

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

FLEXIBLE INNOVATIONS LTD.,  
a Texas Limited Partnership,

Plaintiff,

v.

K DESIGN MARKETING, INC.,  
a Montana Corporation,

Defendant.

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Civil Case No. \_\_\_\_\_

**JURY TRIAL DEMANDED**

**PLAINTIFF'S ORIGINAL COMPLAINT**

Flexible Innovations Ltd., a Texas Limited Partnership, hereby files its Complaint, by and through its attorneys, against K Design Marketing, Inc., a Montana corporation, for willful infringement of U.S. Trademark Registration No. 3,407,948, false designation of origin under the Lanham Act and unfair competition under Texas common law, showing as follows:

**PARTIES AND SERVICE**

1. Plaintiff Flexible Innovations Ltd. is a Texas Limited Partnership with its principal place of business in Tarrant County, Texas, and is sometimes hereinafter referred to as "FI."

2. Upon information and belief, Defendant K Design Marketing, Inc. (hereinafter referred to as "KDM") is a Montana corporation having addresses at 1613 South Avenue W and 3501 West Broadway, both in Missoula, Montana 59801. Service of process may be accomplished by serving its Registered Agent, Kimberly Kinsinger at either 1613 South Avenue W, Missoula, Montana, or 3501 West Broadway, Missoula, Montana 59801.

### **JURISDICTION AND VENUE**

3. This action arises under the Lanham Act, 15 U.S.C. § 1051 *et seq.* Further, there is diversity of citizenship and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs. Therefore, this Court has jurisdiction under 28 U.S.C. §§ 1331 and/or 1332(a)(1). Further, this Court also has jurisdiction over the Texas State common law claim of unfair competition under 28 U.S.C. § 1367(a).

4. This Court has personal jurisdiction over Defendant KDM because Defendant KDM has numerous contacts with Texas, including actively operating its interactive websites (see ¶¶ 11-16, *infra*) in Texas, and it has taken tortious actions and entered into contracts and sold goods in this District and Division and this cause of action arises out of such actions, contracts, and sales. See Exhibits E through K.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2), in that a substantial part of the events giving rise to the claims occurred in this District and Division and that Defendant KDM has taken tortious actions and entered into contracts and sold goods in this District and Division and this cause of action arises from such actions, contracts and sales [28 U.S.C. § 1391(b)(3) & (c)(2)].

### **BACKGROUND FACTS**

6. Rakupuri, Inc., a Japanese corporation with its principal place of business in Japan, manufactures, markets, and sells patented DIGICLEAN<sup>®</sup> adhesive microfiber display screen cleaning wipes. By assignment dated November 20, 2012 from Rakupuri, Plaintiff FI became and now is the owner of United States Trademark Registration No. 3,407,948 (“the ‘948 Registration”) for DIGICLEAN<sup>®</sup> for “Sheet-shaped wiping cloth for cleaning display screens of car navigation, cellular phones, or handheld game machines (“DIGICLEAN Mark”), including

all claims for damages and lost profits for all past infringement of said mark (DIGICLEAN) and said registration. A copy of the DIGICLEAN '948 Registration certificate and the assignment as recorded in the United States Patent and Trademark Office is attached hereto as Exhibit A. The '948 Registration is valid, subsisting and incontestable. Examples of Plaintiff FI's DIGICLEAN microfiber display screen cleaning wipes are shown in Exhibit B.

7. Rakupuri was the initial owner of U.S. Patent 7,431,983 issued October 7, 2008, entitled "WIPING SHEET" (the "'983 Patent"), which details its "DIGICLEAN" wiping cloth. By assignment, Plaintiff FI is now the owner of all right, title and interest of the '983 Patent. A copy of the '983 Patent is attached as Exhibit C.

8. Plaintiff FI has an Exclusive Distributorship Agreement ("Agreement") with Rakupuri. Under the Agreement, Plaintiff FI is the "sole and exclusive distributor to sell and distribute Products (DIGICLEAN) in North America and non-exclusively in the other countries except Japan."

**PLAINTIFF FI'S PRIOR LITIGATION WITH IDEAMAX**

9. On or about November 30, 2012, Plaintiff FI brought a lawsuit against IdeaMax, et al., a California general partnership, in the United States District Court for the Northern District of Texas, Fort Worth Division, being case no. 4:12-cv-00856-A. In this lawsuit, Plaintiff FI alleged, *inter alia*, multiple trademark violations as IdeaMax was attempting to lure Plaintiff FI's "DIGICLEAN" product customers onto its website for the resale of its "MICROCLEAN" screen cleaning wipe products. As a result of this lawsuit, a series of injunctions were entered against IdeaMax enjoining IdeaMax, their "agents, attorneys, employees, and representatives, and all who are in active concert with any of them. . ." from use of the terms "DigiClean," "DigiPad," "DigiCloth" and "DigiStand" or any name or mark deceptively similar to Plaintiff's

“DIGICLEAN” mark as used in association with screen wipes. Exhibit D, pp. 1-2. Further, IdeaMax was required to give notice to the industry search engines of such injunctions and to remove all meta-tags to “DigiClean,” “DigiPad,” “DigiCloth,” and “DigiStand” in association with IdeaMax’s “MicroClean” screen cleaner products so as to disassociate IdeaMax with any of Plaintiff FI’s DIGICLEAN marks. Exhibit D, pp. 2-3.

### **DEFENDANT KDM’S ACTIVITIES**

10. On or about mid-September 2012 and 2013, Defendant KDM made purchases of “DIGICLEAN” screen wipe product from Plaintiff FI. Copies of the respective Purchase Orders are attached hereto as Exhibit E.

11. Upon information and belief, Defendant KDM is the owner and operator of at least the following websites: [www.imprintmyscreencleaner.com](http://www.imprintmyscreencleaner.com) and [www.imprintmylogo.com](http://www.imprintmylogo.com).

12. When a prospective customer searches “Google” for “DIGICLEAN” product, one of the first several “hits” results is a web-based link to [www.imprintmyscreencleaner.com](http://www.imprintmyscreencleaner.com) webpage as shown in Exhibit F. This association with “DIGICLEAN” improperly suggests that Defendant KDM is a supplier of “DIGICLEAN” product, while also providing “MICROCLEAN” products.

13. Upon information and belief, when clicking on the “MicrocleanMAX” tab on page 1 of Exhibit F, the screen appearing at Exhibit G, pp. 1-2 pops up. The URL has the trailing “.com/digiclean.html” moniker. Further, when looking into the various hidden “Key Words” or “meta tags” associated with this web page, it is clear that Defendant KDM is attempting to divert “hits” to its website that appropriately belong to Plaintiff FI. Note on page 3 of Exhibit G the “Key Words” as shown include “digiclean” . . . “digi pad,” “digi clean.” Defendant KDM has made a willful effort to misdirect Plaintiff FI’s “DIGICLEAN” “hits” to

Defendant KDM. Looking to another of its webpages on this site, Exhibit H clearly shows Defendant KDM is offering to sell a “DIGI PAD” product, which it does not sell, while also attempting to switch a “DIGICLEAN” customer to a competing “MICROCLEAN” screen cleaner.

14. Upon information and belief, when clicking on Defendant KDM’s website [www.imprintmylogo.com](http://www.imprintmylogo.com), the webpage of Exhibit I is pulled up for viewing. In the upper right hand corner of Exhibit I is a “Quick Search” box.

15. If the user types in “DIGICLEAN” in the “Quick Search” box, the pages shown on Exhibit J are pulled up. These pages detail an array of Plaintiff FI’s “DIGICLEAN” products—all of which Defendant KDM does not sell—with substituted competing IdeaMax “MICROCLEAN” screen cleaning products interspersed. Further, should the “Quick Search” include the words “MICROCLEAN,” the webpages shown at Exhibit K are pulled up, detailing a wide variety of IdeaMax supplied “MICROCLEAN” products.

16. Upon information and belief, Defendant KDM is attempting to “bait and switch” prospective purchasers by illegally using Plaintiff FI’s “DIGICLEAN” mark as a hidden key word or meta tag to misdirect Plaintiff FI’s “DIGICLEAN” customers to Defendant KDM’s website, believing that Defendant KDM is a provider of “DIGICLEAN” product (when it is not), so as to sell IdeaMax’s “MICROCLEAN” products. Such a meta tag is essentially a programming code instruction, normally invisible to the Internet user or searcher. If someone types in “DIGICLEAN” as a search term, the search via an Internet search engine will result in a link to the Defendant KDM’s website, which if clicked on will take the searcher to KDM’s website. Therefore, anyone searching for “DIGICLEAN” on the Internet may be misdirected to advertising of Defendant KDM, rather than being directed solely to Plaintiff FI.

17. As shown on its website, Defendant KDM is using Plaintiff FI's trademarks, "DIGICLEAN" and "Digi Pad," to misidentify its microfiber cleaning cloth that it sells, or misdirect customers, in an effort to cause initial interest confusion, or further or alternatively source or affiliation confusion, and thereby trade upon the goodwill of Plaintiffs' "DIGICLEAN" mark. See Exhibits F, H, and J attached hereto.

18. Defendant KDM is using the "Digi Pad" mark in association with and to misdirect customers to its "MicroClean" screen wiping products, in its attempt to trade upon the goodwill of Plaintiff FI's "DIGICLEAN" mark, and sell competing IdeaMax "MICROCLEAN" products.

19. Further, Defendant KDM has attempted to associate Plaintiff FI's "DIGICLEAN" products with Defendant KDM in a concerted effort to trade off of Plaintiffs' goodwill and cause confusion in the marketplace as to affiliation. This confusion and identification is shown, by way of example, in Defendant's website pages shown in Exhibits F, H, and J, all prominently depicting "DIGICLEAN" or "Digi Pad" products as being provided by Defendant KDM.

20. As a result of the foregoing, Plaintiff FI has been damaged and, on information and belief, Defendant KDM has profited from such misconduct as above-described.

### **CAUSES OF ACTION**

#### **COUNT 1—TRADEMARK INFRINGEMENT**

21. The allegations of ¶¶ 9-20 above are hereby incorporated herein by reference.

22. Under 15 U.S.C. § 1114(1)(a), Defendant KDM has, without the consent of Plaintiff FI, used in commerce a reproduction, counterfeit, copy, or colorable imitation of the DIGICLEAN mark in connection with the sale, offering for sale, distribution, or advertising of goods or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive.

23. Under 15 U.S.C. § 1117, Plaintiff FI seeks Defendant KDM's profits, damages sustained by Plaintiff FI, and costs of this action. Further, under the circumstances of this case, Plaintiff FI seeks trebling of the actual damages. Further, if the Court should find that the recovery based on profits is inadequate, Plaintiff FI prays that the Court will in its discretion enter judgment for such a sum as the Court shall find to be just.

24. Because of the blatant and willful nature of Defendant KDM's infringement, Plaintiff FI submits this is an exceptional case and seeks its reasonable attorneys' fees.

**COUNT 2—LANHAM ACT UNFAIR COMPETITION**

25. The allegations of ¶¶ 9-24 above are hereby incorporated herein by reference.

26. Under 15 U.S.C. § 1125(a), Defendant KDM has, in connection with goods, used in commerce false or misleading description of facts, or false or misleading representations of facts, which are likely to cause confusion as to the origin, sponsorship, or approval of its goods by another person; or, in commercial advertising or promotion, misrepresented the nature, characteristics, or qualities of its or Plaintiff FI's goods or commercial activities. Plaintiff FI believes that it is, or is likely to be, damaged by such acts. Also, Defendant KDM has made false designations of origins of its product with respect to using DIGICLEAN as a trademark, thereby identifying its product with Plaintiff FI as a source.

27. Under 15 U.S.C. § 1117, Plaintiff FI seeks Defendant KDM's profits, damages sustained by Plaintiff FI, and costs of this action. Further, under the circumstances of this case, Plaintiff FI seeks trebling of the actual damages. Further, if the Court should find that the recovery based on profits is inadequate, Plaintiff FI prays that the Court will in its discretion enter judgment for such a sum as the Court shall find to be just.

28. Because of the blatant and willful nature of Defendant KDM's misrepresentations, Plaintiff FI submits this is an exceptional case and seeks its reasonable attorneys' fees.

**COUNT 3—COMMON LAW UNFAIR COMPETITION**

29. The allegations of ¶¶ 9-28 above are hereby incorporated herein by reference.

30. Defendant KDM has engaged in unfair competition with Plaintiff FI through violations of statutory obligations and/or trade disparagement, thereby, on information and belief, obtaining profits that would otherwise have gone to Plaintiff FI and thereby damaging Plaintiff FI.

31. Defendant KDM's actions have been actuated by fraud and/or malice.

32. Plaintiff FI seeks an award of exemplary damages under the provisions of Chapter 41, Texas Civil Practices and Remedies Code.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff FI prays for the following relief:

- A. Preliminary and permanent injunction against further violations of 15 U.S.C. §§ 1114 and 1125(a) by Defendant KDM, as well as enjoining any future acts of unfair competition by Defendant KDM against Plaintiff FI, including but not limited to ordering Defendant KDM not to further use DIGICLEAN, DIGICLOTH, DIGIPAD in any manner (including, but not by way of limitation, as a hidden keyword), or any name or mark deceptively similar thereto;
- B. Defendant KDM's profits;
- C. Plaintiff FI's damages;
- D. Exemplary damages;
- E. Plaintiff FI's reasonable and necessary attorneys' fees;



- F. Court costs;
- G. Prejudgment and post-judgment interest; and
- H. Such other or further relief to which Plaintiff FI may be entitled.

**JURY DEMAND**

Pursuant to Federal Rules of Civil Procedure, Rule 38(b), Plaintiff FI hereby demands a trial by jury in the above-identified action.

Dated: May 19, 2014.

Respectfully submitted,  
  
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