

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. **07-22553-CIV-JORDAN/TORRES**

**XAVIER PIERRE TANCOGNE
and GAPARDIS HEALTH AND
BEAUTY, INC., a Florida
Corporation,**

Plaintiffs,

v.

**AQUIMPEX, S.p.A., an
Italian corporation,**

Defendant.

FILED by <u>VK</u> D.C. ELECTRONIC
Sept. 27, 2007
CLARENCE MADDOX CLERK U.S. DIST. CT. S.D. OF FLA. - MIAMI

COMPLAINT

Plaintiffs, Xavier Pierre Tancogne (“Tancogne”) and Gapardis Health & Beauty, Inc. (“Gapardis”), (collectively “Plaintiffs”), by and through their undersigned attorney, for their Complaint against the Defendant, alleges as follows:

I. The Nature of the Action

1. This action seeks injunctive and monetary relief for trademark infringement in violation of Sections 32 and 43 of the Lanham Trademark Act (15 U.S.C. §§ 1114 and 1125), trade dress infringement and federal unfair competition, in violation of Section 43(a) of the Lanham Trademark Act (15 U.S.C. § 1125(a)), compensatory and punitive damages for unfair competition under Florida common law and for violation of Florida’s Deceptive and Unfair Trade Practices Act, FLA. STAT. §501.204, and compensatory damages under Florida’s common law for unjust enrichment.

II. The Parties

2. Plaintiff Tancogne is an individual who resides in France.

3. Plaintiff Gapardis was, at all times pertinent, and is, a corporation organized under the laws of Florida with its principal place of business in Miami, Florida, which does business as “The Mitchell Group.”

4. Defendant Aquimpex, S.p.A., (“Aquimpex”) is a corporation organized and existing under the laws of Italy, with a principal place of business at Via Longhi, 21 I-20052, Monza (MI) Italy.

III. Jurisdiction and Venue

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

6. Aquimpex is subject to personal jurisdiction in that it transacts or does business in Florida and it distributes the infringing products which are the subject of this action in Florida.

7. Gapardis has searched diligently for any officer, employee, or agent of Aquimpex in the State of Florida by investigating the database of the Florida Department of State, Division of Corporations, and by investigating telephone directories and Internet sources, and has found no officer, employee, or agent of Aquimpex in the State of Florida.

8. Aquimpex has not designated an agent for service of process with the Secretary of State of Florida, as required by Fla. Stat. §§ 48.091(1), 607.1501, and 607.1507.

9. Pursuant to Fla. Stat. § 48.181(3), Aquimpex, as a corporation which sells tangible personal property, through wholesalers or distributors to persons in this state, “is conclusively presumed to be both engaged in substantial and not isolated activities within this state and operating, conducting, engaging in, or carrying on a business or business venture in this state.”

10. Pursuant to Fla. Stat. § 48.181(1), Aquimpex’s actions in carrying on a business or business venture in the state, “constitutes an appointment . . . of the Secretary of State of the state as their agent on whom all process in any action or proceeding against them . . . arising out of any transaction or operation connected with or incidental to the business or business venture may be served.”

11. Aquimpex is amenable to service of process through service upon the Secretary of State of Florida, as Aquimpex’s agent for to service of process as designated by law, pursuant to Fla. Stat. § 48.181(1), and Fed.R.Civ.Pro. 4(h)(1).

12. Venue is proper in this judicial district, pursuant to 28 U.S.C. § 1391(b)(2), because a substantial part of the events giving rise to the claims occurred in this district, and because a substantial part of the property that is the subject matter of the action is situated within this district, and pursuant to 28 U.S.C. § 1391(c) because Defendant is a corporation which is presently subject to personal jurisdiction in this judicial district.

IV. Background Facts

13. Tancogne conducts business in commerce as a distributor of beauty and skin care products, including the importation and wholesale and retail sales of such products. Among other products, Tancogne distributes and sells soaps, lotions, milks,

creams, and gels for the face and body bearing the trademarks EXCLUSIVE WHITENIZER, FAIR & WHITE, and PARIS FAIR & WHITE.

14. Tancogne is the owner of the following design mark, registered with the United States Patent and Trademark Office:

EXCLUSIVE
Whitenizer

<u>Trademark</u>	<u>Registration No.</u>	<u>Registration Date</u>	<u>Priority Date</u>
EXCLUSIVE WHITENIZER	3,000,734	Sept. 27, 2005	April 4, 2003

Tancogne's registration for EXCLUSIVE WHITENIZER & Design is for products in International Class 3, and includes:

Cosmetics; cosmetic products, namely, cosmetic cleansing creams, cosmetic balls, cosmetic creams for skin care, cosmetic oil, cosmetic pads, non-medicated cosmetic preparations for skin renewal, perfumery, perfumery products, namely, perfumes, eau de cologne and eau de toilet; non-medicated skin care preparations, beauty and skin care products, namely non-medicated body and beauty care preparations, body and beauty care cosmetics, beauty and skin creams for body care; lotions, milks, face and body creams and gels; non-medicated bath salts, oils, gels and lotions; essential oils for personal use, body powder and talcum; shampoos, hair and scalp lotions and gels; personal deodorants; toilet soap; [and] dentifrices.

Gapardis is the exclusive licensee of Tancogne regarding the sale and distribution of EXCLUSIVE WHITENIZER in the United States.

15. Tancogne is also the registrant of the following trademarks, registered with the United States Patent and Trademark Office:

<u>Trademark</u>	<u>Registration No.</u>	<u>Registration Date</u>	<u>Date of first use in commerce</u>
FAIR & WHITE	2,839,374	May 11, 2004	February 1999

<u>Trademark</u>	<u>Registration No.</u>	<u>Registration Date</u>	<u>Date of first use in commerce</u>
PARIS FAIR & WHITE	2,497,918	October 16, 2001	February 1999

Each of these two marks has been assigned by Tancogne to Gapardis. The registrations of FAIR & WHITE and PARIS FAIR & WHITE set forth above are for products in International Class 3, including “beauty and skin care products, namely soaps, lotions, milks, creams and gels for the face and body.”

16. The trade dress of Plaintiffs’ products sold in connection with the marks FAIR & WHITE and PARIS FAIR & WHITE has distinctive features which consumers have come to associate with Plaintiffs’ products.

17. Specifically, with respect to Plaintiffs’ FAIR & WHITE and PARIS FAIR & WHITE marks, Plaintiffs generally employ each of the following design elements:

- a. Packaging in the form of boxes uniformly covered in a distinctive shade of cerise (a deep purplish shade of pink).
- b. A coating over the packaging material which provides a shiny metallic sheen that is reflective of light.
- c. Text on all surfaces of the box except the bottom in a shade that is markedly lighter than the packaging material.

18. Plaintiffs have used these design elements in connection with FAIR & WHITE and PARIS FAIR & WHITE branded skin care products since at least as early as 2005.

19. The EXCLUSIVE WHITENIZER, FAIR & WHITE and PARIS FAIR & WHITE health and beauty products are marketed to an ethnic market which includes persons of African and Caribbean heritage. Gapardis has devoted considerable efforts and

resources to the marketing and promotion of EXCLUSIVE WHITENIZER, FAIR & WHITE and PARIS FAIR & WHITE health and beauty products in such ethnic market in various locations in the United States.

20. Consumers of Plaintiffs' products are familiar with Plaintiffs' EXCLUSIVE WHITENIZER trademark, and with the trade dress used for Plaintiffs' FAIR & WHITE and PARIS FAIR & WHITE branded skin care products, and would be likely to presume that a product bearing EXCLUSIVE WHITENIZER would be sold in packaging featuring the trade dress associated with Plaintiffs' FAIR & WHITE and PARIS FAIR & WHITE branded skin care products.

21. Net sales of EXCLUSIVE WHITENIZER, FAIR & WHITE and PARIS FAIR & WHITE products in the U.S. have been substantial. As the unit cost for these products is small, these sales represent a considerable quantity of product.

22. Products bearing the EXCLUSIVE WHITENIZER, FAIR & WHITE and PARIS FAIR & WHITE trademarks and trade dress have come to be known by the African and Caribbean ethnic markets throughout the United States as health and beauty aids of the highest quality. Therefore, the EXCLUSIVE WHITENIZER, FAIR & WHITE and PARIS FAIR & WHITE trademarks and trade dress and the good will associated with them are of inestimable value to Plaintiffs.

V. Infringements by Aquimpex

23. Aquimpex is marketing products (herein the "Infringing Products") under the name of EXCLUSIVE, using a mark that is confusingly similar to Plaintiffs' registered EXCLUSIVE WHITENIZER trademark, and using packaging and imagery

that are confusingly similar to the trade dress associated with Plaintiffs' registered FAIR & WHITE and PARIS FAIR & WHITE trademarks.

A. Infringement of the Plaintiffs' EXCLUSIVE WHITENIZER trademark by Aquimpex's EXCLUSIVE branded products.

24. Aquimpex is presently manufacturing and selling skin care products under the name EXCLUSIVE.

25. Aquimpex's EXCLUSIVE mark and the trade dress used by Aquimpex for products it distributes under this mark are confusingly similar to Plaintiffs' registered mark and design for EXCLUSIVE WHITENIZER, and to the trade dress used for Plaintiffs' FAIR & WHITE and PARIS FAIR & WHITE branded skin care products.

26. The similarities between Aquimpex's EXCLUSIVE mark and Plaintiffs' registered mark and design for EXCLUSIVE WHITENIZER include the following:

- a. As with Plaintiffs' design, Aquimpex uses the word "EXCLUSIVE."
- b. As with Plaintiffs' design, Aquimpex presents the word "EXCLUSIVE" with one horizontal line suspended above the word and one horizontal line suspended below the word, Aquimpex's packaging features the words used in the mark in all capital letters.
- c. On at least one product, Aquimpex's EXCLUSIVE branded whitening milk, Aquimpex presents the word "EXCLUSIVE" above the words "WHITENING MILK," in the same arrangement that Plaintiffs present the word "EXCLUSIVE" above the word "WHITENIZING."

B. Infringement of Plaintiffs' distinctive trade dress associated with Plaintiffs' PARIS FAIR & WHITE mark and by Aquimpex's trade dress.

27. The trade dress used by Aquimpex for products it distributes under the EXCLUSIVE mark is confusingly similar to the distinctive trade dress associated with Plaintiffs' registered FAIR & WHITE and PARIS FAIR & WHITE marks. The similarities include the following:

- a. Both parties use packaging in the form of boxes uniformly covered in a distinctive shade of cerise (a deep purplish shade of pink).
- b. Both parties use packaging that includes a coating over the packaging material which provides a shiny metallic sheen that is reflective of light
- c. Both parties use packaging that includes text on all surfaces of the box except the bottom in a shade that is markedly lighter than the packaging material.

28. On information and belief, Aquimpex was aware of Plaintiffs' use of the EXCLUSIVE WHITENIZER, and of Plaintiffs' the trade dress used for FAIR & WHITE and PARIS FAIR & WHITE branded skin care products.

29. On information and belief, Aquimpex was aware that customers would be likely to presume that a product bearing EXCLUSIVE WHITENIZER would be sold in packaging featuring the trade dress associated with Plaintiffs' FAIR & WHITE and PARIS FAIR & WHITE branded skin care products, and intended to capitalize on the confusion that would inevitably be caused by Aquimpex's use of the EXCLUSIVE mark in connection with trade dress resembling the trade dress associated with Plaintiffs' PARIS FAIR & WHITE branded skin care products.

**COUNT I: INFRINGEMENT OF REGISTERED
TRADEMARKS UNDER 15 U.S.C. § 1114(1)(a)**

30. Plaintiffs repeat and reallege paragraphs 1 through 29 as if fully set forth herein.

31. In violation of 15 U.S.C. § 1114(1)(a), Defendant used in commerce, without Plaintiffs' consent, either a reproduction, counterfeit, copy or colorable imitation of Plaintiffs' trademarks and trade dress in connection with the sale, offering for sale, distribution, or advertising of products in exactly the same class of goods, which use is likely to cause confusion, or to cause mistake or to deceive.

32. Plaintiffs have been and continue to be damaged by the Defendant above-stated activities and conduct. Defendant has profited thereby and, unless Defendant is enjoined, Plaintiffs' business, goodwill and reputation will suffer irreparable injury which cannot be adequately calculated or compensated for solely by money damages.

**COUNT II: TRADEMARK AND TRADE DRESS
INFRINGEMENT UNDER 15 U.S.C. § 1114(1)(b)**

33. Plaintiffs repeat and reallege paragraphs 1 through 29 as if fully set forth herein.

34. In violation of 15 U.S.C. § 1114(1)(b), Defendant reproduced, counterfeited, copied or colorably imitated Plaintiffs' registered trademarks and Plaintiffs' trade dress and applied such reproduction, counterfeit, copy or colorable imitation to labels and packages intended to be used in commerce upon or in connection with the offering for sale, distribution or advertising of products in exactly the same class of goods, which use is likely to cause confusion, to cause mistake or to deceive.

35. Plaintiffs have been and continue to be damaged by the Defendant's activities and conduct stated above. The Defendant has profited thereby and, unless Defendant is enjoined, Plaintiffs' business, goodwill and reputation will suffer irreparable injury which cannot be adequately calculated or compensated for solely by money damages.

**COUNT III: TRADEMARK INFRINGEMENT
UNDER 15 U.S.C. §1125(a)(1)(A)**

36. Plaintiffs repeat and reallege paragraphs 1 through 29 as if fully set forth herein.

37. In violation of 15 U.S.C. §1125(a)(1)(A), Defendant, in connection with the Infringing Products, used in commerce a word, term, name, symbol, or device, or combination thereof, or a false designation of origin, false or misleading description of fact or false or misleading representation of fact, which was likely to cause confusion or to cause mistake, or to deceive as to the approval of the Defendant's goods by Plaintiffs.

38. Plaintiffs have been and continue to be damaged by the Defendant's activities and conduct stated above. The Defendant has profited thereby and, unless the Defendant is enjoined, Plaintiffs' business, goodwill and reputation will suffer irreparable injury which cannot be adequately calculated or compensated for solely by money damages.

**COUNT IV: TRADEMARK INFRINGEMENT
UNDER 15 U.S.C. §1125(a)(1)(B)**

39. Plaintiffs repeat and reallege paragraphs 1 through 29 as if fully set forth herein.

40. In violation of 15 U.S.C. § 1125(a)(1)(B), Aquimpex, in connection with the sale of the Infringing Products, used a word, term, name, symbol, or device or combination thereof, or a false designation of origin, false or misleading description of fact or false or misleading representation of fact, which in commercial advertising or promotion, misrepresented the nature, characteristics, qualities or geographic origin of the Infringing Products.

41. Plaintiffs have been and continue to be damaged by the Aquimpex's activities and conduct stated above. Aquimpex has profited thereby and, unless Aquimpex is enjoined, Plaintiffs' business, goodwill and reputation will suffer irreparable injury which cannot be adequately calculated or compensated for solely by money damages.

COUNT V: DECEPTIVE AND UNFAIR TRADE PRACTICES

42. Plaintiffs repeat and reallege paragraphs 1 through 29 as if fully set forth herein.

43. Aquimpex's acts complained of herein are in violation of Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201 et seq., in that Aquimpex's use in Florida of marks, packaging and imagery that are confusingly similar to Plaintiffs' EXCLUSIVE WHITENIZER & Design trademark, and using packaging and imagery that are confusingly similar to the trade dress associated with Plaintiffs' registered FAIR & WHITE and PARIS FAIR & WHITE trademarks constitute unfair competition, and unfair and deceptive acts and practices in the conduct of trade and commerce in the State of Florida.

44. By reason of Aquimpex's acts herein alleged, Plaintiffs have suffered and, unless Aquimpex is restrained from continuing its wrongful acts, will continue to suffer serious and irreparable harm for which it has no adequate remedy at law.

COUNT VI: FLORIDA COMMON LAW UNFAIR COMPETITION

45. Plaintiffs repeat and reallege paragraphs 1 through 29 as if fully set forth herein.

46. In violation of the common law of the State of Florida, Aquimpex has unfairly competed with Plaintiffs by packaging, labeling and/or selling the Infringing Products.

47. Plaintiffs have been and continue to be damaged by Aquimpex's activities and conduct stated above. Aquimpex has profited thereby and, as a result, Plaintiffs are entitled to punitive damages from Aquimpex.

COUNT VII: FLORIDA COMMON LAW UNJUST ENRICHMENT

48. Plaintiffs repeat and reallege paragraphs 1 through 29 as if fully set forth herein.

49. Based on Aquimpex's infringement of Plaintiffs' products, Aquimpex has unjustly enriched itself at Plaintiffs' expense.

50. Equity and good conscience dictate that Aquimpex not be permitted to retain the profits from their infringement of Plaintiffs' products.

51. Plaintiffs have been damaged by a sum which cannot be ascertained at this time.

52. Plaintiffs have no adequate remedy at law.

RELIEF SOUGHT

WHEREFORE, Plaintiffs demand judgment against the Defendant as follows:

(a) that preliminary and permanent injunctions be issued, pursuant to 15 U.S.C. § 1116, Fla. Stat. § 501.207(b), and Florida common law, enjoining Defendant, its subsidiaries, parents, affiliates, agents, servants, employees, directors, officers and attorneys and those persons or entities in active concert or participation with them:

(i) From using the infringing marks EXCLUSIVE, or any other trademarks and/or trade dress, or reproductions, counterfeits, copies or colorable imitations thereof which infringe Plaintiffs' registered EXCLUSIVE WHITENIZER & Design trademark, or using packaging and imagery that are confusingly similar to the trade dress associated with Plaintiffs' registered FAIR & WHITE and PARIS FAIR & WHITE trademarks, and Plaintiffs' trade dress used in connection with those marks;

(ii) Except for surrendering to Plaintiffs the Infringing Products, from possessing, receiving, manufacturing, assembling, distributing, warehousing, shipping, transshipping, transferring, storing, advertising, promoting, offering, selling, offering or holding for sale, disposing, or in any other manner handling or dealing with any goods, packaging, wrappers, containers and recepticals, and any catalogues, price lists, promotional materials and the like bearing a copy or colorable imitation of the Plaintiffs' trademarks and/or trade dress;

(iii) From infringing the Plaintiffs' trademarks and/or trade dress;

(iv) From otherwise unfairly competing with Plaintiffs;

(v) From using any reproduction, counterfeit, copy or colorable imitation of the Plaintiffs' trademarks and/or trade dress in connection with publicity,

promotion, sale or advertising of goods sold by Defendant, including, without limitation, health and beauty products bearing a copy or colorable imitation of the Plaintiffs' trademarks and/or trade dress;

(vi) From affixing, applying, annexing or using in connection with the same any goods, false description or any representation, including words or other symbols, falsely describing, falsely representing such goods as being those of Plaintiffs and from offering such goods in commerce;

(vii) From using any trademark, trade name or trade dress in connection with the manufacture, sale or distribution of any goods which may be calculated to falsely represent such goods as being connected with, approved by or sponsored by Plaintiffs;

(viii) From destroying, altering, disposing of, moving, removing, concealing, tampering with or in any manner secreting any and all business records, invoices, correspondence, books of account, receipts or any other documents or things relating or referring in any manner to the manufacture, advertising, receiving, acquisition, importation, purchase, sale or offer for sale, distribution, warehousing or transfer of any Infringing Products bearing the Plaintiffs' trademarks and/or trade dress;

(ix) From assisting, aiding or betting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs (i) through (viii) above;

(b) that all materials bearing the infringing marks be ordered seized, impounded and destroyed, pursuant to 15 U.S.C. § 1118;

(c) that Plaintiffs be awarded from the Defendant their damages resulting from Defendant's infringement of Plaintiffs' trademarks and trade dress in an amount to be ascertained at trial, treble damages, and reasonable costs, investigative expenses and attorneys' fees, pursuant to 15 U.S.C. §1117, or an award of statutory damages, pursuant to 15 U.S.C. §1117(c), including reasonable costs, investigative expenses and attorneys' fees;

(d) that Plaintiffs be awarded attorney's fees as a prevailing party, pursuant to FLA. STAT. § 501.2105;

(e) that Plaintiffs be awarded punitive damages for Defendant's willful infringement of Plaintiffs' trademarks and trade dress in an amount to be ascertained at trial, pursuant to 15 U.S.C. § 1117 and FLA. STAT. § 768.73;

(f) that Plaintiffs be awarded from the Defendant an amount to be ascertained at trial, for unfair competition and/or unjust enrichment, pursuant to 15 U.S.C. § 1117 and Florida common law; and

(g) that Plaintiffs be awarded such other and further relief as may be just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury of all issues so triable.

Dated: September 27, 2007.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David M. Rogero", is written over a horizontal line.

David M. Rogero, Esq.
Florida Bar No. 212172
David M. Rogero P.A.
2625 Ponce de Leon Boulevard, Suite 280
Coral Gables, FL 33134
Telephone: 305-441-0200
Facsimile: 305-460-4099
E-mail: dmrogero@dmrpa.com

Attorney for Plaintiffs

JS 44 (Rev. 11/05)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

I. (a) PLAINTIFFS

Xavier Pierre Tancogne and Gapardis Health and Beauty, Inc.

(b) County of Residence of First Listed Plaintiff France
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

David M. Rogero, David M. Rogero, P.A., 2625 Ponce de Leon Blvd.,
Suite 280, Coral Gables, FL 33134, 305-441-0200

DEFENDANTS

Aquamex, S.p.A.

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT
LAND INVOLVED.

Attorneys (If Known)

(d) Check County Where Action Arose: ☒ MIAMI-DADE ☐ MONROE ☐ BROWARD ☐ PALM BEACH ☐ MARTIN ☐ ST. LUCIE ☐ INDIAN RIVER ☐ OKEECHOBEE
HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question
(U.S. Government Not a Party)

☐ 2 U.S. Government Defendant ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State ☐ PTF 1 ☐ DEF 1 Incorporated or Principal Place of Business In This State ☐ PTF 4 ☐ DEF 4

Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business In Another State ☐ 5 ☐ 5

Citizen of Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act (Excl. Veterans) <input type="checkbox"/> 152 Recovery of Defaulted Student Loans <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Banker Influenced and Crypt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Re-filed- (see VI below) ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S).a) Re-filed Case ☐ YES ☒ NOb) Related Cases ☐ YES ☒ NO

(See instructions second page):

JUDGE

DOCKET NUMBER

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. ss 1114, 1125; 28 U.S.C. s 2201

LENGTH OF TRIAL via _____ days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD

DATE

FOR OFFICE USE ONLY

AMOUNT

RECEIPT #