner in which its products are presented to the public; deceive and confuse the public as to the origin and sponsorship of such products; wrongfully prey upon and cash in on the reputation and goodwill of Rubbermaid; and irreparably harm and injure the reputation of Rubbermaid for providing quality medication cart and transfer cart products.

44. Capsa's use of the Rubbermaid Trade Dress constitutes use of a term, name symbol and device and use of a false designation of origin, all of which is likely to cause confusion, mistake, or deception as to the source of origin of the products provided by Capsa under the Rubbermaid Trade Dress in that customers and potential customers are likely to believe that such products are provided by, sponsored by, approved by, licensed by, affiliated or associated with, or in some other way legitimately connected to Rubbermaid.

45. Capsa's use of the Rubbermaid Trade Dress is likely to cause confusion, mistake, or deception, in that customers and potential customers are likely to believe there is sponsorship, approval, licensing, affiliation, association, or some legitimate connection between the products provided by Capsa under the Rubbermaid Trade Dress and Rubbermaid's products.

46. Capsa's actions are willful, deliberate, and done with knowledge of Rubbermaid's exclusive property rights and other legitimate interests and with knowledge that these actions are likely to confuse, mislead, and deceive the public.

47. Rubbermaid has no adequate remedy at law. The unlawful activities of Capsa described herein have caused, and if not enjoined will continue to cause, irreparable damage to the legitimate rights and interests of Rubbermaid, including the reputation associated with the Rubbermaid Trade Dress.

COUNT IV
(Unfair Competition under N.C. Gen. Stat. § 75-1.1, *et seq.*)

48. Rubbermaid hereby incorporates by reference the allegations contained in paragraphs 1 through 47 of this Complaint as if stated herein.

49. Capsa's acts constitute unfair methods of competition in or affecting commerce and unfair or deceptive actions or practices in or affecting commerce, in violation of the North Carolina Unfair and Deceptive Trade Practices Act, N.C.G.S. §§ 75-1.1(a).

50. Rubbermaid has suffered actual injury and has been damaged by virtue of Capsa's unfair and deceptive acts.

51. Pursuant to N.C. Gen. Stat. § 75-1.1, *et seq.*, Rubbermaid is entitled to treble damages and attorneys' fees for Capsa's unfair and deceptive acts.

COUNT V
(North Carolina Common Law Unfair Competition)

52. Paragraphs 1 through 51 are incorporated and made a part of this Count.

53. Capsa's use of the Rubbermaid Trade Dress constitutes use of a term, name symbol and device and use of a false designation of origin, all of which is likely to cause confusion, mistake, or deception as to the source of origin of the products provided by Capsa under the Rubbermaid Trade Dress in that customers and potential customers are likely to believe that such products are provided by, sponsored by, approved by, licensed by, affiliated or associated with, or in some other way legitimately connected to Rubbermaid.

54. Capsa's use of the Rubbermaid Trade Dress is likely to cause confusion, mistake, or deception, in that customers and potential customers are likely to believe there is sponsorship, approval, licensing, affiliation, association, or some legitimate connection between the products provided by Capsa under the Rubbermaid Trade Dress and Rubbermaid's products.

55. As a direct and proximate result of the likely confusion, mistake, or deception, Rubbermaid has suffered and will continue to suffer considerable damages as a result of Capsa's actions.

56. Unless enjoined by this Court, the infringing acts complained of will continue. Rubbermaid will be irreparably harmed and have no adequate remedy at law to redress the continuing injuries that Capsa has have caused and will continue to cause by its conduct.

57. The likely confusion, mistake, or deception caused by Capsa violates the common law of the State of North Carolina.

RELIEF REQUESTED

WHEREFORE, Rubbermaid prays:

A. That this Court order, adjudge and decree that Capsa's aforesaid acts constitute infringement of the '259 patent and the '260 patent in violation of 35 U.S.C. § 271; trade dress infringement, unfair competition and false designation of origin in violation of 15 U.S.C. § 1125(a); unfair competition in violation of N.C. Gen. Stat. § 75-1.1, *et seq.*, and unfair competition in violation of North Carolina common law;

B. That preliminary and permanent injunctions be issued enjoining and restraining Capsa, its directors, members, officers, agents, servants, employees, subsidiaries, and affiliates, and all persons in active concert or participation with, through, or under any of them, at first during the pendency of this action and thereafter perpetually, from:

1. directly or indirectly making, having made, using, selling or importing medication carts or transfer carts having an appearance similar to the '259 patent or the '260 patent;

2. from committing any acts of unfair competition and from implying a false designation of origin or a false description or representation with respect to the Rubbermaid Trade Dress;

C. That this Court order Capsa, its officers, agents, servants and employees to deliver up to this Court for destruction all products infringing upon, directly or otherwise, any claim of the '259 patent or the '260 patent or the use of which would infringe, directly or otherwise, any

claim of the '259 patent or the '260 patent, or that would unlawfully use the Rubbermaid Trade Dress in connection with Capsa's goods;

D. That the Court require that, within thirty (30) days after service of notice of entry of judgment or issuance of an injunction pursuant thereto, Capsa file with the Court and serve upon Rubbermaid's counsel a written report under oath setting forth details of the manner in which Capsa has complied with the Court's order pursuant to paragraphs B and C above;

E. That Capsa be ordered to account for and pay over all proceeds and profits made by it from its wrongful infringing acts of patent infringement, and to account for and pay to Rubbermaid damages in a sum to be determined by the Court, but no less than a reasonable royalty;

F. That, if the evidence warrants, the damages awarded by the Court to Rubbermaid be trebled in view of intentional copying of Rubbermaid's patented inventions and willful and wanton violation of Rubbermaid's patent rights;

G. In connection with Capsa's acts of federal trade dress infringement and unfair competition, that Capsa be ordered to account and pay over to Rubbermaid all damages sustained by Rubbermaid, Capsa's profits, and ordering that the amount of damages awarded Rubbermaid be increased three times the amount thereof;

H. That this be declared an exceptional case under 35 U.S.C. § 285, and that Rubbermaid be awarded costs and reasonable attorneys' fees for Capsa's acts of patent infringement;

I. That this be declared an exceptional case under 15 U.S.C. § 1117, and that Rubbermaid be awarded costs and reasonable attorneys' fees for Capsa's acts of trade dress infringement and unfair competition;

J. That this Court award Rubbermaid damages, including treble damages, costs, and attorneys' fees for Capsa's unfair and deceptive acts, pursuant to N.C. Gen. Stat. §§ 75-1.1, *et seq.*;

K. That Rubbermaid be awarded punitive damages for Capsa's unfair competition under North Carolina law, in view of Capsa's wanton and deliberate illegal acts committed with oppression, fraud, or malice;

L. That this Court order Capsa to pay the costs of this action, pre-judgment interest and post-judgment interest;

M. That this Court grant to Rubbermaid such other and further relief as may be deemed just and equitable.

JURY DEMAND

Rubbermaid hereby demands trial by jury on all issues so triable.

Dated: December 10, 2012

Respectfully submitted,

RUBBERMAID INCORPORATED D/B/A
RUBBERMAID MEDICAL SOLUTIONS

By Counsel

/s/ R. Matthew Pearson

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