



4. Upon information and belief, the Marco Company is organized and or doing business under or through one or more unknown corporate entities that are registered in the State of Texas or elsewhere and are doing business in Fort Worth, Texas, and that through such other entities, the Marco Company has carried out acts of infringement. The identity of these entities is unknown to the Plaintiff despite the Plaintiffs' best efforts to identify the precise name of the businesses.

### **JURISDICTION AND VENUE**

5. This is an action for infringement of a United States patent arising under 35 U.S.C. §§ 271, 281 and 284-285, among others. This Court has subject matter jurisdiction of the action under Title 28 U.S.C. § 1331 and § 1338(a).

6. Upon information and belief, personal jurisdiction by this Court over Defendant is proper based upon its having regularly conducted business, including the acts complained of herein, within the State of Texas and this judicial district and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this judicial district.

7. Venue properly lies in this district under the provisions of 28 U.S.C. § 1391 because Defendant has purposely and repeatedly availed itself of the privilege of doing business within the district, and because a substantial part of the events giving rise to the claims herein occurred in this district.

### **THE PATENT-IN-SUIT**

8. On July 18, 2000, United States Patent No. 6,089,385 (the "385 patent") was duly and legally issued for a "Roller Type Commodity Stand." A true and correct copy of the '385 patent is attached hereto as Exhibit A.

9. Hamlon has been granted "all substantial rights" in and to the '385 patent including, without limitation, the exclusive right and license under the '385 patent to make, have

made, use, import, offer or sell products or services in the United States covered by the patent, the exclusive right to grant sublicenses, to sue for and collect past, present and future damages and to seek and obtain injunctive or any other relief for infringement of the '385 patent.

Bruegmann is Hamlon's sub-licensee under the '385 patent. With respect to the marketing, manufacture and sale of the products at issue, Marco and Bruegmann directly compete with respect to one another.

### **DEFENDANT'S ACTS**

10. Marco, in this District, has offered for sale, sold, manufactured, used and/or otherwise provided third parties certain roller type commodity stands. These products infringe at least claim 1 of the '385 patent under 35 U.S.C. §271(a).

11. Marco acquired actual or constructive notice of the patent-in-suit at least as early as May, 2012, when products sourced by Bruegmann and covered by the patent-in-suit were marked to identify the '385 patent. On information and belief, Defendant's infringement of the patent-in-suit is now being carried out willfully.

12. As a result of Defendant's infringement of '385 patent, Plaintiffs have suffered monetary damages that are adequate to compensate it for the infringement under 35 U.S.C. §284, but in no event less than a reasonable royalty.

13. Upon information and belief, Defendant's infringing conduct will continue unless enjoined by this Court, resulting in continuing harm to Plaintiffs.

### **JURY DEMAND**

14. Plaintiffs hereby request a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request that the Court enter a judgment in their favor and against Defendant as follows:

- A. permanently enjoining Defendant, its agents, servants, and employees, and all those in privity with it or in active concert and participation with it, from engaging in acts of infringement of the patent-in-suit;
- B. awarding Plaintiffs past and future damages together with prejudgment interest and post-judgment interest to compensate for the infringement of the patents-in-suit in accordance with 35 U.S.C. § 384;
- C. declare this case exceptional, pursuant to 35 U.S.C. § 285; and
- D. awarding Plaintiffs their costs (including expert fees), disbursements, attorneys' fees, and such further and additional relief as is deemed appropriate by this Court; and
- E. granting such further relief as this Court deems to be just and proper.

Dated: July 22, 2013

Respectfully submitted,

/s/ Allan B. Diamond

Allan B. Diamond  
State Bar No. 05801800  
Jason Fulton  
State Bar No. 24040936  
DIAMOND MCCARTHY LLP  
909 Fannin, 15th Floor  
Houston, Texas 77010  
Telephone: (713) 333-5100  
Facsimile: (713) 333-5199  
E-mail: [adiamond@diamondmccarthy.com](mailto:adiamond@diamondmccarthy.com)  
E-mail: [jfulton@diamondmccarthy.com](mailto:jfulton@diamondmccarthy.com)

David H. Judson  
State Bar No. 11047150  
LAW OFFICE OF DAVID H. JUDSON  
15950 Dallas Parkway, Suite 225  
Dallas, Texas 75248  
Telephone: (214) 939-7659  
Facsimile: (253) 369-3141  
E-mail: [mail@davidjudson.com](mailto:mail@davidjudson.com)

**COUNSEL FOR PLAINTIFFS**