

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

DEXAS INTERNATIONAL, LTD.,	§	
	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO.
	§	JURY TRIAL DEMANDED
PROGRESSIVE INTERNATIONAL CORP.	§	
	§	
Defendant	§	

PLAINTIFF’S ORIGINAL COMPLAINT

Plaintiff Dexas International, Ltd., files this Original Complaint against Progressive International Corp. (“Defendant”), and respectfully shows the Court as follows:.

PARTIES

1. Plaintiff Dexas International, Ltd. (“Dexas”) is a limited partnership organized under the laws of the State of Texas with it principal place of business at 585 S. Royal Lane, Suite 200, Coppell, Texas 75019.

2. Defendant Progressive is a corporation organized and existing under the laws of the state of Delaware having its principal place of business at 6111 South 228th Street, Kent, Washington, 98032. Defendant can be served by service upon its registered agent Corporations Service Company, 300 Deschutes Way SW, Suite 304, Tumwater, WA. 98501.

JURISDICTION AND VENUE

3. This action arises under the Trademark Laws of the United States, 15 U.S.C. § 1051 *et seq.* Accordingly, original jurisdiction over this cause of action is

conferred upon this Court pursuant to 15 U.S.C. §§ 1121, 1125 and 28 U.S.C. §§ 1331 and 1338 (a) and (b).

4. Defendant does business in Texas and thus, jurisdiction is proper over Defendant in this judicial district. Venue is proper under 28 U.S.C. §§ 1391(b) and (c).

5. This Court has personal jurisdiction over Defendant because it has sufficient contacts with the state of Texas and this Judicial District to subject it to specific and general personal jurisdiction. The contacts with the state of Texas and this Judicial District and Division include sales of various kitchenware products to stores including Walmart, Target, Sur la Table, Willims-Sonoma, Dillards, HomeGoods, and Bed, Bath & Beyond, with the knowledge and intent that they be distributed and sold within the United States, including this Judicial District.

FACTS

6. Dexas was founded in 1969 and over the decades has become a recognized leader in poly, acrylic and other cutting boards, including but not limited to kitchenware. Dexas is one of the largest designers and manufacturers of cutting boards in the United States. In the early 2000s Dexas created a cutting board it called the CHOP & SCOOP®. The CHOP & SCOOP is an innovative design ideal for cutting juicy fruits and vegetables. Curved edges keep juices contained; a unique shape and grip handle make it easy to cut and transfer foods into pans and bowls. Its 100% virgin poly-plastic surface is non-stick, non-absorbent, odor resistant and will not dull knives. The CHOP & SCOOP is currently one of Dexas' most successful and well-known products.

7. The mark CHOP & SCOOP®, Federal Registration No. 3,285,413, was registered on the Principal Register on August 28, 2007 and the mark CHOP N SCOOP®,

Federal Registration No. 3,577,386, registered on the Principal Register on February 17, 2009 for cutting boards in International Class 21 (the “Marks”). True and correct copies of the Registration Certificates for the Marks are attached hereto as EXHIBITS A-1 and A-2. Accordingly, Dexas is the sole and exclusive owner of the federally registered marks for cutting boards and related kitchenware items.

8. The Marks are well known, famous, inherently distinctive and/or has acquired distinctiveness long prior to Defendant’s use of the mark CHOP AND SCOOP. The goodwill associated with the Marks is a valuable asset to Dexas. Dexas has expended great effort and considerable resources in the promoting and advertising its products under the Mark. As a result of this widespread and continuous use and promotion, the Marks have become widely associated with Dexas; the Marks identify Dexas as the source of the goods offered and represents the valuable goodwill of Dexas among members of the relevant consuming public.

9. Dexas distributes its CHOP & SCOOP and CHOP N SCOOP cutting boards through various retailers, including HomeGoods and Bed, Bath & Beyond.

10. On or around May 22, 2013, Dexas became aware of Defendant’s use of the mark “Chop and Scoop” on a kitchen utensil that is designed to be a “quick way to cut and transfer food from cutting board to hot pan mess-free” (the “Infringing Product”). True and correct copies of a picture of the Infringing Product that were taken at a Dallas area HomeGoods store as well as an image from Progressive’s website are attached as EXHIBITS B-1 and B-2, respectively. Progressive’s Infringing Product can clearly be used in conjunction with Dexas’ cutting boards sold under the Marks and are sold at the same retailers that offer Dexas’ products.

11. Defendant's use of the Mark "Chop and Scoop" on its Infringing Product is likely to confuse consumers into believing that its Infringing Product is made by, sponsored by, connected with, endorsed by or otherwise affiliated with Dexas. This use will substantially harm Dexas' reputation for quality products. Defendant's willful and deceitful acts will cause irreparable harm to Dexas and its Mark.

COUNT ONE
FEDERAL TRADEMARK INFRINGEMENT

12. Dexas realleges and incorporates by reference paragraphs 1 through 11, inclusive, of this Complaint as fully set forth herein. Defendant's conduct described above constitutes trademark infringement under the Lanham Act, 15 U.S.C. § 1114(1).

13. The acts of Defendant, as set forth above, constitute use in interstate commerce of reproductions, copies, and/or colorable imitations of the Marks through its use of a substantially similar mark on a related product being sold through the identical or similar channels of trade. Further, Defendant's use of the identical mark in connection with confusing similar goods, within this judicial district and elsewhere, is likely to cause confusion, cause mistake, and deceive as to the affiliation, connection, and association of Dexas with Defendant.

14. Further, the activities of Defendant are intended to, and are likely to, lead the public to conclude, incorrectly, that the infringing uses of the Marks described in this Complaint that are authorized by Dexas to the damage and harm of Dexas. Defendant's activities constitute deliberate infringement of the Marks in violation of the Lanham Trademark Act, including, but not limited to, 15 U.S.C. § 1114(1), entitling Dexas to damages.

15. As a result of Defendant's activities, Defendant has caused and will cause irreparable harm to Dexas for which Dexas has no adequate remedy at law for relief from Defendants' wrongful conduct. Accordingly, Dexas is entitled to damages and injunctive relief.

COUNT TWO
UNFAIR COMPETITION

16. Dexas realleges and incorporates by reference paragraphs 1 through 15, inclusive, of this Complaint as fully set forth herein. Defendants' conduct described above constitutes federal unfair competition under the Lanham Act, 15 U.S.C. §1125(a)(1).

17. On information and belief, Defendant's actions have been with full knowledge of Dexas' rights and with the intent to trade on Dexas' goodwill in the Mark, thus making this an exceptional case under 15 U.S.C. §1117(a).

18. Further, the activities of Defendant are intended to, and are likely to, lead the public to conclude, incorrectly, that the infringing uses of the Mark described in this Complaint to the damage and harm of Dexas. Defendant's activities constitute deliberate infringement of the Mark in violation of the Lanham Trademark Act, including, but not limited to, 15 U.S.C. § 1114(1), entitling Dexas to damages.

19. As a result of Defendant's activities, Defendant has caused and will cause irreparable harm to Dexas for which Dexas has no adequate remedy at law for relief from Defendant's wrongful conduct. Accordingly, Dexas is entitled to damages and injunctive relief.

COUNT THREE
COMMON LAW UNFAIR COMPETITION

20. Dexas realleges and incorporates by reference paragraphs 1 through 19, inclusive, of this Complaint as fully set forth herein. Defendant's actions described above constitute unfair competition under Texas common law.

21. As a result of Defendant's wrongful conduct, Dexas is entitled to injunctive relief and damages to be proven at trial.

REMEDIES

22. Dexas realleges and incorporates by reference paragraphs 1 through 21, inclusive, of this Complaint as fully set forth herein.

23. Dexas is entitled to monetary relief, including, (1) the Defendant's profits, (2) any damages sustained by Dexas, and (3) the cost of this action. *See* 15 U.S.C. § 1117.

24. Dexas also is entitled to an order from the Court requiring that all label, advertisements or other material using the mark "Chop & Scoop" or any substantially similar mark, including the Dexas Marks, be destroyed. *See* 15 U.S.C. § 1118.

25. Dexas also is entitled to injunctive relief under federal law. *See* 15 U.S.C. § 1116.

ATTORNEYS' FEES

26. Dexas is entitled to an award of attorneys' fees under 15 U.S.C. § 1117(a).

JURY DEMAND

27. Dexas requests a trial by jury of all claims.

PRAYER FOR RELIEF

WHEREFORE, Dexas prays that it have judgment against Defendant for the following:

(1) A decree that the Marks are infringed by Defendant through its use of the name “Chop and Scoop” on related products sold through similar channels of trade;

(2) A decree that Defendant’s use of the Mark is likely to cause confusion and mistake as to Defendant’s affiliation, connection, and association with Dexas and as to the origin, sponsorship, and approval of Defendant’s Infringing Product by Dexas and constitutes unfair competition under federal and common law;

(3) A preliminary injunction enjoining and restraining Defendant and its agents, servants, employees, affiliates, divisions, subsidiaries, agents, servants, and employees, and those in association with them, from using the mark and name “CHOP AND SCOOP” or any other mark confusingly similar to the Marks in conjunction with kitchenware, including but not limited to cutting boards and tools used in conjunction with cutting boards;

(5) A permanent injunction enjoining and restraining Defendant and its agents, servants, employees, affiliates, divisions, subsidiaries, agents, servants, and employees, and those in association with them, from using the Marks and name “Chop and Scoop” or any other mark confusingly similar to the Marks in conjunction with kitchenware products;

(6) An award of damages as requested in each Count above;

(7) An order requiring that all labels, advertisement, or other materials used in connection with the Infringing Products that include the name “Chop and Scoop” or any similar mark, including the Dexas Marks, be destroyed;

(8) An award of exemplary damages;

(9) An award of all costs of this action, including attorneys’ fees and interest;

and

(10) Such other and further relief, at law or in equity, to which Dexas may be justly entitled.

Respectfully submitted,

/s/ Elizann Carroll

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