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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

NEWBORN BROS. CO., INC.,

Plaintiff,

v.

ALBION ENGINEERING COMPANY,

Defendant.

Civil Action No.

Civil Action

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

COMPLAINT

Plaintiff NEWBORN BROS. CO., INC. (hereinafter "Newborn" or "Plaintiff") by way of Complaint against ALBION ENGINEERING COMPANY ("Albion" or "Defendant"), alleges as follows:

NATURE OF THE ACTION

1. This is an action for false and misleading advertising, product labeling, and product packaging under the Lanham Act § 43(a) (15 U.S.C. § 1125(a)) and for unconscionable commercial practice, fraud, misrepresentation, and knowing concealment or omission of material facts in the sale and advertisement of Albion's manual dispensing guns and caulking accessories in violation of New Jersey law.

PARTIES

2. Plaintiff Newborn is a Virginia corporation with its principal place of business located at 8221 Preston Court, Suite D, Jessup, Maryland 20794-9638.

3. Defendant Albion is a New Jersey corporation, with its principal place of business located in Burlington County at 1250 North Church Street, Moorestown, New Jersey 08057-1102.

JURISDICTION AND VENUE

4. Jurisdiction over the parties and subject matter of this action is proper in this Court pursuant to 15 U.S.C. § 1121 (actions arising under the Lanham Act) and 28 U.S.C. § 1331 (actions arising under the laws of the United States). This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a) over the claims in this Complaint that arise under New Jersey law.

5. This Court has personal jurisdiction over Albion because it is a New Jersey corporation, because its principal place of business is located in Burlington County at 1250 North Church Street, Moorestown, New Jersey 08057-1102, and because it conducts business in the State of New Jersey. Albion markets its manual dispensing guns and caulking accessories to distributors, including: C.R. Laurence Co., Inc. located at 1511 Lancer Drive, Moorestown, New Jersey 08057-4232; and Kenseal Construction Products located at 799 Edwards Road, Parsippany, New Jersey 07054 and at 1702 Industrial Highway at Rt. 130, Cinnaminson, New Jersey 08077; and Allied Building Products Corp. having multiple New Jersey locations and headquartered at 15 East Union Ave in East Rutherford, New Jersey 07073. These distributors sell Albion's manual dispensing guns and caulking accessories to consumers.

6. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b), (c).

STANDING

7. Plaintiff Newborn has standing to bring this action under Section 43 of the Lanham Act, 15 U.S.C. § 1125(a), because Newborn's manual dispensing guns and caulking accessories compete with Albion's manual dispensing guns and caulking accessories and because Newborn has been and is likely to be damaged by Albion's false and misleading advertising, product labeling, and product packaging as to the

geographic origin and location of manufacture of its manual dispensing guns and caulking accessories.

8. Plaintiff Newborn has standing to bring this action under New Jersey common law because it is injured by unfair competition of Albion in the form of false representations of the geographic origin and location of manufacture of its manual dispensing guns and caulking accessories and because it is injured by Albion's intentional concealment and material omission of the true location of manufacture and geographic origin of such goods.

STATEMENT OF FACTS

9. This action seeks under federal and state statutory law redress for Albion's deliberate and unlawful false and misleading advertising, product origin marking, and product packaging of the merchandise subject to this action, *i.e.* (a) its manual Deluxe and Special Deluxe dispensing guns that use the Deluxe and Special Deluxe "drive handle assemblies" (hereafter "Deluxe and Special Deluxe dispensing guns"), (b) its manual B-Line dispensing guns (hereafter "B-Line dispensing guns"), and (c) its caulking accessories (hereafter "caulking accessories") (collectively "subject merchandise"), which have been and are being marked, packaged, advertised and sold based on false and misleading representations of the true manufacturer and geographic origin and based on

knowingly concealed and omitted material facts about the true manufacturer and geographic origin.

10. Newborn further seeks redress for damages resulting from violations of New Jersey common law arising from Albion's intentionally false advertising and intentionally false product and packaging country of origin marking and knowing concealment and/or omission of material facts as to the true manufacture and country of origin of the subject merchandise.

11. Newborn also seeks redress for violations of New Jersey common law which have resulted as a consequence of Albion marketing the subject merchandise to distributors based on representations that are actually false and which caused distributors to substitute the subject merchandise for Newborn's dispensing guns and caulking accessories, depriving Newborn of sales of its dispensing guns and caulking accessories.

**Albion Imports the Subject Merchandise From Taiwan
and Advertises and Sells It Throughout the United States**

- **Albion's Imported Subject Merchandise**

12. Albion's Deluxe and Special Deluxe manual dispensing gun models use Albion's Deluxe and Special Deluxe drive handle assemblies.

13. These Deluxe and Special Deluxe models include, but are not limited to, models having the prefix DL-24, DL-32, DL-45, DL-59, DL79, 103, 440, 770, and 139-3, and models 505-9P, 505-9U, 505-10P, 505-12P, 590-4P, 778-1U, 778-2U, 778-3U, 778-4U, 794-1U, 7994-1P, 806-2P, 857-1P, 937-1U, and 946-1U.

14. Albion's caulking accessories include but are not limited to nozzles, spatulas, spatula kits, caulk knives, and mixing paddles.

15. Albion's Deluxe and Special Deluxe dispensing guns may be sold in three basic MCU variations, *i.e.*, bulk guns, sausage guns, and cartridge guns.

16. Bulk type dispensing guns have a barrel designed to be filled by hand with dispensing material sold separately in bulk containers, such as pails or buckets.

17. Sausage type dispensing guns have a barrel of a standard size to hold and dispense material sold separately in sausage-shaped casings of a standard size.

18. Cartridge type guns have rails or an open top or an open side barrel-shaped holder that accommodates separately sold drop-in cartridges of dispensing material (hereafter "material cartridge") having an integrated end cap and nozzle.

19. Bulk guns and sausage guns are sold with dispensing material pushers and nozzles that are replaceable and upgradable to task specific versions; and they are not significant factors of competition in sales of dispensing guns.

20. Pushers, also called ejectors, pistons, piston cups and expanders, which consist of one or more parts in a kit, distribute the pressure from the drive handle rod to force the dispensing materials out of the barrel through the nozzle.

21. Pushers vary by material, e.g., leather or synthetic, and shape, e.g., cup shape or finger shape.

22. Nozzles also vary by material, e.g., plastic or metal, and by size and tip shape.

23. The size and shape of a nozzle affects the pressure required to dispense material and the size, shape, and amount of material dispensed.

24. Albion's B-Line dispensing gun models include, but are not limited to, models having a model number that starts with the letter "B" and models having a model number or model prefix B12, B12Q, B26, and B26Q.

25. Albion's B-Line dispensing guns are cartridge guns and epoxy guns as described in paragraphs 20 and 28.

26. Epoxy guns are a type of cartridge gun having a frame that accommodates dual material cartridges of epoxy components that dispense through a single opening or nozzle.

on country of origin, claiming that such Albion products are made in the United States of America or are manufactured or built by Albion in America.

**Newborn's Competitive Goods Directly Compete
With Albion's Subject Merchandise**

37. Newborn, a Virginia corporation, was formed in 1974 and has been and continues to be in the business of importing and distributing dispensing guns sold under its corporate name.

38. Newborn distributes and sells a range of manual bulk, sausage, cartridge and epoxy dispensing gun models, including its 150, RB220, 224, 232, RB245, 250, 255, 316, 324, 330, 332, 373-XSP, 375-XSP, 416, 424, 432 (recently discontinued), 490-GTR, 510, 515-SP, 530, 535-XSP, 624-GTS, 632-GTS, 632C-GTS, 755-XSP, 824-NSS, 832-NSS, 924-XSP, 932-XSP models (hereafter "Newborn's dispensing guns"), and caulking accessories, including spatulas, mixers, and caulk knives (also known as "The PipeKnife[®]") (hereafter "Newborn's caulking accessories" and (collectively "Newborn's competitive goods").

39. Newborn's competitive goods compete directly with Albion's Deluxe, Special Deluxe dispensing guns, B-Line dispensing guns and caulking accessories.

40. Newborn's competitive dispensing guns have features that are comparable to the features of Albion's Deluxe, Special Deluxe, and B-Line dispensing guns with respect to the type of material containment units ("MCUs"), i.e., bulk type, sausage type, or multicomponent/epoxy type; the amount of material contained in the MCUs; the types of piston rod used, e.g., smooth and ratchet rod; and the drive thrust or force to dispense the material contained.

41. Newborn's competitive dispensing guns are used for the same purposes, i.e., are used to dispense the same materials and/or for the same applications or uses, as Albion's Deluxe, Special Deluxe, and B-Line dispensing guns.

42. Newborn's competitive caulking accessories are physically similar and are used for the same purposes as Albion's caulking accessories.

43. With the exception of its PipeKnife[®], Newborn's competitive goods have been and are imported from Taiwan or China.

44. Except for Newborn's domestically made PipeKnife[®], Newborn's competitive goods are marked with their country of origin as "Taiwan," "Made in Taiwan," "China," or "Made in China," as appropriate.

45. Newborn's competitive goods are marketed under the brand name/trade name "Newborn."

46. Newborn imports and sells its competitive goods in New Jersey and throughout the United States through various distributors; and competitive goods are available in all fifty states and the District of Columbia.

**False and Misleading Advertising and Product Marking of
Albion's Subject Merchandise**

47. On the cover of Albion's Owners Guide, Albion falsely advertises that "ALL ALBION PRODUCTS ARE MADE IN AMERICA." (Exhibit "A", Albion Owners Guide cover, attached hereto)

48. "Made in America" is a representation of a U.S.A. geographic origin.

- **Albion's Deluxe, Special Deluxe and B-Line Dispensing Guns**

49. Albion advertises and sells its Deluxe, Special Deluxe, and B-Line dispensing guns falsely representing the products to be manufactured or built by Albion in the United States.

50. The claim in Albion's Owners Guide that "ALL ALBION PRODUCTS ARE MADE IN AMERICA" falsely represents to distributors and their customers that Albion's Deluxe, Special Deluxe and B-Line dispensing guns are made in USA.

51. Upon information and belief based upon Albion's product catalog, Albion falsely advertises to distributors and their customers that Albion's Deluxe and Special Deluxe dispensing guns are manufactured in the United States by Albion by the

representation: “With its [Albion’s] USA manufacturing capabilities the Professional Line has reached standards difficult to match anywhere. The lines in this category include the Special Deluxe, Special Deluxe Plus, Ultra, Deluxe, Utility, Utility Plus, Air, Cordless, and Push-Pull.”

52. Albion sells all of its Deluxe and Special Deluxe dispensing guns with the stamped in metal marking “U.S.A.”, which is a geographical origin designation for the United States of America.

53. Albion sells its Deluxe and Special Deluxe dispensing guns without any foreign country of origin marked on the dispensing gun or its immediate container.

54. Albion markets its Deluxe and Special Deluxe dispensing guns without disclosure of the foreign country of origin of the products.

55. The immediate container in which Albion’s Deluxe and Special Deluxe dispensing guns are sold contains Albion’s Owners Guide that claims on its cover that “ALL ALBION PRODUCTS ARE MADE IN AMERICA.”

56. The handle of Albion’s Deluxe and Special Deluxe dispensing guns are stamped with the abbreviation “Phila., PA. U.S.A.,” a reference to the location Philadelphia, Pennsylvania, United States of America.

57. Upon information and belief based on commercially available shipment records, Albion's Deluxe and Special Deluxe dispensing guns are not made in Philadelphia, nor are they made elsewhere in the United States.

58. Albion is not located in Philadelphia, PA.

59. According to a news release dated December 20, 2004 published on Albion's web site, Albion had a facility in Philadelphia that Albion reports it closed more than seven years ago, before January 1, 2005.

60. Upon information and belief, stamping Albion's Deluxe and Special Deluxe drive handle assemblies with the mark "Phila. PA., U.S.A." is a separate production step for which an additional expense is incurred.

61. Upon information and belief, there is no commercial reason for Albion to mark its Deluxe and Special Deluxe dispensing guns with an abbreviation of the location Philadelphia, PA, USA other than as part of a scheme to deceive distributors and customers into a false belief that such dispensing guns are manufactured or made by Albion in the United States in Philadelphia.

62. The individual product bulletins for Albion B-Line products and Albion's model 139-3 manual dispensing guns falsely claims that Albion manufactures and builds these products.

63. Product Bulletin 289 covering Albion model 139-3 includes the claim that Albion is the manufacturer who builds this product through the use of the representation that “Albion Engineering - We’re a third generation America manufacturer recognized as a leader in the field of dispensing technologies. We design, develop and build High End Dispensing Tools and Accessories for the most demanding professional and industrial applications (hereafter “Albion’s manufacturer and build claim.”).”

64. Albion’s manufacturer and build claim is made in Bulletin 281C for B-Line Sausage and Cartridge Tools, Bulletin 383A B-Line Two Component Gun for 300/300ml and 300/150ml Cartridges, Bulletin 284A B-Line Two Component Gun for 300/30ml and 10oz. Cartridge, Bulletin 288 B-Line 20oz. Sausage Gun, Convertible to 10oz. Cartridge and Bulk, and other B-Line product bulletins.

65. The MCU of Albion’s model B12, B12Q, B26 and B26Q of B-Line dispensing guns is printed prominently and conspicuously with large bold lettering on the MCU stating: “**75 Year History – USA Manufacturer & Designer.**”

66. The claim “**75 Year History – USA Manufacturer & Designer**” on the MCU of the B12, B12Q, B26, and B26Q manual dispensing guns is printed using a lettering size and contrasting color in a position on the dispensing guns to be readily

visible to a customer when the B12, B12Q, B26, and B26Q manual dispensing guns are displayed by a distributor on a store wall or showcase shelf for sale.

67. Neither Albion nor another company in the United States is the manufacturer of Albion's B12, B12Q, B26, and B26Q or other B-Line dispensing guns.

68. Upon information and belief based on shipment records, the B12, B12Q, B26 and B26Q and other B-Line guns are made in Taiwan and sold to Albion by Kent Bridge Enterprise Co. Ltd. or Asia Global Enterprises Ltd. located in Taiwan.

69. Albion's B12, B12Q, B26, and B26Q and other B-Line dispensing guns are sold with a paper hang tag on the drive handle assembly that is printed on the front side with a diagram of the drive assembly and lubrication instructions and is printed on the reverse side with small, inconspicuous lettering stating "Made in Taiwan."

70. The "Made in Taiwan" geographic origin mark hang tag on the handle of Albion's B-Line dispensing guns is not conspicuous.

71. The "Made in Taiwan" geographic origin mark hang tag on the handle of Albion's B-Line dispensing guns is not closely proximate to the "USA Manufacturer" claim on the MCU of the guns.

78. Upon information and belief based on shipment records, Albion's caulking accessories imported from Taiwan are made in Taiwan and sold to Albion by Kent Bridge Enterprise Co. Ltd. or Asia Global Enterprises Ltd. located in Taiwan.

79. Upon information and belief based on the description of the products in shipment records which indicates their finished condition as imported, Albion performs no post-importation manufacturing or assembly operations on the caulking accessories it imports from Taiwan.

80. Albion sells its caulking accessories imported from Taiwan without any foreign country of origin marked on the product or their immediate container.

**Albion's Knowledge of Marking Requirements
and the Deceptive Effect of its Advertising**

81. Upon information and belief based on shipment records, Albion has direct contact with the suppliers of the subject merchandise in Taiwan giving it knowledge of the true facts; therefore Albion's false origin claims, misrepresentations of the manufacturer, and omissions of material fact as to the true geographic origin of its Deluxe and Special Deluxe dispensing guns, its B-Line dispensing guns, and its caulking accessories in Albion's product marking, container labeling, advertising, and sale, are done knowingly and intentionally.

82. Albion uses false advertisement and product marking and omits representations and markings of the true geographic origin of its Deluxe and Special Deluxe dispensing guns to mislead its distributors and their customers into believing that Albion's Deluxe and Special Deluxe dispensing guns are made in America.

83. Upon information and belief based on the product descriptions and container marks in shipment records, prior to sale and distribution of its Deluxe and Special Deluxe dispensing guns, Albion intentionally removes any required Taiwan origin marking that appears on such articles and/or their immediate containers as imported for the purpose of misleading the ultimate purchasers of such products into the belief that they are not of foreign origin and manufacture.

84. Upon information and belief based on the product descriptions and container marks in shipment records, Albion intentionally does not place a Taiwan origin mark on its Taiwan-origin Deluxe and Special Deluxe dispensing guns, Deluxe and Special Deluxe drive handle assemblies and parts thereof after unpacking them from the containers in which imported that are marked "Made in Taiwan."

85. Upon information and belief based on the product descriptions and container marks in shipment records, Albion intentionally repacks Deluxe and Special Deluxe dispensing guns, Deluxe and Special Deluxe drive handle assemblies, and parts

thereof for distribution and sale in the United States in containers that are not marked with the foreign country of origin of their contents.

86. Albion is aware that its Deluxe and Special Deluxe dispensing guns, their drive handle assemblies, and parts thereof are made in Taiwan and knows that products of Taiwan origin must be marked “Made in Taiwan.”

87. Albion intentionally has the handle of its Deluxe and Special Deluxe dispensing guns falsely stamped “U.S.A.” for the purpose of misleading distributors and their customers of such products into the belief that the Deluxe and Special Deluxe dispensing guns are made in the United States.

88. Albion intentionally prints the cover of its Owners Guide with the false claim that “All Albion Products Are Made in America” and publishes the Owners Guide on its website for the purpose of misleading its distributors and their customers of Albion products imported from Taiwan into the belief that Albion makes such products in the United States.

89. Albion knows that all its products are not made in America.

90. Upon information and belief, Lucinda Schneider, who responds to distributor inquiries at Albion, falsely represents to distributors that Albion’s Deluxe dispensing guns are made in the USA.

91. Albion's distributors are deceived about the geographic origin and the manufacturer of Albion's Deluxe dispensing guns.

92. Albion's distributor ABC Supply Co. Inc. advertises Albion's Deluxe and Special Deluxe dispensing guns, which it identifies as caulk guns, on its web site with an image of the American flag as a representation of US-origin.

93. Upon information and belief based on a distributor invoice statement, one of Albion's distributors certifies to its customers that an Albion Deluxe dispensing gun is of U.S. origin.

94. Upon information and belief based on the product descriptions and container marks in shipment records, prior to sale and distribution of its B-Line dispensing guns, Albion intentionally removes any required Taiwan origin marking that appears on their immediate containers as imported for the purpose of misleading the ultimate purchasers of such products into the belief that they are not of foreign origin and manufacture.

95. Upon information and belief based on the product descriptions and container marks in shipment records, Albion intentionally repacks its B-Line dispensing guns for distribution and sale in the United States in containers that are not marked with the foreign country of origin of their contents.

102. Albion intentionally omits printing its B-line dispensing guns with the geographic origin mark “Made in Taiwan” in close proximity and in lettering of comparable size to the “USA manufacturer” mark on the MCU.

103. Albion intentionally advertises its B-Line dispensing guns in product bulletins with false claims, misleading statements, and omissions of material fact by withholding any disclosure of their Taiwan origin and manufacturer and by claiming in the product literature for individual B-Line dispensing gun models that Albion is an “American manufacturer” who “design[s], develop[s], and build[s] High End Dispensing Tools for the most demanding professional and industrial applications” for the purpose of misleading its distributors and their customers of B-Line dispensing guns into the belief that Albion makes them in the United States.

104. Albion’s distributors and the ultimate purchasers of its Taiwanese made B-Line dispensing guns are misled by Albion’s intentional false origin marking and manufacturer claims on such products and have contacted Albion to inform Albion that its claims are deceptive.

105. An individual purchaser of an Albion B-Line product with the forum member name “sheslostcontrol” posted on the www.SmarterUSA.com/ forum a message under the discussion thread “Buyer Beware: Albion caulking guns “Made in USA.” The

message related the poster's personal experience about being deceived by Albion's web site advertisement of Albion's manufacture of all its dispensing guns and accessories in the USA. The post stated that forum member had contacted Albion on February 2, 2010 and was told that Albion knew its web site was incorrect, that Albion imported most of its caulking guns from Taiwan, and Albion refused to change its web site that continued to deceive customers.

106. The discussion forum member with the name "sheslostcontrol" cross-posted the images of Albion's caulking gun in a discussion thread on "America made tools" on the Garage Journal web site forum at <http://www.garagejournal.com/forum>. The cross-post identified the Sound Isolation Store as a source for the Albion caulking gun that was ordered on the belief that it was "Made in USA." After that reposting by "sheslostcontrol," a representative of the Sound Isolation Store named "Eric" posted a response under the member name "soundstore" (hereafter called "the 'soundstore' posting").

107. In the "soundstore" posting, Eric stated that the Sound Isolation Store was misled by Albion's web site into the belief that Albion's "caulking guns" were "Made in USA" and stated its intent to remove any "Made in USA" reference to the product on its web site.

108. The “soundstore” posting was edited by Eric to add the statement that Albion was apparently now making its “dispensing gun” in Taiwan because the Sound Isolation Store had in stock Albion dispensing guns labeled “Made in Taiwan” which the Sound Isolation Store had previously received marked “Made in USA.”

109. The Albion “caulking guns” and Albion “dispensing gun” referenced in the “soundstore” posting are Albion B-Line dispensing gun models “B12Q” and “B12B30.”

110. Albion uses false advertisement and product marking and omits representations and markings of the true geographic origin of its caulking accessories to mislead its distributors and their customers into believing that Albion’s caulking accessories are made in America.

111. Prior to sale and distribution of its caulking accessories, Albion intentionally removes any required Taiwan origin marking that appears on such articles and/or their immediate containers as imported for the purpose of misleading the ultimate purchasers of such products into the belief that they are not of foreign origin and manufacture.

112. Albion intentionally does not place a Taiwan origin mark on its Taiwan-origin caulking accessories after unpacking them from the containers in which imported that are marked “Made in Taiwan.”

113. Albion intentionally repacks its caulking accessories for distribution and sale in the United States in containers that are not marked with the foreign country of origin of their contents.

114. Albion knows that its caulking accessories are made in Taiwan.

115. Albion intentionally has its mixing paddles falsely stamped “U.S.A.” for the purpose of misleading distributors and their customers of such products into the belief that the mixing paddles are made in the United States.

116. Albion intentionally has its spatula kits stamped “Made in USA” for the purpose of misleading the ultimate purchasers of such products into the belief that they are made in the United States.

117. Albion intends to mislead its distributors and their customers to make sales of its Deluxe, Special Deluxe, and B-Line dispensing guns and its caulking accessories to distributors and customers who have a preference for such products that are made in the United States.

U.S.C. § 1304(a) and 19 C.F.R. § 134.11, with the foreign country of origin of the subject merchandise legibly, permanently, and conspicuously so that the ultimate purchaser may know its foreign country of origin.

122. The importer of record is responsible for compliance with all Customs requirements for the admissibility of products into the commerce of the United States, including their proper marking with their foreign country of origin. *See e.g.* 19 U.S.C. §§ 1304(i), 1484, and 1485.

123. Albion is the importer of record of the subject merchandise.

124. Albion is an experienced importer having imported the subject merchandise in scores of shipments for more than seven years.

125. Upon information and belief, Albion's imported drive handle assemblies from Taiwan are comprised of a metal handle, trigger, threaded barrel back cap, gripper plate, recoil plate, and spring.

126. Upon information and belief, Albion also imports drive handle assemblies from Taiwan for such dispensing guns that are assembled with a plunger rod and metal barrel as well as complete dispensing guns.

127. Upon information and belief, the subject merchandise is imported in bulk quantities.

128. Upon information and belief, based on the importation of the merchandise in bulk quantities and in incomplete condition, the subject merchandise is unpacked and repacked before distribution in mixed orders in the United States.

129. An importer who intends to repack after importation goods that are properly marked at the time of importation is required by either 19 C.F.R. § 134.25 or § 134.26 to provide a repacking certification to Customs that the importer will remark the goods properly and provide a notice to subsequent purchasers of the requirements of the marking law.

130. Upon information and belief, Albion does not provide the requisite notice to subsequent purchasers of the subject merchandise.

131. Upon information and belief, based on merchandise descriptions in commercially available shipment records, the subject merchandise imported from Taiwan is not “substantially transformed” after importation by Albion into “new and different products having a different name, character and use” after importation so that the subject merchandise and their containers are exempt from foreign country-of-origin marking in accordance with 19 U.S.C. § 1304 and 19 C.F.R. § 134.35(a), as administered by U.S. Customs and Border Protection.

132. In the event that Albion would assemble in the United States a customer-specified pusher and nozzle onto its imported drive handle assemblies from Taiwan, such assembly does not result in a product of the United States within the meaning of the so-called tariff-shift rules of origin under the North American Free Trade Agreement (“NAFTA”) administered by U.S. Customs and Border Protection for marking goods manufactured in NAFTA countries. *See* 19 C.F.R. Part 102.

133. Imported manual dispensing guns, including Albion’s Deluxe and Special Deluxe dispensing guns that are made of steel, are classified for Customs’ tariff purposes as “caulking guns” under Subheading 8205.59.45 of the Harmonized Tariff Schedule of the United States (“HTSUS”) (2012).

134. HTSUS Subheading 8205.59.45 describes: “Handtools (including glass cutters), not elsewhere specified or included; ...: Other handtools (including glasscutters) and parts thereof: Other: Of iron or steel: Caulking guns.”

135. Albion’s imported Deluxe and Special Deluxe dispensing guns that are incomplete because they lack one or more parts, such as a pusher and/or a nozzle, are still classifiable as “caulking guns” under HTSUS subheading 8205.59.45 by virtue of HTSUS General Rule of Interpretation 2(a). *See* HTSUS General Rules of Interpretation

2(a) (“Any reference in a heading to an article shall be taken to include a reference to that

article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), entered unassembled or disassembled.”).

136. Imported parts of manual dispensing guns that are made of base metal, including parts for Albion’s Deluxe and Special Deluxe dispensing guns, such as barrels, blank rods, and nozzles made of steel, are classifiable under Subheading 8205.59.55 of the Harmonized Tariff Schedule of the United States (“HTSUS”) (2012).

137. HTSUS Subheading 8205.59.55 describes: “Handtools (including glass cutters), not elsewhere specified or included; ... base metal parts thereof: Other handtools (including glasscutters) and parts thereof: Other: Of iron or steel: Other.”

138. The NAFTA origin-marking rule applicable to goods manufactured or produced in North America that are classifiable as caulking guns under subheading 8205.59 is set forth in 19 C.F.R. § 102.20 as a tariff-classification-shift rule at the six-digit subheading level requiring manufacture or production in the United States to result in a change in the classification of any non-US materials, components, or parts from a tariff subheading outside the subheading 8205.59 into subheading 8205.59 (“8203.10-

142. Section 134.46 provides:

In any case in which the words “United States,” or “American,” the letters “U.S.A.,” any variation of such words or letters, or the name of any city or location in the United States, or the name of any foreign country or locality other than the country or locality in which the article was manufactured or produced appear on an imported article or its container, and those words, letters or names may mislead or deceive the ultimate purchaser as to the actual country of origin of the article, there shall appear legibly and permanently in close proximity to such words, letters, or name, and in at least a comparable size, the name of the country of origin preceded by “Made in,” “Product of,” or other words of similar meaning.

143. In considering origin marking similar to the marking of Albion’s B-Line dispensing guns, Customs has ruled that such origin marking is deceptive and contrary to the requirements of 19 C.F.R. § 134.46. *See* Customs New York Ruling Letter M87845 (November 28, 2008) (“holding that a caulk storage unit is deceptively marking when packed in a box the front panel of which was printed with an American flag and the words “Designed in USA” and the back panel of which was marked “Made in China.””).

- **Ineligibility for Made in USA Mark**

144. The Federal Trade Commission (“FTC”) is responsible for determining the circumstances in which the use of U.S. origin marks, such as “Made in USA” and “Made in America,” is misleading to purchasers. *See* Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

145. Under longstanding, published FTC interpretations, it is false and misleading to mark goods as “Made in USA” or “Made in America” unless they consist of “all or virtually all US components.” *See e.g.* *Complying With the Made in USA Standard*, Federal Trade Commission 1998 at 1, 5-9.

146. Under longstanding, published FTC interpretations, use of the image of the American flag may convey a claim of U.S. origin by itself or in conjunction with other phrases or images. *See* *Complying With the Made in USA Standard*, Federal Trade Commission 1998 at 4 and 24.

147. Under longstanding, published FTC interpretations, manufacturers and marketers should not indicate, either expressly or implicitly, that a whole product line is of U.S. origin (*e.g.* “Our products are made in USA”), when only some products in the product line are made in the U.S. according to the “all” or “virtually all” standard. *See e.g.* *Complying With the Made in USA Standard*, Federal Trade Commission 1998 at 5.

148. The assembly of an imported drive handle assembly and a pusher and nozzle in the United States does not result in a product that is “all or virtually all” made in the United States as is required for a product to be eligible to be marked “Made in USA” or its equivalent “Made in America” under the laws administered by the Federal Trade Commission, *i.e.*, Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

149. Post-importation repacking in the United States of Albion’s B-Line dispensing guns made in Taiwan and Albion caulking accessories made in Taiwan does not result in a product that is “all or virtually all” made in the United States as is required for a product to be eligible to be marked “Made in USA” or its equivalent “Made in America” under the laws administered by the Federal Trade Commission, *i.e.*, Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

- **False Representations of Geographic Origin and Commercial Activity**

150. Upon information and belief, Albion has made and distributed, in interstate commerce and in this District, advertisements, products, and product packaging, containing false statements of facts, misrepresentations, and material omissions of facts of the geographic origin of the subject merchandise and the commercial activity of Albion in violation of Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)). These advertisements and products fail to disclose the actual country of

origin of the subject merchandise and falsely claim the subject merchandise is manufactured in the United States by Albion.

151. Albion's false advertising statements and omissions injure both consumers and Newborn.

152. Albion has caused, and will continue to cause, immediate and irreparable injury to Newborn, including injury to its business, reputation, and goodwill, for which there is no adequate remedy at law.

153. Newborn is at present unable to ascertain the full extent of the monetary damages it has suffered by reason of Albion's acts.

154. Newborn is at present unable to ascertain the full amount of the gains, profits and advantages Albion obtained by reason of its acts.

155. Moreover, Newborn believes, and on that basis alleges, that Albion's conduct was undertaken willfully and with the intention of causing confusion, mistake or deception, making this an exceptional case entitling Newborn to recover additional damages and reasonable attorneys' fees.

WHEREFORE, Newborn respectfully requests that this Court enter Judgment as

follows:

A. Finding that Albion violated Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)) by unfairly competing against Newborn by using false, deceptive and/or misleading statements of fact that misrepresent the manufacturer and/or geographic origin of the subject merchandise.

B. Granting an injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure and 15 U.S.C. § 1116, preliminarily and permanently restraining and enjoining Albion, its officers, agents, employees, and attorneys, and all those persons or entities in active concert or participation with them from:

1. engaging in false and misleading advertising with respect to the subject merchandise and caulking accessories and/or violating Lanham Act § 43(a), which relief includes but is not limited to removal of all false or misleading advertisements and corrective advertising to remedy the effects of Albions's false and/or misleading advertising;

2. removing any proper foreign country of origin marks on the subject merchandise, their parts and components, the caulking accessories, and their packaging and containers that are required pursuant to 19 U.S.C. 1304 and 19 C.F.R. Part 134;
 3. selling any dispensing guns and caulking accessories stamped with "Phila. PA. U.S.A." in whole or in part or with any similar marking;
 4. supplying, distributing, or selling the subject merchandise without permanent, legible, and conspicuous foreign country of origin marking on the product and its immediate container and without a notice to subsequent purchasers as prescribed in 19 C.F.R. Part 134.
 5. engaging in any other unfair competition or unlawful activities;
- C. Requiring Albion to recall from any distributors or retailers and to destroy upon receipt all falsely or misleadingly origin marked products, and all advertisements, labels, marketing materials or other

I. Awarding treble such damages and profits to Newborn as a result of Albion's willful, intentional and deliberate acts in violation of Lanham Act § 43(a);

J. Awarding Newborn its costs, attorneys' fees, investigatory fees and expenses to the full extent provided by the Lanham Act;

K. Disposing of all of Albion's misleading and deceptive advertising materials and products by destruction as allowed under 15 U.S.C. § 1118;

L. Awarding Newborn prejudgment and post judgment interest; and

M. Awarding such other and further relief as the Court deems just and proper.

**COUNT 2 – Tortious Unfair Competition
Through False Statements and Material Omissions**

156. Paragraphs 1 through 155 of the Complaint are incorporated by reference, and alleged, as though fully restated herein.

157. Albion made false statements and intentionally omitted material information regarding the geographic origin of the subject merchandise in advertising, marketing and selling the subject merchandise to its distributors and their customers.

158. Albion's misrepresentations and material omissions concerning the geographic origin of the subject merchandise include that these products are "Made in America" and Albion's failure to disclose that these products are "Made in Taiwan" are unfair competition that has injured Newborn by causing distributors to substitute the subject merchandise for Newborn's competitive goods.

WHEREFORE, Newborn demands judgment against Albion as follows:

- A. Injunctive relief
- B. Damages;
- C. Pre-judgment Interest;
- D. Post Judgment Interest;
- E. Attorneys' Fees;
- F. Cost of Suit;
- G. Treble Damages;
- H. Punitive Damages;

I. Such other relief the Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a jury trial as to all triable issues.

Madden & Madden, P.A.

By: s/John-Paul Madden
John-Paul Madden, Esq.
Attorney for Plaintiff
Newborn Bros. Co., Inc.

Dated: May 18, 2012

CERTIFICATION PURSUANT TO L. Civ. R. 11.2

I, JOHN-PAUL MADDEN, ESQUIRE, counsel for the Plaintiff Newborn Bros. Co., Inc., do hereby certify that the matter in controversy is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Madden & Madden, P.A.

By: s/John-Paul Madden
John-Paul Madden, Esq.
Attorney for Plaintiff
Newborn Bros. Co., Inc.

Dated: May 18, 2012

EXHIBIT A

**Replacement
Parts**
Replacement parts are
available for all Albion
Ultra, SDI plus, Special
Deluxe and Deluxe
models. These guns are
easily disassembled and
repaired in the field.

Polotinner® Caucana Diction