

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

INDUSTRIAL MODELS, INC.	)	
an Illinois corporation,	)	
Plaintiff,	)	
	)	Case No.
v.	)	
	)	Judge
SNF, INC. d/b/a BRAND FX BODY	)	
COMPANY, a Texas corporation,	)	JURY TRIAL DEMANDED
Defendant.	)	

COMPLAINT

NOW COMES Plaintiff, INDUSTRIAL MODELS, INC. (“Industrial Models”), and complains of Defendant, SNF, INC. d/b/a BRAND FX BODY COMPANY (“Brand FX”), as follows:

Parties

1. Plaintiff, Industrial Models, is an Illinois corporation in good standing, with its principal place of business at 400 W. Bonner Road, Wauconda, Illinois.
2. Upon information and belief, Defendant, Brand FX, is a Texas corporation with its principal place of business located at 2800 Golden Triangle Blvd., Fort Worth, Texas.

Jurisdiction and Venue

3. This action arises under Sections 1 and 2 of the Sherman Act (15 U.S.C. §2), Section 4 of the Clayton Act (15 U.S.C. §15), the Declaratory Judgment Act (28 U.S.C. §§2201 *et seq.*), the Lanham Act (15 U.S.C. §§1051 *et seq.*), the Patent Act (35 U.S.C. §§1 *et seq.*), the Copyright Act (17 U.S.C. §§101 *et seq.*) and under Illinois common law. Jurisdiction of this Court is

invoked pursuant to 28 U.S.C. §§1331, 1338(a), 2201 and 2202, 15 U.S.C. §1121 and the Court's supplemental jurisdiction under 28 U.S.C. §1367(a).

4. Venue is proper in this judicial district pursuant to 15 U.S.C. §22 because Brand FX transacts business in this district and, upon information and belief, may be found in this district. Venue is also proper in this judicial district pursuant to 28 U.S.C. §§1391(b), (c) and (d) because a substantial part of the events giving rise to the claims occurred in this district, a substantial part of property that is the subject of this action is situated in this district, Brand FX transacts business in this district, and, upon information and belief, Brand FX has continuous and systematic business contacts with this district such that Brand FX is subject to personal jurisdiction here.

Background

5. Industrial Models is a closely-held and family-owned Illinois corporation that for many years has manufactured machined components in a wide variety of materials for use in a wide variety of industries, and in related engineering services.

6. No later than January 2012, Industrial Models made a decision to further diversity its business by entering the United States market for fiberglass utility bodies for trucks (hereinafter "FUBs")

7. Starting no later than January 2012, Industrial Models took costly, specific and extensive steps to prepare to enter the United States market for FUBs and, in so doing, spent a substantial amount of money and invested other valuable resources on development of an Industrial Models product line of FUBs and preparations to manufacture and sell such products in the United States.

8. In early February 2012, as part of such costly, specific and extensive steps, Industrial Models purchased a set of unique and valuable molds (hereinafter "the Subject Molds"), of a

kind necessary for manufacturing FUBs, from a Wisconsin entity (hereinafter “Badger Truck”) that earlier had been using the Subject Molds to manufacture FUBs but which at that time had elected to stop such manufacturing activities.

9. Additional costs incurred and investments made by Industrial Models starting in 2012 in furtherance of its entry into the United States market for FUBs included without limitation the following examples:

- costs of purchasing additional valuable manufacturing equipment necessary for an FUBs production line;
- costs of purchasing substantial amounts of valuable raw materials necessary for the manufacture of FUBs;
- costs incurred in refurbishing the Subject Molds;
- costs incurred in reconfiguring, re-purposing and using substantial amounts of Industrial Models’ existing workspace and workforce capacity as necessary for development, manufacture and sales of FUBs;
- costs incurred in searching for, hiring and employing additional personnel necessary for running Industrial Models’ FUBs production line;
- costs incurred in manufacturing prototype FUBs;
- additional costs incurred in entering the FUBs market, *e.g.*, establishing and developing relationships with prospective purchasers of Industrial Models FUBs; and
- substantial opportunity costs incurred by Industrial Models resulting from its decision to spend and invest capital on entering the FUBs market rather than on alternative valuable business activities on which Industrial Models otherwise could and would have been spent and invested such capital.

10. Starting in early February 2013, Industrial Models received communications from Brand FX, stating Brand FX's awareness that Industrial Models had entered the FUBs market and expressing interest in purchasing the Subject Molds from Industrial Models.

11. On or about February 18, 2013, in response to such early-February 2013 communications from Brand FX, Industrial Models informed Brand FX that Industrial Models had already incurred very substantial costs and made very substantial investments on entering the FUBs market with the specific intention of selling FUBs made using the Subject Molds. At such time, Industrial Models informed Brand FX that such total costs to date were at or about \$200,000.

12. On or about February 19, 2013, Brand FX sent a written communication to Industrial Models, alleging that the Subject Molds "infringe on our trade dress, our copyrights and our patents," demanding that Industrial Models get the Subject Molds "off the market" and stating that Brand FX had instructed its attorneys to file a lawsuit against Industrial Models and "to seek an injunction against the sale of the molds until the lawsuit is settled."

13. Such February 19, 2013 written communication from Brand FX did not identify any trade dress, patent or copyright in connection with its infringement allegations against Industrial Models, nor had Brand FX at any earlier point identified any trade dress, copyright or patent in connection with such infringement allegations.

14. To this day, Brand FX has not identified any cognizable Brand FX trade dress right, actual or alleged, that could form the basis of any reasonable, good faith claim by Brand FX of trade dress infringement with respect to any use by Industrial Models of the Subject Molds, any product made therewith, or any product that could reasonably be expected to be made therewith;

this is despite Industrial Models' repeated requests that Brand FX provide any such information to Industrial Models.

15. Upon information and belief, there was no Brand FX trade dress right, and continues to be no Brand FX trade dress right, that could form the basis of any reasonable, good faith claim by Brand FX of trade dress infringement with respect to any use by Industrial Models of the Subject Molds, any product made therewith, or any product that could reasonably be expected to be made therewith.

16. Despite the foregoing, starting no later than February 19, 2013, Brand FX repeatedly and in some instances publicly accused Industrial Models of infringing purported Brand FX trade dress rights in connection with Industrial Models' use of the Subject Molds.

17. Upon information and belief, at the time of each instance that Brand FX accused Industrial Models of infringing Brand FX trade dress rights, including without limitation when Brand FX stated such accusations publicly, and at the time of each instance that Brand FX made a related cease-and-desist demand of Industrial Models, Brand FX knew that Brand FX owned no trade dress right that could form the basis of any reasonable, good faith claim by Brand FX of trade dress infringement against Industrial Models in connection with use of the Subject Molds, any product made therewith, or any product that could reasonably be expected to be made therewith.

18. Brand FX's publicly-stated accusations that Industrial Models' use of the Subject Molds infringed Brand FX trade dress rights included a Texas lawsuit that Brand FX filed against Industrial Models in March 2013 and which Brand FX continued to prosecute against Industrial Models until Brand FX filed a notice of non-suit in August 2014 for dismissal without prejudice.

19. Brand FX filed such Texas lawsuit against Industrial Models despite knowing that Brand FX owned no trade dress right that could form the basis of any reasonable, good faith claim by Brand FX of trade dress infringement against Industrial Models in connection with use of the Subject Molds, any product made therewith, or any product that could reasonably be expected to be made therewith.

20. By such bad-faith Texas lawsuit, Brand FX sought an order enjoining Industrial Models “from offering to sale, selling, using, or otherwise disposing of” the Subject Molds.

21. Industrial Models incurred substantial costs in defending itself against such bad-faith Texas lawsuit, including before a Tarrant County, Texas district court that entered an April 29, 2013 default judgment and permanent injunction ordering Industrial Models to refrain “from offering to sale, selling, using, or otherwise disposing of” the Subject Molds, and before a Texas court of appeals that issued a July 24, 2014 memorandum opinion concluding that “the face of the record shows the absence of proper service [of process on Industrial Models]” and vacating the April 29, 2013 default judgment and permanent injunction.

22. Brand FX’s complaint (“Original Petition”) in such Texas lawsuit did not identify any cognizable alleged Brand FX trade dress right that could form the basis of any reasonable, good faith claim by Brand FX of trade dress infringement with respect to any use by Industrial Models of the Subject Molds, any product made therewith, or any product that could reasonably be expected to be made therewith.

23. At no time has Brand FX brought to Industrial Models’ attention the specific content of any cognizable trade dress right that could form the basis of any reasonable, good faith claim by Brand FX that Industrial Models infringed, or threatened to infringe, such right.

24. During the pendency of Brand FX's bad-faith Texas lawsuit against Industrial Models, Brand FX communicated to Industrial Models multiple *contradictory* allegations as to content of the purported "trade dress" which was the subject of Brand FX's infringement accusations against Industrial Models; no such allegation communicated by Brand FX at any time included a description of anything that could reasonably be considered a cognizable trade dress right.

25. During the pendency of such bad-faith Texas lawsuit, specifically during a July 16, 2013 teleconference between counsel for Brand FX and counsel for Industrial Models, counsel for Industrial Models repeated Industrial Models' earlier-stated demand that Brand FX identify the purported "trade dress" which was the subject of Brand FX's infringement accusations against Industrial Models. Counsel for Brand FX responded by making a statement too ambiguous to identify any cognizable trade dress right: counsel for Brand FX stated that the purported "trade dress" was "the French curve in all of our designs." Industrial Models' counsel then asked Brand FX's counsel to elaborate, to which Brand FX's counsel stated, "I'm going to rely on the complaint" and "I don't need your bullshit."

26. At a later time during the pendency of such bad-faith Texas lawsuit, in an appellee brief filed on or about November 15, 2013, Brand FX asserted that the purported "trade dress" which was the subject of Brand FX's infringement accusations against Industrial Models was the "'total image' of Brand FX's business."

27. Brand FX's accusation that Industrial Models' use of the Subject Molds infringed a Brand FX-owned trade dress right in the "'total image' of Brand FX's business" was entirely without basis, and, upon information and belief, Brand FX made such accusation in bad faith.

28. In such November 15, 2013 appellee brief, Brand FX set forth what it described as “a thorough description of ... [Brand FX’s purported] trade dress.” The following indented text is a direct and complete quotation of such “thorough description” (absent citations here omitted):

- i. *Size of the business:* “Brand FX is the largest manufacturer of fiberglass truck bodies in the United States.”
- ii. *Types of product comprising the business:* “Fiberglass composite utility or truck bodies,” including “service bodies,” “line bodies,” “toppers,” and “inserts.”
- iii. *Raw material used in the business’ products:* “Fiberglass.”
- iv. *Role of the business:* Brand FX acts as designer, manufacturer, and seller.
- v. *Purpose of the business:* To place on the market a truck product that “allow[s] end-users to efficiently store and compartmentalize the various tools and equipment that they regularly use.”

29. Such “thorough description” by Brand FX of the purported Brand FX “trade dress” which Brand FX accused Industrial Models of infringing neither comprises nor includes a description of anything that could reasonably be considered a cognizable trade dress right.

30. Such “thorough description” by Brand FX of the purported Brand FX “trade dress” which Brand FX accused Industrial Models of infringing neither comprises nor includes a description of any trade dress characterized by a “French curve.”

31. Such “thorough description” by Brand FX of the purported Brand FX “trade dress” which Brand FX accused Industrial Models of infringing contradicted Brand FX’s earlier non-specific allegation, also made by Brand FX during the pendency of the bad-faith Texas lawsuit, that the purported “trade dress” was “the French curve in all of our designs.”

32. By asserting in Texas court the purported Brand FX “trade dress” that was the subject of such “thorough description” by Brand FX, Brand FX publicly asserted an exclusive right to be the largest manufacturer of fiberglass truck bodies in the United States engaged in activities to which Brand FX had (and has) no right to exclude any competitor.

33. By asserting in Texas court the purported Brand FX “trade dress” that was the subject of such “thorough description” by Brand FX, Brand FX publicly asserted a right to exclude Industrial Models from becoming the largest manufacturer of fiberglass truck bodies in the United States engaged in activities to which Brand FX had (and has) no right to exclude any competitor.

34. During the pendency of such bad-faith Texas lawsuit, Brand FX attempted to pressure Industrial Models to enter into a “non compete” agreement with Brand FX; despite such pressure, Industrial Models did not enter into any such agreement.

35. To this day, Brand FX has not identified any patent that could form the basis of any reasonable, good faith claim by Brand FX of patent infringement with respect to the Subject Molds, any product made therewith, or any product that could reasonably be expected to be made therewith; this is despite Industrial Models’ repeated requests that Brand FX provide any such information to Industrial Models.

36. Upon information and belief, there was no patent, and continues to be no patent, that could form the basis of any reasonable, good faith claim by Brand FX of patent infringement with respect to the Subject Molds, any product made therewith, or any product that could reasonably be expected to be made therewith.

37. Despite the foregoing, starting no later than February 19, 2013, Brand FX repeatedly accused Industrial Models of infringing purported Brand FX patent rights in connection with the Subject Molds.

38. During a July 16, 2013 teleconference between counsel for Brand FX and counsel for Industrial Models, counsel for Industrial Models repeated Industrial Models' earlier-stated demand that Brand FX identify the purported "patents" that were the subject of Brand FX's infringement accusation and cease-and-desist demand against Industrial Models. Counsel for Brand FX responded by refusing to identify any patent.

39. Upon information and belief, at the time of each instance that Brand FX accused Industrial Models of infringing Brand FX patent rights and at the time of each instance that Brand FX made a related cease-and-desist demand of Industrial Models, Brand FX knew that Brand FX owned no patent that could form the basis of any reasonable, good faith claim by Brand FX of patent infringement in connection with the Subject Molds, any product made therewith, or any product that could reasonably be expected to be made therewith.

40. To this day, Brand FX has not identified any copyright, actual or alleged, that could form the basis of any reasonable, good faith claim by Brand FX of copyright infringement with respect to any use by Industrial Models of the Subject Molds, any product made therewith, or any product that could reasonably be expected to be made therewith.

41. Upon information and belief, there was no Brand FX copyright, and continues to be no Brand FX copyright, that could form the basis of any reasonable, good faith claim by Brand FX of copyright infringement with respect to any use by Industrial Models of the Subject Molds, any product made therewith, or any product that could reasonably be expected to be made therewith.

42. Despite the foregoing, starting no later than February 19, 2013, Brand FX repeatedly accused Industrial Models of infringing purported Brand FX copyrights in connection with Industrial Models' use of the Subject Molds.

43. Upon information and belief, at the time of each instance that Brand FX accused Industrial Models of infringing any Brand FX copyright and at the time of each instance that Brand FX made a related cease-and-desist demand of Industrial Models, Brand FX knew that Brand FX owned no copyright that could form the basis of any reasonable, good faith claim by Brand FX of copyright infringement against Industrial Models in connection with use of the Subject Molds, any product made therewith, or any product that could reasonably be expected to be made therewith.

44. Given Brand FX's stated contentions that the Subject Molds infringe Brand FX trade dress rights, patents and copyrights and that Industrial Models therefore has a legal obligation to avoid using the Subject Molds, and further given Brand FX's specific efforts to obtain an injunction against Industrial Models offering, selling, using or disposing of the Subject Molds, and further given the entry of such an injunction by a Texas court until the vacation of such injunction in July 2014, Industrial Models has since early 2013 reasonably, prudently and costly refrained from using the Subject Molds, in an effort to avoid any foreseeable costs of dispute with Brand FX, including without limitation costs of threatened litigation.

45. At no time has Brand FX indicated any retraction, correction or modification of any part of Brand FX's stated contentions – which Brand FX continuously has known to be false – that the Subject Molds infringe Brand FX trade dress rights, patents and copyrights.

46. At no time has Brand FX indicated any retraction, correction or modification of any part of Brand FX's stated demand – which Brand FX continuously has known to be baseless – that Industrial Models cease and desist use of the Subject Molds.

47. Upon information and belief, Brand FX has told at least one other entity active in the United States market for FUBs that Brand FX owns trade dress rights, patents and copyrights covering the Subject Molds such that Brand FX has exclusive rights thereto, despite knowing that Brand FX did not (and does not) own any such trade dress right, patent or copyright.

48. Upon information and belief, Brand FX told Badger Truck that Brand FX owned trade dress rights, patents and copyrights covering the Subject Molds such that Brand FX had exclusive rights thereto, despite knowing that Brand FX did not own any such trade dress right, patent or copyright.

49. Upon information and belief, such communication by Brand FX to Badger Truck occurred at times both before and after Badger Truck sold the Subject Molds to Industrial Models, including at a time that Brand FX knew that Badger Truck or an entity closely related thereto was a prospective purchaser of FUBs that Industrial Models was preparing to manufacture using the Subject Molds and knew that Brand FX did not own any such trade dress right, patent or copyright.

50. At the time such communication occurred, Industrial Models had a business relationship with Badger Truck.

51. At the time such communication occurred, upon information and belief, Badger Truck was a prospective purchaser of FUBs that Industrial Models was preparing to manufacture

using the Subject Molds, and both Industrial Models and Brand FX knew of such prospective business relationship.

52. In falsely telling Industrial Models and one or more entities other than Industrial Models, including at least Badger Truck, that the Subject Molds infringed non-existent Brand FX intellectual property rights, Brand FX acted with intent to cause disuse of the Subject Molds by Industrial Models and thus non-manufacture and non-sale by Industrial Models of FUBs.

53. Brand FX's conduct in falsely telling Industrial Models and one or more entities other than Industrial Models, including at least Badger Truck, that the Subject Molds infringed non-existent Brand FX intellectual property rights had the foreseeable effect of causing disuse of the Subject Molds by Industrial Models, including without limitation non-manufacture by Industrial Models of FUBs manufacturable with the Subject Molds, and thus precluding any sale of such FUBs by Industrial Models to such entity or entities.

54. Upon information and belief, in engaging in the conduct described in the foregoing paragraphs, including without limitation Brand FX's filing and prosecution of its Texas lawsuit against Industrial Models, Brand FX did not have any actual purpose or specific intent to enforce any actual or believed Brand FX trade dress right.

55. Upon information and belief, Brand FX, in engaging in the conduct described in the foregoing paragraphs, including without limitation Brand FX's filing and prosecution of its Texas lawsuit against Industrial Models, did not have any actual purpose or specific intent to enforce any actual or believed Brand FX patent.

56. Upon information and belief, in engaging in the conduct described in the foregoing paragraphs, including without limitation Brand FX's filing and prosecution of its Texas lawsuit

against Industrial Models, Brand FX did not have any actual purpose or specific intent to enforce any actual or believed Brand FX copyright.

57. Notwithstanding the foregoing and Industrial Models' substantial costs and losses incurred to date as a direct result of Brand FX's anti-competitive conduct, Industrial Models retains manufacturing capacity and remains intent on competing successfully in the interstate United States market for FUBs, including against Brand FX and including by using the Subject Molds to manufacture FUBs for sale in the United States.

58. Brand FX, by its conduct including without limitation Brand FX's specific and unretracted threats of litigation against Industrial Models, its bad-faith Texas lawsuit against Industrial Models for purported trade dress infringement and unfair competition, its obtaining of an injunction against Industrial Models (later vacated on appeal) through such lawsuit, and its recent non-suiting *without prejudice* of such lawsuit – all in connection with the Subject Molds – has substantially and unlawfully impeded, hindered and obstructed interstate competition in the United States market for FUBs, including by causing Industrial Models reasonably to avoid using the Subject Molds and related valuable assets until these matters are resolved.

59. Industrial Models remains under real and immediate threat of litigation by Brand FX for purported trade dress infringement, purported patent infringement and/or purported copyright infringement in connection with Industrial Models' possession and commercial use of the Subject Molds, and Industrial Models has a reasonable apprehension that Brand FX may initiate such litigation.

60. Upon information and belief, Brand FX has acquired and is maintaining monopoly power in the United States market for FUBs, with a market share in excess of 80 percent.

Industrial Models' bases for such reasonable belief include substantial relevant market data and information, for example:

- an April 8, 2010 Memorandum Opinion of the Court of Appeals for the Second District of Texas, stating that Brand FX and Astoria Industries of Iowa, Inc. ("Astoria") "comprise approximately ninety percent of the fiberglass utility body and work topper market";
- a January 12, 2011 brief filed in a Texas court by Brand FX, describing Brand FX and Astoria as "primary competitors in the fiberglass body market" and as "compet[ing] primarily against each other in the fiberglass body industry";
- a January 2012 market survey stating that Brand FX's revenues and workforce are ten times greater than Astoria's revenues and workforce;
- Brand FX's recent public statement that Brand FX is "the largest manufacturer of fiberglass truck bodies in the United States";
- Brand FX's recent public statement that Brand FX is "the world's largest composite utility body manufacturer";
- Brand FX's recent public statement that Brand FX "employs over 500 people in 5 states";
- Brand FX's recent public statement that Brand FX's manufacturing capacity includes "over a million square feet of capacity in five states";
- corroborating information in the public domain, including without limitation documents indicating that Brand FX dramatically increased its relevant manufacturing capacity and other commercial capacities through acquisitions of the assets of Fiber

Body Industries in 2002, the Oregon company GemTop Mfg. in 2003 and assets of the Minnesota company Glasstite in 2005, and that Brand FX has also in recent years dramatically expanded its manufacturing assets in ways other than through acquisitions;

- information in the public domain indicating that Brand FX's annual revenues have grown with extraordinary rapidity in recent years, including a January 2012 market survey identifying Brand FX's annual revenues as \$39.64 million and a September 2013 press release published by Brand FX owner Stonebridge Partners identifying Brand FX's annual revenues as then "approaching \$80 million";
- additional public documents indicating that Brand FX has extraordinarily strong market power in the United States market for FUBs, *e.g.*, documents showing that public entities engaged in procurement of FUBs have imposed requirements specifically benefitting Brand FX and indicating entrenched buyer preference for Brand FX, *e.g.*, requirements limiting bidder eligibility to Brand FX dealers or distributors and requirements specifying that FUBs must be Brand FX FUBs; and
- additional industry information.

61. Upon information and belief, Brand FX's actual purpose and specific intent in the conduct described herein was to suppress, foreclose and destroy existing and foreseeable lawful competition in the United States market for FUBs, including without limitation such competition by Industrial Models, to interfere directly with the business activities and relationships of Industrial Models, to monopolize the United States market for FUBs, and to maintain Brand FX's monopoly power in the United States market for FUBs.

62. Upon information and belief, although Brand FX endeavored to give its filing and prosecution of the Texas lawsuit against Industrial Models the appearance of some intent to serve a lawful purpose, Brand FX actually had no such intent, and the Texas lawsuit was objectively meritless such that it lacked any potential lawful purpose; such Texas lawsuit and Brand FX's related conduct amounted to a mere sham to cover Brand FX's predatory purpose and intent.

63. Given Brand FX's market power, Brand FX's conduct described in the foregoing paragraphs carries a dangerous probability of resulting in monopolization by Brand FX, has in fact resulted in monopolization, and has in fact resulted in acquisition and maintenance of monopoly power by Brand FX.

COUNT I - VIOLATION OF SHERMAN ACT §1

64. Paragraphs 1-63 are realleged and incorporated by reference as if fully set forth herein.

65. Prior to Brand FX's Texas lawsuit against Industrial Models, Brand FX made a specific offer to Industrial Models to enter an agreement restraining interstate trade and commerce in the market for FUBs. Such offer included the following terms:

- Industrial Models refrains from selling the Subject Molds or using the Subject Molds to manufacture FUBs; and
- Brand FX refrains from suing Industrial Models for infringement of non-existent intellectual property rights, which Brand FX knew did not exist.

66. Industrial Models refused such invitation to collude, and Brand FX filed its bad-faith Texas lawsuit against Industrial Models.

67. During the pendency of Brand FX's Texas lawsuit against Industrial Models, Brand FX made a further specific offer to Industrial Models to enter an agreement restraining interstate trade and commerce in the market for FUBs. Such offer included the following terms:

- Industrial Models makes a covenant not to compete against Brand FX;
- Industrial Models relinquishes valuable manufacturing assets, including at least the Subject Molds, to Brand FX;
- Industrial Models issues a general release to Brand FX from any liability to Industrial Models; and
- Brand FX makes a payment of money to Industrial Models.

68. Industrial Models refused such further invitation to collude, and Brand FX continued to prosecute its bad-faith Texas lawsuit against Industrial Models.

69. Upon information and belief, Brand FX also pressured at least one other entity (*i.e.*, an entity other than Industrial Models) active in the United States market for FUBs, including at least Badger Truck, to enter into an agreement restraining interstate trade and commerce in the market for FUBs. Upon information and belief, such offer or offers included the following terms, which Brand FX offered in the knowledge that it had no actual right to exclude any other from using the Subject Molds or using any product manufactured therewith:

- offerree refrains from making commercial use of the Subject Molds or trading in FUBs manufactured therewith;
- Brand FX refrains from suing offerree for infringement of (non-existent) intellectual property rights.

70. At least by the conduct alleged herein, Brand FX unlawfully restrained competition in the United States market for FUBs, for example by causing stoppage and reduction in output

by one or more competitors of Brand FX, including at least Industrial Models, by substantially excluding Industrial Models from the United States market for FUBs, and by imposing crippling costs on Industrial Models at a time when it was a new market entrant.

71. But for Brand FX's conduct, including at least as alleged herein, the United States market for FUBs would presently be and in recent years would have been characterized by greater product choice, greater price competition, greater competition with respect to quality, greater competition with respect to design and, upon information and belief, lower prices than presently exist and than have existed. Such conditions would have redounded to the specific benefit of the consuming public, the specific benefit of Industrial Models as a competitor in the United States market for FUBs, and the specific benefit of other competitors in such market.

72. Brand FX has acted in violation of Section 1 of the Sherman Act (15 U.S.C. §1), including at least by Brand FX's conduct as alleged herein.

73. As a direct result of Brand FX's conduct, including at least as alleged herein, Industrial Models has been injured in its business and property and has suffered related damages, and Industrial Models continues to suffer such injury and related damages.

74. Under Section 4 of the Clayton Act (15 U.S.C. §15) Industrial Models is entitled to recover threefold the damages sustained in connection with Brand FX's violation of 15 U.S.C. §1 and also to recover the cost of this suit including a reasonable attorney's fee.

COUNT II - VIOLATION OF SHERMAN ACT §2

75. Paragraphs 1-74 are realleged and incorporated by reference as if fully set forth herein.

76. Brand FX has acted in violation of Section 2 of the Sherman Act (15 U.S.C. §2), including at least by Brand FX's conduct as alleged herein.

77. As a direct result of Brand FX's conduct, including at least as alleged herein, Industrial Models has been injured in its business and property and has suffered related damages, and Industrial Models continues to suffer such injury and related damages.

78. Under Section 4 of the Clayton Act (15 U.S.C. §15) Industrial Models is entitled to recover threefold the damages sustained in connection with Brand FX's violation of 15 U.S.C. §2 and also to recovery the cost of this suit including a reasonable attorney's fee.

**COUNT III - DECLARATORY JUDGMENT OF NON-INFRINGEMENT
OF BRAND FX'S PURPORTED TRADE DRESS RIGHTS**

79. Paragraphs 1-78 are realleged and incorporated by reference as if fully set forth herein.

80. Industrial Models has not infringed any trade dress right owned by Brand FX.

81. No reasonably-foreseeable use by Industrial Models of the Subject Molds will infringe any trade dress right owned by Brand FX.

82. No use by Industrial Models of any product reasonably expected to result from a manufacturing process using the Subject Molds will infringe any trade dress right owned by Brand FX.

83. An actual case or controversy exists between Brand FX and Industrial Models, given the following: In connection with the Subject Molds and products to be made therewith, Brand FX has accused Industrial Models of infringing trade dress rights owned by Brand FX. Brand FX has threatened to file a lawsuit against Brand FX for trade dress infringement, and in fact did file such a lawsuit in Texas, such lawsuit currently having been dismissed without prejudice. Brand FX has not withdrawn its accusation of trade dress infringement against Industrial Models.

84. Industrial Models has been injured and damaged by Brand FX's conduct as alleged herein.

85. Declaratory relief is both appropriate and necessary to establish that Industrial Models has not infringed any trade dress right owned by Brand FX.

**COUNT IV - DECLARATORY JUDGMENT OF NON-INFRINGEMENT
OF BRAND FX'S PURPORTED PATENT RIGHTS**

86. Paragraphs 1-85 are realleged and incorporated by reference as if fully set forth herein.

87. Industrial Models has not infringed any United States patent owned by Brand FX.

88. No reasonably-foreseeable use by Industrial Models of the Subject Molds will infringe any United States patent owned by Brand FX.

89. No use by Industrial Models of any product reasonably expected to result from a manufacturing process using the Subject Molds will infringe any United States patent owned by Brand FX.

90. An actual case or controversy exists between Brand FX and Industrial Models, given the following: In connection with the Subject Molds and products to be made therewith, Brand FX has accused Industrial Models of infringing patent rights owned by Brand FX. Brand FX has threatened to file a lawsuit against Brand FX for patent infringement. Despite having never specifying any particular patent in connection with its infringement accusations against Industrial Models, Brand FX has not withdrawn its accusation.

91. Industrial Models has been injured and damaged by Brand FX's conduct as alleged herein.

92. Declaratory relief is both appropriate and necessary to establish that Industrial Models has not infringed any patent owned by Brand FX.

**COUNT V - DECLARATORY JUDGMENT OF NON-INFRINGEMENT
OF BRAND FX'S PURPORTED COPYRIGHTS**

93. Paragraphs 1-92 are realleged and incorporated by reference as if fully set forth herein.

94. Industrial Models has not infringed any copyright owned by Brand FX.

95. No reasonably-foreseeable use by Industrial Models of the Subject Molds will infringe any copyright owned by Brand FX.

96. No use by Industrial Models of any product reasonably expected to result from a manufacturing process using the Subject Molds will infringe any copyright owned by Brand FX.

97. An actual case or controversy exists between Brand FX and Industrial Models, given the following: In connection with the Subject Molds and products to be made therewith, Brand FX has accused Industrial Models of infringing copyrights owned by Brand FX. Brand FX has threatened to file a lawsuit against Brand FX for copyright infringement. Despite having never specifying any particular copyright in connection with its infringement accusations against Industrial Models, Brand FX has not withdrawn its accusation.

98. Industrial Models has been injured and damaged by Brand FX's conduct as alleged herein.

99. Declaratory relief is both appropriate and necessary to establish that Industrial Models has not infringed any copyright owned by Brand FX.

**COUNT VI - TORTIOUS INTERFERENCE WITH
PROSPECTIVE ECONOMIC ADVANTAGE**

100. Paragraphs 1-99 are realleged and incorporated by reference as if fully set forth herein.

101. Brand FX has tortiously interfered with Industrial Models' prospective economic advantage, including at least by Brand FX's conduct as alleged herein.

102. As a direct result of Brand FX's tortious interference, including at least as alleged herein, Industrial Models has been injured and suffered related damages, and Industrial Models continues to suffer such injury and related damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Industrial Models, prays that this Court enter judgment in its favor and against Defendant, Brand FX and its subsidiaries, successors, parents, affiliates, officers, directors, agents, servants, and employees as follows:

- A. An entry of judgment in favor of Industrial Models and against Brand FX that Brand FX has violated 15 U.S.C. §1;
- B. An entry of judgment in favor of Industrial Models and against Brand FX that Brand FX has violated 15 U.S.C. §2;
- C. An award of damages to Industrial Models in an amount including threefold the damages sustained by Industrial Models in connection with Brand FX's violation of 15 U.S.C. §1 and recovery of the cost of this suit including a reasonable attorney's fee;
- D. An award of damages to Industrial Models in an amount including threefold the damages sustained by Industrial Models in connection with Brand FX's violation of

15 U.S.C. §2 and recovery of the cost of this suit including a reasonable attorney's fee;

- E. Declaratory judgment that Industrial Models has not infringed any Brand FX trade dress right, that no sale or reasonably-foreseeable use by Industrial Models of the Subject Molds will infringe any Brand FX trade dress right, and that no use, manufacture or sale by Industrial Models of any product reasonably expected to result from a manufacturing process using the Subject Molds will infringe any Brand FX trade dress right;
- F. Declaratory judgment that Industrial Models has not infringed any United States patent owned by Brand FX, that no sale or reasonably-foreseeable use by Industrial Models of the Subject Molds will infringe any such Brand FX patent, and that no use, manufacture or sale by Industrial Models of any product reasonably expected to result from a manufacturing process using the Subject Molds will infringe any such Brand FX patent;
- G. Declaratory judgment that Industrial Models has not infringed any copyright owned by Brand FX, that no reasonably-foreseeable use or sale by Industrial Models of the Subject Molds will infringe any Brand FX copyright, and that no use, manufacture or sale by Industrial Models of any product reasonably expected to result from a manufacturing process using the Subject Molds will infringe any Brand FX copyright.
- H. A permanent injunction enjoining Brand FX, its subsidiaries, successors, parents, affiliates, officers, directors, agents, servants, employees and attorneys from asserting or threatening to assert against Industrial Models, any Industrial Models customer,

any potential customer of Industrial Models and any user of any Industrial Models product, any charge of trade dress infringement in connection with the Subject Molds, any product manufactured using the Subject Molds, or any product reasonably expected to result from a manufacturing process using the Subject Molds;

- I. A permanent injunction enjoining Brand FX, its subsidiaries, successors, parents, affiliates, officers, directors, agents, servants, employees and attorneys from asserting or threatening to assert against Industrial Models, any Industrial Models customer, any potential customer of Industrial Models and any user of any Industrial Models product, any charge of patent infringement in connection with the Subject Molds, any product manufactured using the Subject Molds, or any product reasonably expected to result from a manufacturing process using the Subject Molds;
- J. A permanent injunction enjoining Brand FX, its subsidiaries, successors, parents, affiliates, officers, directors, agents, servants, employees and attorneys from asserting or threatening to assert against Industrial Models, any Industrial Models customer, any potential customer of Industrial Models and any user of any Industrial Models product, any charge of copyright infringement in connection with the Subject Molds, any product manufactured using the Subject Molds, or any product reasonably expected to result from a manufacturing process using the Subject Molds;
- K. To the extent appropriate, a finding that this case is exceptional within the meaning of 15 U.S.C. §1117(a) for reason of Brand FX's conduct, and a related order that Brand FX pay Industrial Models its reasonable attorney's fees and costs;

- L. To the extent appropriate, a finding that this case is exceptional within the meaning of 35 U.S.C. §285 for reason of Brand FX's conduct, and a related order that Brand FX pay Industrial Models its reasonable attorney's fees and costs;
- M. To the extent appropriate, a finding that this case is exceptional within the meaning of 17 U.S.C. §505 for reason of Brand FX's conduct, and a related order that Brand FX pay Industrial Models its full costs including a reasonable attorney's fees;
- N. An entry of judgment in favor of Industrial Models and against Brand FX that Brand FX has tortiously interfered with Industrial Models' prospective economic advantage;
- O. An award of damages adequate to compensate Industrial Models for Brand FX's tortious interference with Industrial Models' prospective economic advantage;
- P. Such other and further relief as this Court or a jury may deem just and proper.

Jury Demand

Industrial Models requests a trial by jury.

Dated this 23rd day of October, 2014.

Respectfully submitted,

INDUSTRIAL MODELS, INC.

By s/Peter N. Jansson
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