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Attorney for Plaintiff
U.S. Merchants Financial Group, Inc.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

U.S. Merchants Financial Group, Inc., a California Corporation Plaintiff, v. Home Products International, North America, Inc., a Delaware Corporation Defendant	CASE NO. **COMPLAINT FOR DESIGN PATENT INFRINGEMENT** **JURY TRIAL DEMAND**

Plaintiff U.S. Merchants Financial Group, Inc. for its Complaint against Defendant Home Products International, North America, Inc., asserts as follows:

NATURE OF THE ACTION AND THE PARTIES

1) This is an action for patent infringement under 35 U.S.C. §271, *et. seq.*, for infringement of United States Design Patent No. D792,212, a true and correct copy of which is attached hereto as Exhibit 1.

2) Plaintiff U.S. Merchants Financial Group, Inc. ("U.S. Merchants") is a

California Corporation having a primary place of business at 8737 Wilshire Blvd., Beverly Hills, Ca 90211. U.S. Merchants is the owner of all rights in the D792,212 Patent.

3) On information and belief, Defendant Home Products International, North America, Inc. ("Home Products") is a Delaware Corporation, however, Home Products does not have a physical presence in Delaware. On information and belief, Home Products has places of business at: 4501 W. 47th Street, Chicago, IL 60632; 400 S Airport Rd, and 885 N Chestnut St, in Seymour, IN 47274; and a California place of business at 5200 Eucalyptus Ave, Chino CA 91710.

4) Home Products is a registered foreign corporation in California having designated as its agent for service of process in California: Corporation Service Company, dba CSC-Lawyers Incorporating Service 2710 Gateway Oaks DR, Suite 150N, Sacramento CA 95833.

JURISDICTION AND VENUE

5) This Court has subject matter jurisdiction under 28 U.S.C §§ 1331 and 1338.

6) This Court has personal jurisdiction over Defendant Home Products because at least a portion of the infringements alleged herein have occurred in the State of California and in this judicial district, and because Home Products sells its accused products to and through multiple stores in California and in this judicial district, Home Products regularly does business, engages in persistent courses of conduct and derives substantial revenues from goods and services provided in the State of California and in this judicial district.

7) Venue is proper in this judicial district under 28 U.S.C. §1391 and §1400 with respect to Home Products because it has regular and established place of business in this judicial district at 5200 Eucalyptus Ave, Chino CA 91710, and because it has infringed the asserted patent in this judicial district. On information and belief, Home Products sells the accused "Tough Tote" products to and through

retail stores including Home Depot, Lowes, and Wal-Mart that combined have over 500 locations in the State of California and over 50 locations in this judicial district.

FACTUAL ALLEGATIONS

8) Plaintiff U.S. Merchants, incorporated in 1994, is a manufacturer of various plastic packaging products and container products.

9) U.S. Merchants filed application no. 29/531,172 on June 23, 2015.

10) The 29/531,172 application was examined in the United States Patent Office and issued as U. S. Design Patent No. D792,212 on July 18, 2017.

11) U.S. Merchants is the assignee and owner of all rights in the D792,212 Design Patent.

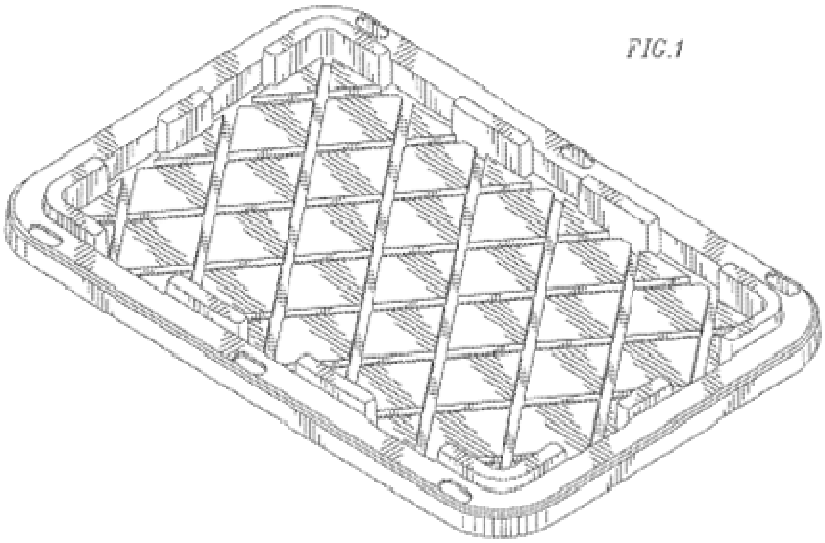
12) The D792,212 Design Patent claims the design of a lid to be used with a storage container or bin. The ornamental design of the lid is shown in the drawings in the D792,212 Design Patent.

13) U.S. Merchants has a reputation for manufacturing high quality products. U.S. Merchants made a substantial investment in the machinery and tooling to manufacture 27 gallon storage bins and conforming lids in 2015-2016. U.S. Merchants has obtained two design patents for two versions of the lid, including the recently issued D792,212 Patent and U.S Design Patent No. D762,471. U.S. Merchants' black 27 gallon storage bin and yellow lids are sold in retail stores in California and throughout the United States.

14) The U.S. Merchants product is superior in quality of manufacture and materials as compared to the similar black bin - yellow lid products sold by competitors, and despite the similarity in the aesthetic appearance of the products the bins and lids are of slightly different dimensions whereby the lids of other products do not fit on the bins made by U.S. Merchants, and vice versa.

15) Home Products manufactures and sells a line of "Tough Tote" products in at least 15 gallon, 27 gallon bin sizes, each of which includes a lid having a raised diamond pattern. The Home Products website (https://

http://www.homzproducts.com) advertises and displays the "Tough Tote" products, and the website advertises that its products can be purchased at a number of retail stores including Home Depot, Lowes and Wal-Mart. Exemplary pages from the Home Products website advertising the "Tough Tote" product line are attached hereto as Exhibit B. A representative perspective view of the 27 Gallon "Tough Tote" from the Home Products website is reproduced below for comparison with Figure 1 (perspective) of the D792,212 Design Patent:





INFRINGEMENT UNDER 35 U.S.C. §271 et seq.

U.S. DESIGN PATENT NO. D792,212

16) U.S. Merchants incorporates by reference the allegations of paragraphs 1-15 set forth above in this claim against Home Products.

17) The D792,212 Patent claims the design as shown in the drawings contained therein. On information and belief the ornamental design of the lid of the Infringing "Tough Tote" Products offered for sale and sold by Home Products are the same, or are substantially identical to, the design depicted and claimed in the D792,212 Patent.

18) On information and belief, Plaintiff U.S. Merchants contends that an ordinary observer with an understanding of the relevant prior art of lids for containers would be deceived into believing that the Infringing "Tough Tote" Product lids are the same as the patented design of the D792,212 Patent.

19) Defendant Home Products has infringed, and will continue to infringe the D792,212 Patent literally and/or under the doctrine of equivalents, by making, using, selling, and/or offering to sell the Infringing "Tough Tote" Product lids without the authority of U.S. Merchants, in violation of 35 U.S.C. §271.

20) As a result of the infringement, defendant Home Products has damaged U.S. Merchants by the unauthorized incorporation of the design of the D792,212 Patent in the Infringing "Tough Tote" Product lids offered and sold by Home Products.

21) Defendant Home Products is liable to Plaintiff U.S. Merchants in and amount to be determined at trial.

22) Defendant's acts have caused, and unless enjoined will continue to cause, irreparable injury and damages to Plaintiff for which there is no adequate remedy at law. On information and belief, Plaintiff contends that unless enjoined by the Court, Defendant will continue to infringe the D792,212 Patent.

WHEREFORE, U. S. Merchants requests judgment against Defendant Home Products as follows:

A. A judgment that Defendant has infringed the D792,212 Patent in violation of 35 U.S.C. §271 *et. seq*.

B. A judgment that Defendant and its agents, officers, Directors, servants, employees and all others in active concert or participation with Defendant be permanently enjoined from directly or indirectly making, using, selling, offering for sale, importing or exporting any product, including the Infringing "Tough Tote" Products, and/or any subsequent or substitute versions of the Infringing "Tough Tote" Products, that infringe the D792,212 Patent.

C. An award of damages adequate to compensate U.S. Merchants for the infringement of the D792,212 Patent, in no event less than a reasonable royalty.

D. Such other, further, and different relief as the nature of this action may require and that the Court may deem just and proper.

Dated: August 9, 2017

Law Office of David B. Abel

By: /s/David B. Abel

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JURY TRIAL DEMAND

U.S. Merchants hereby requests trial by jury on all issues so triable.

Dated: August 9, 2017

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