

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Horizon Global Americas Inc.,)	
)	
<i>Plaintiff,</i>)	Case No. 22-cv-2523
v.)	
)	
THE PARTNERSHIP AND.)	
UNINCORPORATED ASSOCIATION)	
IDENTIFIED ON SCHEDULE "A,")	
)	
)	
<i>Defendant.</i>)	

COMPLAINT

For its complaint against the entity identified on Schedule A hereto ("Defendant") plaintiff Horizon Global Americas Inc. ("Horizon") states as follows:

NATURE OF ACTION

1. Horizon is one of the world's leading manufacturers of towing and trailering equipment.
2. Horizon is home to some of the most recognized brands in the towing and trailering industry, including Tekonsha®.
3. As part of its Tekonsha brand, Horizon (and its predecessors) manufacture and sell a brake controller known as the Tekonsha P3 Brake Controller (the "Tekonsha Brake Controller").
4. The Tekonsha Brake Controller is a popular, reliable, and high quality trailer brake controller that has been available to consumers since December 9, 2014. To date, it has over 5,000 reviews on Amazon, 88% of which are 5-stars.
5. However, with success comes imitation. Companies began selling inferior

counterfeits of the Tekonsha Brake Controller at much lower prices that copy and infringe the Tekonsha Brake Controller trade dress in a blatant attempt to capitalize on Tekonsha Brake Controller's distinctive product design and its recognition in the marketplace.

6. Such infringers have gone so far as to blatantly include the "Tekonsha®" registered trademark on unauthorized products that are neither sold or authorized by Horizon or otherwise provided in connection with the Tekonsha® registered trademark, and at times have even included identical product manuals with the trademark of Horizon's predecessor Cequent Performance Products, Inc. ("Cequent") – in an attempt to confuse consumers and capitalize on Horizon's goodwill.

7. Most recently, Horizon successfully shut down a counterfeiter on Amazon, identified as "FINDAUTO."

8. FINDAUTO was offering for sale a direct counterfeit of the Tekonsha Brake Controller, going so far as to include Horizon's trademarks and reference to Horizon's predecessor, Cequent.

9. Because of FINDAUTO's blatant infringement in direct violation of Amazon's policies, Horizon was able to successfully and promptly shut the seller down via Amazon's internal complaint system.

10. However, upon information and belief, it appears that FINDAUTO returned under a new alias, identified on Schedule A, to set up a new store-front on Amazon, in order to offer for sale its counterfeit Tekonsha Brake Controllers, but this time, with Horizon's trademarks removed. This is common practice when enforcing intellectual property rights against counterfeiters on Amazon.

11. Defendant is selling counterfeit versions of the Tekonsha Brake Controller

(the “Counterfeit Product”) on Amazon.com.

12. Furthermore, upon information and belief, Defendant created this seller profile on Amazon in an effort to circumvent its previously shut down account by which it was also selling Counterfeit Products.

13. Horizon now sues to stop DEFENDANT, to protect its customers, and to protect Horizon’s sales, reputation, and goodwill.

PARTIES

14. Horizon is a Delaware corporation with a principal place of business at 47912 Halyard Dr. #100, Plymouth, MI 48170. Horizon is the predecessor of Cequent Performance Products, Inc.

15. Upon information and belief, Defendant is an individual and/or business entity of unknown makeup who owns and/or operates one or more store fronts on Amazon and resides in China or other foreign jurisdictions. Defendant conducts business or assists in business conducted throughout the United States (including within the State of Illinois and this Judicial District) through the manufacturing, online advertising, sale and offering for sale, and importation and distribution of products that use counterfeit and infringing versions of the Plaintiff’s Tekonsha Brake Controller operating under at least the seller alias identified on Schedule A. Defendant uses a pseudonym, and does not maintain any online presence (other than selling on Amazon.com under its pseudonym), and use other tactics to conceal its identifies and to hide the full extent of its counterfeiting operations.¹

¹ The seller name is listed on Schedule A hereto. Horizon is moving contemporaneous with this motion for leave to file Schedule A under seal to avoid the Defendant learning of this case and consequently working to avoid service of the summons and complaint.

JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction over Horizon's Lanham Act claims under 15 U.S.C. § 1121 and under 28 U.S.C. § 1331 because they arise under federal law.

17. This Court has supplemental subject matter jurisdiction over Horizon's state law claims under 28 U.S.C. § 1367 because those claims are so related to the Lanham Act claims that together the claims are part of the same case or controversy under Article III.

18. This Court has personal jurisdiction over Defendant because, among other things, the Defendant is intentionally confusing and harming Illinois residents, doing business in Illinois, offering to sell counterfeit goods in Illinois to Illinois individuals and businesses, actually selling products to Illinois individuals and organizations and shipping products into Illinois, including the Counterfeit Products, and receiving payments from Illinois residents.

19. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, and this Court may properly exercise personal jurisdiction over Defendant, since the Defendant directly targets business activities toward consumers in the United States, including Illinois, through its operation of, or assistance in the operation of, the fully interactive, e-commerce store(s) on Amazon that target United States consumers.

20. Venue is proper under 28 U.S.C. § 1391 because the Defendant is subject to personal jurisdiction in this district under Illinois law and, therefore, "resides" in the Northern District of Illinois according to federal law.

FACTS

Horizon's Trade Dress

21. For decades, Horizon and its predecessors and affiliates have continually designed, produced, manufactured, distributed, and marketed a wide array of high-quality and custom-engineered products and accessories for trailer equipment manufacturers, wholesaler-distributors, and retail markets in North America and Europe.

22. Horizon is committed to providing cutting-edge and best-in-class products to its consumers, and the Tekonsha Brake Controller is no exception.

23. Intelligent trailer braking is the key to the success of the Tekonsha product line. What began as a manufacturer of RV stairs and steps in 1964, Tekonsha has evolved to become a trusted name in towing safety.

24. The core product line consists of brake controllers, including the Tekonsha Brake Controller, which has been trusted by professional towers and weekend warriors for worry-free travel alike.

25. The Tekonsha Brake Controller employ a distinctive trade dress. The look and feel of the Tekonsha Brake Controller, as comprised by the design of the device; the size, shape, total image, and overall appearance of the device; and the arrangement, size, and style of the ornamental features on the device, is referred to here collectively as the "Tekonsha Brake Controller Trade Dress."

26. Some of the features that distinguish the Tekonsha Brake Controller Trade Dress include (but are not limited to):

- a. A uniquely designed body which contains contours on both sides, and ornamental raised portions in the front of the product to make for a distinctive look when facing the product from any perspective;
- b. Ornamental and stylized control buttons on the front screen; and
- c. A front panel which is in a unique and distinctive shape.

27. Since at least 2014, Horizon has generated significant revenue from the sale of its Tekonsha Brake Controllers that incorporate the Tekonsha Brake Controller Trade Dress.

28. Since at least 2014, Horizon has significantly invested in marketing, advertising, and promoting its Tekonsha Brake Controllers with the Tekonsha Brake Controller Trade Dress in the relevant channels of trade throughout the United States and internationally.

29. As a result of the sales, marketing and distinctiveness of the product itself, the trade dress has acquired secondary meaning.

30. Horizon has the exclusive right to use the Tekonsha Brake Controller Trade Dress in connection with trailer brake controls by virtue of its development, creation, and use of that trade dress and the timing thereof.

31. Since 2014, Horizon has promoted its Tekonsha Brake Controllers on its website at tekonsha.com and elsewhere, including Amazon.

32. Horizon sells its Tekonsha Brake Controllers throughout the United States and internationally.

33. Through its website, advertising, other promotional efforts, and sales, Horizon has enhanced the reputation of the Tekonsha brand, and it has caused the Tekonsha Brake Controller Trade Dress to grow in strength, value, and recognition to the point that the product trade dress now carries strong secondary meaning.

34. Horizon's distributors, retailers, customers, and end users have come to associate the distinctive Tekonsha Brake Controller Trade Dress with Horizon and its brand Tekonsha.

Defendant's Infringing Business

35. Defendant is an individual and/or business entity of unknown makeup who owns and/or operates one or more e-commerce stores under at least the alias identified on Schedule A, upon information and belief FINDAUTO and/or other seller aliases not yet known to Horizon. Upon information and belief, Defendant resides and/or operates in China or other foreign jurisdictions, or redistributes products from the same or similar sources in those locations. Defendant has the capacity to be sued pursuant to Federal Rule of Civil Procedure 17(b).

36. The success of the Tekonsha Brake Controller has led to counterfeiting and infringement. As such, Horizon is working to combat the counterfeiting actions complained of herein.

37. These anti-counterfeiting efforts include investigating suspicious e-commerce listings on Amazon which offer for sale Counterfeit Products to consumers in the United States.

38. Because of how easy it is for anyone with an Internet connection to become a “seller” with a fake name and to then sell products on websites like Amazon.com from anywhere in the world, Defendant has taken advantage of that e-commerce site to import Counterfeit Products into the U.S.

39. Defendant operated one or more e-commerce stores under the alias listed on Schedule A attached hereto.

40. On information and belief, Defendant also engages in fraudulent conduct when setting up its seller account on Amazon, by providing false, misleading, or incomplete information to Amazon. This allows Defendant to remain virtually anonymous and

untraceable, preventing discovery of its true identity, potential connection with other aliases, and ultimately cover up the scope of its counterfeiting operations.

41. On information and belief, Defendant is aware of the Tekonsha Brake Controller success and popularity, and as such, has set up its Amazon seller account to directly target consumers of the Tekonsha Brake Controllers, and in some cases, mislead consumers into believing the Counterfeit Products are authorized or sold by Horizon.

42. For example, Defendant includes in the Counterfeit Product an instruction manual designed to mislead consumers into thinking that such product is the Tekonsha Brake Controller, or least manufactured or distributed by Horizon.

43. These instruction manuals reference Horizon's predecessor "Cequent Performance Products, Inc." in an effort to falsely draw association with the Counterfeit Product. (A copy of the instruction manual is attached hereto as Exhibit 1).

44. Defendant is knowingly and willfully manufacturing, importing, distributing, offering for sale, and selling Counterfeit. Defendant, without any authorization or license from Horizon, has knowingly and willfully used and continues to use the Tekonsha Brake Controller Trade Dress in connection with the advertisement, distribution, offering for sale, and sale of Counterfeit Products into the United States and Illinois over the Internet.

45. Defendant has copied the Tekonsha Brake Controller Trade Dress in various ways, including by mimicking the distinctive features of the Tekonsha Brake Controller Trade Dress such as the distinctive shape of the device, ornamental buttons and display screen, the texture and overall look and feel of the product, and by copying the product and its features as a whole. Defendant even goes to such lengths as to list the Counterfeit

Products on Amazon in ways which mislead a consumer to believe the products are provided by Horizon under its Tekonsha brand.

46. Furthermore, Defendant's Counterfeit Product with the same size, shape, color scheme and general overall design of the Tekonsha Brake Controller is sold at a lower price.

47. Defendant's Counterfeit Product is packaged the same way as the Tekonsha Brake Controller, in furtherance of attempting to confuse consumers and trade off of Horizon's goodwill.

48. An example side-by-side comparison is below, showing the Tekonsha Brake Controller on the left, and the Counterfeit Product on the right.



49. Defendant has intentionally copied the Tekonsha Brake Controller Trade Dress with the bad intent of trading on the goodwill and reputation of the Tekonsha Brake

Controllers to benefit itself to the detriment of Horizon and its customers.

50. By copying the Tekonsha Brake Controller Trade Dress, Defendant is likely to cause confusion (and has caused actual confusion), or cause mistake, or deceive as to (a) the affiliation, connection, or association between Defendant and Horizon, or (b) the origin, sponsorship, or approval of Defendant's or Horizon's goods, services, or commercial activities.

51. In fact, several customers have left reviews questioning the authenticity of the Counterfeit Products, and questioning whether they are counterfeit versions of the Tekonsha Brake Controller.

COUNT I
Trade Dress Infringement under the Lanham Act
15 U.S.C. § 1125

52. Horizon realleges and incorporates by reference paragraphs 1-51 as though fully stated herein.

53. The Tekonsha Brake Controller Trade Dress is valid and legally enforceable.

54. Horizon exclusively owns the Tekonsha Brake Controller Trade Dress.

55. At least due to years of exclusive commercial use, substantial advertising, substantial sales, number of customers, and established place in the market, the Tekonsha Brake Controller Trade Dress has acquired distinctiveness in the marketplace, such that those in the relevant channels of distribution readily associate the Tekonsha Brake Controller Trade Dress with Horizon and its well-known trailer accessory Tekonsha brand.

56. Moreover, the fact that Defendant intentionally copied the Tekonsha Brake Controller Trade Dress to confuse customers and make undeserved sales is additional proof of acquired distinctiveness, aka secondary meaning.

57. By using the Tekonsha Brake Controller Trade Dress to market and sell the brake controllers, Defendant has caused, and is likely to continue to cause, confusion in the minds of purchasers between Horizon, Defendant, and their respective goods and services.

58. Horizon has no control over the quality of the counterfeit goods that Defendant is promoting, advertising and selling under the Tekonsha Brake Controller Trade Dress, with the result that Horizon's valuable goodwill in its Tekonsha Brake Controller Trade Dress will be damaged irreparably by Defendant's infringing activities.

59. The sales of inferior quality counterfeit brake controllers further poses a risk of serious harm to users who may be deceived into believing that they are genuine, as such devices are literally used to control brakes of trailers, and the malfunction of which could be a serious issue of safety.

60. Because, based upon information and belief, Defendant re-launched its store under a separate cover once its former alias was shut down by Horizon, it is unknown how effective the Counterfeit Products are controlling trailer brake systems. However, the lesser price point alone could suggest a lesser quality, further harming Horizon's goodwill and reputation.

61. Defendant has infringed Horizon's trade dress rights under the Lanham Act.

62. Defendant's infringement of Horizon's trade dress rights was and is willful and intentional.

63. Defendant's trade dress infringement has damaged Horizon financially by causing lost sales and in other ways, and has caused Horizon irreparable harm, which will continue unless Defendant's unlawful conduct is enjoined by this Court.

COUNT II
Unfair Competition under the Lanham Act
15 U.S.C. § 1125

64. Horizon realleges and incorporates by reference paragraphs 1-63 as though fully stated herein.

65. As described above, Defendant has used words, terms, names, symbols, devices, and combinations thereof, in ways that are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendant (and its goods and services), on the one hand, and Horizon (and its goods and services under the Tekonsha brand), on the other.

66. Defendant's willful and unlawful activities, as described above, are unfair competition under the Lanham Act.

67. Defendant's unfair competition has damaged Horizon and caused it irreparable harm, which will continue unless Defendant's unlawful conduct is enjoined by this Court.

COUNT III
Deceptive Trade Practices
815 ILCS §§ 510/1, et seq.

68. Horizon realleges and incorporates by reference paragraphs 1-67 as though fully stated herein.

69. Defendant's aforesaid unauthorized uses of the Tekonsha Brake Controller Trade Dress constitutes knowing and willful engagement in deceptive trade practices within the meaning of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS §§ 510/1 *et seq.* by passing off goods, causing likelihood of confusion or misunderstanding as to the source, origin, or sponsorship of the parties' respective products or services; causing likelihood of confusion or of misunderstanding as to the affiliation, connection, or association of Defendant or its products with Horizon; and using deceptive representations or designations of origin in connection with Defendant's products.

70. The unauthorized use by Defendant of the Tekonsha Brake Controller Trade Dress is causing and is likely to cause damages, substantial injury to the public and to Horizon and Horizon has no adequate remedy at law for this injury.

71. Horizon is entitled to damages, injunctive relief and to an award of its costs and attorney's fees under 815 ILCS § 510/3.

COUNT IV
Common Law Unfair Competition

72. Horizon realleges and incorporates by reference paragraphs 1-71 as though fully stated herein.

73. Defendant's aforesaid unauthorized uses of the Tekonsha Brake Controller Trade Dress constitutes common law trademark infringement in violation of the common law of the various states, including the state of Illinois.

74. Defendant's conduct is willful, deliberate, intentional, and in bad faith.

75. Defendant's unfair competition has damaged Horizon and caused it irreparable harm, which will continue unless Defendant's unlawful conduct is enjoined by this Court.

COUNT V
Unjust Enrichment

76. Horizon realleges and incorporates by reference paragraphs 1-75 as though fully stated herein.

77. Through its unlawful activities, as described above, Defendant has obtained benefits, including business and goodwill, which rightfully belong to Horizon.

78. Defendant has not compensated Horizon for the benefits that it wrongfully obtained, despite justice and equity requiring it to do so.

79. Defendant has unjustly enriched itself by obtaining and retaining the ill-gotten benefits of its unlawful activities.

80. Defendant's receipt and retention of the benefits of its unlawful activities is unjust enrichment.

81. Defendant's unjust enrichment has damaged Horizon and caused it irreparable harm, which will continue unless Defendant's unlawful conduct is enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Horizon asks this Court to enter judgment in its favor against Defendant as follows:

1. Enter judgment that Defendant has violated the Lanham Act, 15 U.S.C. §1125; 815 ILCS §§ 510/1, *et seq.*, and Illinois common law, and that such violations were willful and intentional, making this an exceptional case;
2. Preliminary and permanent injunctive relief, barring Defendant, its officers, agents, servants, employees, attorneys, and those who are in active concert or participation with any of those persons from:
 - a. Manufacturing, distributing, selling, offering for sale, holding for sale, or advertising any goods in association with a trade dress, a trademark mark, or other matter that is a colorable imitation of, or that bears a confusing similarity to, the Tekonsha Brake Controller Trade Dress, including the Counterfeit Products.
 - b. Otherwise infringing Horizon's trademark or trade dress rights;
 - c. Otherwise engaging in any deceptive trade practice; and
 - d. Otherwise unfairly competing with Horizon.
3. An order that, upon Horizon's request, those with notice of the injunction, including, without limitation, any online marketplace platforms such as Amazon, shall disable and cease displaying any advertisements used by or associated with Defendant in connection with the sale of counterfeit and infringing goods using the Tekonsha Brake Controller Trade Dress;

4. An order that Defendant and all those assisting or acting in concert with Defendant deliver up for destruction all labels, signs, prints, packages, labels, advertisements, products and any other matter bearing matter that is confusingly similar to the Tekonsha Brake Controller Trade Dress.
5. For statutory damages, actual damages and increased and punitive damages as allowed by the law—including, but not limited to, those increased damages authorized by 15 U.S.C. § 1117;
6. For Horizon's costs and expenses, reasonable attorneys' fees pursuant to 15 U.S.C. § 1117 and prejudgment interest at the maximum legal rate; and
7. For such other and further relief as may be just and equitable.

JURY DEMAND

Plaintiff Horizon Global Americas Inc. hereby demands and requests a trial by jury on all issues so triable.

Dated: May 12, 2022

Respectfully submitted,

HORIZON GLOBAL AMERICAS INC.,

By: /s/ Matthew J. Cavanagh
One of their attorneys

Matthew J. Cavanagh
Stephen J. Rosenfeld
Donielle F. Robinson

MCDONALD HOPKINS LLC
600 Superior Avenue, Suite 2100
Cleveland, Ohio 44144
Phone: (216)348-5730
mcavanagh@mcdonaldhopkins.com

300 North LaSalle, Suite 1400
Chicago, IL 60654
Phone: (312) 642-6103
srosenfeld@mcdonaldhopkins.com
drobinson@mcdonaldhopkins.com

Attorneys for Horizon Global Americas Inc.,