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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

10 RBP Performance, Inc., a Corporation,

CV10 7872 GAF (MAN)
CASE NO.

11 Plaintiff,

12 } COMPLAINT FOR:

13 v. }
14 Behrouz Mizban; T-REX Truck Products, Inc.;
15 and, DOES 1 through 10 Inclusive,

16 Defendants. }
17 } (1) Copyright Infringement;
18 } (2) Trademark Infringement;
19 } (3) Trade Dress Infringement;
20 } (4) California Unfair Competition;
21 } (5) Breach of Contract; and,
22 } (6) Common Law Trademark
23 } Infringement

24 Filing Date: October 20, 2010
25 Trial Date: *10/20/2010*

26 THE PARTIES

27 1. Plaintiff, RBP Performance, Inc. ("RBP") is a California Corporation
28 with its principal place of business at 2380 Railroad St., #101, Corona, California 92880.

29 2. Defendant, Behrouz Mizban ("Mizban") is an individual who, on
30 information and belief, at all material times, resided in Corona, California.

31 3. Defendant, T-REX Truck Products, Inc. is a corporation with, a
32 principal place of business at all material times, at 2365 Railroad Street, Corona, California
33 92880.

34 COMPLAINT

1 4. The true names and capacities, whether individual, corporate,
2 partnership, associate or otherwise, of defendants Does 1 through 30 inclusive, and each of
3 them, are unknown to plaintiff who therefore sues them by such fictitious names. Plaintiff
4 will seek leave to amend this Complaint to show the true names and capacities of Does 1
5 through 30 upon discovery of the same. Plaintiff alleges that, at all times mentioned herein,
6 all of the defendants acted or participated in some manner in the acts alleged herein, and in
7 some way caused and are responsible for plaintiff's damages. All references to the named
8 defendant shall include, without limitation, Does 1 through 30 inclusive.

9 5. Plaintiff alleges that, at all times mentioned herein and unless otherwise
10 indicated, each of the defendants was and now is the agent of each of the other defendants,
11 and that each of the defendants, in performing the acts alleged, was acting within the course
12 and scope of such agency.

13 **VENUE AND JURISDICTION**

14 6. This court has jurisdiction over RBP's copyright infringement claims
15 under 17 U.S.C. §§ 101 et seq., 28 U.S.C. §§ 1331 and 1338(a).

16 7. This court has jurisdiction over RBP's trademark infringement claims
17 under 15 U.S.C. § 1121.

18 8. This court has jurisdiction over RBP's trade dress infringement claims
19 under 28 U.S.C. §§ 1331 and 1381(a) and 15 U.S.C. § 1121.

20 9. This court has jurisdiction over RBP's State law claims under 28 U.S.C.
21 §§ 1337 and 1367.

22 10. This court has personal jurisdiction over Mizban and T-REX Truck
23 Products, Inc. (hereinafter "Defendants") because the principal place of business is in this
24 judicial district and Defendants are transacting business in herein, and have made, used,
25 offered for sale, or sold products that infringe in this judicial district.

26 11. Venue is proper under 28 U.S.C. §§ 1391(b) because Defendants are
27 subject to personal jurisdiction and have committed acts of infringement in this district.

28 **STATEMENT OF FACTS**

1 12. RBP was incorporated January 8, 2007 and is in the business of
2 producing, selling, and distributing automotive accessories. Specifically, through the diligent
3 branding of RBP and its partners, RBP has become a premier provider of rims, exhaust tips,
4 and grilles for upscale off-road vehicles.

5 13. Defendants are in the business of manufacturing and selling grilles,
6 specifically grilles authorized and approved by RBP. The manufacturing and sales
7 agreement between RBP and Defendants began on or about June 2007, and continued
8 through July 1, 2009.

9 14. All RBP grille designs were works for hire and design was directed and
10 paid for by RBP. RBP is the copyright owner of the RBP grilles.

11 15. RBP has complied in all respects to 17 U.S.C. §§101 et seq. and secured
12 the exclusive rights and privileges in and to the copyrights of the below referenced work.
13 RBP has been and still is the owner of all right, title, interest in and to the copyrights in the
14 grille designs filed with the U.S. Copyright Office, application No. 1-501732571, titled “RBP
15 Grilles” and attached as Exhibit A.

16 16. RBP is the owner of U.S. Trademark Nos. 3,540,149, 3,790,749, and
17 3,543,209 which confers on RBP the exclusive right to use these trademarks in commerce. A
18 true and correct copy of each U.S. Trademark Registration is attached hereto as Exhibit B.
19 The trademark registrations referred to above are in full force and effect, and have never
20 been abandoned. RBP continues to preserve its rights with respect to these trademark
21 registrations.

22 17. RBP has established a well known and recognizable trade dress related
23 to the sale and distribution of aftermarket products for off-road vehicles. The RBP grille
24 trade dress comprises among other things chrome or black frame with rivets framing the
25 grille often times, but not necessarily, accompanied by an incomplete five-point star.

26 18. The Specialty Equipment Manufacturer Association (“SEMA”) tradeshow is
27 the premier automotive specialty products trade event in the world. It is not open to the general
28 public. It draws the industry’s brightest minds and hottest products to one place, the Las Vegas

1 Convention Center, and it attracts more than 100,000 industry leaders from more than 100 countries
2 for unlimited profit opportunities in the automotive, truck and SUV, and RV markets.

3 19. Prior to SEMA 2007, Defendants took a photograph of an RBP truck,
4 branded with an RBP grille, then “Photoshopped” the RBP trademark out of the photograph
5 and substituted Defendants’ “LUX” logo for use in Defendants’ 2007 SEMA catalog. See
6 attached Exhibit C.

7 20. Upon learning of the aforementioned act of infringement in or about
8 October 2007, RBP President, Frank Hodges, and Defendants had a clear discussion about
9 RBP intellectual property and the unequivocal enforcement that would follow any additional
10 infringement.

11 21. On or about July 1, 2009, RBP’s President had a conversation with
12 Defendants regarding a change to the RBP ongoing manufacturing and sales agreement. In
13 particular, RBP requested that Defendants cease using any RBP trademarks or other
14 intellectual property, in any of its business ventures other than those that were for the direct
15 benefit and at the direction of RPB.

16 22. On or about July 10, 2009, RBP’s counsel sent a letter to Defendants
17 stating that Defendants were not authorized to sell any trademarked products to anyone other
18 than RBP.

19 23. On or about July 24, 2009 Defendants attempted negotiations with RBP
20 to amend the June 2007 manufacturing and sales agreement, which included a complete
21 restriction on Defendants from manufacturing grilles for high end vehicles for brands other
22 than RBP.

23 24. On or about July 29, 2009 RBP’s counsel sent an additional cease and
24 desist notice to Defendants, which also included a process for Defendants to sell RBP
25 branded product through October 31, 2009.

26 25. On or about October 27, 2009 Defendants displayed grilles that
27 infringed RBP trade dress at SEMA 2009. When RBP discovered the infringement, RBP’s
28

1 President contacted Defendants and Defendants immediately removed the infringing grilles
2 from the SEMA 2009 tradeshow.

3 26. On or about December 4, 2009, RBP's counsel sent an additional cease
4 and desist reminder to the previous July 29, 2009 communication that clearly stated that
5 Defendants were not authorized to sell any RBP copyrighted or trademarked products.

6 27. Despite having agreed to the terms of the June 2007 manufacturing and
7 sales agreement, and having actual knowledge of the protected nature of the intellectual
8 property, Defendants have failed and refused to refrain from marketing and selling RPB
9 trademarked products to other interests.

10 28. Defendants have stated on multiple occasions and in particular on
11 October 12, 2010, that Defendants would pursue Original Equipment Manufacturer ("OEM")
12 manufacturing and discount distribution deals in breach of the RBP manufacturing and sales
13 agreement. Further, Defendants stated that Defendants would pursue OEM manufacturing
14 and discount distribution deals even if Defendants' products infringed RBP's intellectual
15 property rights.

16 29. Additionally, prior to October 12, 2010, RBP entered into an oral
17 agreement for manufacturing and distribution with Defendants for RBP branded grilles. In
18 performance of the agreement Defendants had access to proprietary information, including
19 trade secrets and vendor lists of RBP. Defendants purposefully entered into or attempted to
20 enter into agreements with cheap discount channel partners, like BMF, in breach of the
21 agreement. Defendants may attempt to use RBP proprietary information for unfair business
22 practices.

23 30. On or about October 12, 2010 RBP's President called Defendants and
24 gave notice of infringement of intellectual property rights including copyright, trademark and
25 trade dress rights. The notice specifically addressed grilles and grille designs that were
26 displayed or offered for sale through potential OEM deals.

27 31. Defendants have stated on multiple occasions, and in particular on
28 October 12, 2010, that Defendants would pursue OEM manufacturing and discount

1 distribution deals in breach of the RBP manufacturing and sales agreement and regardless of
2 whether doing so infringed RBP's intellectual property rights.

3 **FIRST CAUSE OF ACTION**

4 **(Copyright Infringement Against Defendants and Does 1 through 30)**

5 32. Plaintiff realleges and incorporates by reference each allegation
6 contained in paragraphs 1 through 31 as though fully set forth at this point.

7 33. RBP has complied in all respects to 17 U.S.C. §§101 et seq. and secure
8 the exclusive rights and privileges in and to the copyrights of the below referenced work.
9 RBP has been and still is the owner of all right, title, interest in and to the copyright
10 application of the works filed October 13, 2010 having case # 1-501732571.

11 34. For an unknown period of time, but at least as early as 2007, Defendants
12 have unlawfully copied, displayed, distributed and reproduced RBP's copyrighted images as
13 set forth above as well as many other images that are not registered with the copyright office.
14 RBP did not authorize the copying, display, distribution, or reproduction of RBP's work.

15 35. Defendants have therefore violated RBP's exclusive rights in its
16 copyrighted works including and without limitation RBP's rights under 17 U.S.C. §106.

17 36. On information and belief RBP alleges that, as a direct and proximate
18 result of Defendants wrong conduct, Defendants have realized and continue to realize profits
19 and other benefits rightfully belonging to RBP. Accordingly, RBP seeks an award of
20 damages pursuant to 17 U.S.C. §§504 and 505.

21 37. Defendants' infringing conduct has also caused and is causing
22 substantial and irreparable injury and damage to RBP in an amount not capable of
23 calculation, and unless restrained, will cause further irreparable injury leaving RBP with no
24 remedy at law.

25 38. Accordingly, RBP respectfully requests the court issue a preliminary and
26 permanent injunction against Defendants' continued use of RBP copyrighted works.

27 **SECOND CAUSE OF ACTION**

28 **(Trademark Infringement Against Defendants and Does 1 through 30)**

1 39. Plaintiff realleges and incorporates by reference each allegation
2 contained in paragraphs 1 through 38 as though fully set forth at this point.

3 40. RBP is the owner of U.S. Trademark Nos. 3,540,149, 3,790,749, and
4 3,543,209 which confers on RBP the exclusive right to use these trademarks in commerce. A true
5 and correct copy of each U.S. Trademark Registration is attached hereto as Exhibit B. The
6 trademark registrations referred to above are in full force and effect, and have never been abandoned.
7 RBP continues to preserve its rights with respect to these trademark registrations.

8 41. The trademarks referred to above are inherently distinctive in
9 appearance and have become through widespread public acceptance, a distinctive designation
10 or source of origin of goods offered by RBP and have acquired secondary meaning in the
11 marketplace. The trademarks constitute an asset of incalculable value as a symbol of RBP in
12 its quality of goods and goodwill.

13 42. The marks have been used in commerce in connection with the sale of
14 RBP grilles continuously since at least the earliest date of issue. The marks appear clearly on
15 packaging, advertisements, product brochures, point of purchase materials and on RBP
16 branded products.

17 43. RBP is informed and believes and based thereon alleges that Defendants
18 have used the RBP trademarks on Defendants' website and products creating the impression
19 that Defendants are authorized to use RBP's trademarks.

20 44. RBP is informed and believes and based thereon alleges that Defendants
21 use of the Plaintiff's trademarks in commerce constitute trademark infringement and false
22 designation.

23 45. Defendants are well aware of RBP's trademark rights and agreed by way
24 of contract not to use RBP's trademarks without express authority of RBP. Defendants have
25 obtained no such authority.

26 46. RBP is informed and believes and based thereon alleges that Defendants
27 have derived, received, and will continue to receive its profits from Defendants infringement
28

1 of RBP's trademark rights in an amount not yet ascertainable, but will be as of the time of
2 trial.

3 47. RBP is informed to believes, and based thereon alleges that Defendants
4 will continue to infringe RBP's registered trademarks to the irreparable injury of RBP to
5 which RBP has no adequate remedy of law unless Defendants are enjoined by this court from
6 doing so.

7 48. Plaintiff has been damaged and continues to be damaged as a result of
8 Defendants' infringement of its trademarks. Plaintiff is informed and believes, and based
9 thereon alleges that this unauthorized sale of RBP marked products by Defendants has
10 resulted in lost sales and has reduced the business and profit of RBP all to RBP's damage in
11 the amount not yet ascertained.

12 **THIRD CAUSE OF ACTION**

13 **(Trade Dress Infringement Against Defendants and Does 1 through 30)**

14 49. Plaintiff realleges and incorporates by reference each allegation
15 contained in paragraphs 1 through 48 as though fully set forth at this point.

16 50. RBP's registered trademarks and trade dress are distinctive of goods
17 originating from RBP. Through sales and advertising, the trade dress has become associated
18 in the minds of consumers with Plaintiff's products.

19 51. The trade dress referred to above is inherently distinctive in appearance
20 and has become through widespread public acceptance, a distinctive designation or source of
21 origin of goods offered by RBP and has acquired secondary meaning in the marketplace. The
22 trade dress constitutes an asset of incalculable value as a symbol of RBP in its quality of
23 goods and goodwill.

24 52. Defendants continuing use of the registered marks and RBP trade dress
25 is unauthorized.

26 53. Defendants' continued use of the registered marks and RBP trade dress
27 is likely to cause and, on information and belief, has actually caused confusion in the
28

1 marketplace by creating the false and mistaken impression that Defendants' infringing
2 products are affiliated, connected or associated with, or approved by RBP.

3 54. On information and belief, RBP alleges that, as a direct and proximate
4 result of Defendants wrongful conduct, Defendants have realized and continue to realize
5 profits and other benefits rightfully belonging to RBP.

6 55. Defendants' continued infringing conduct has also caused and is causing
7 substantial and irreparable injury and damage to RBP in an amount not readily capable of
8 calculation, and unless restrained, will cause further irreparable injury leaving RBP with no
9 remedy at law.

10 56. Accordingly, RBP respectfully requests the court issue a preliminary and
11 permanent injunction against Defendants' continued use of RBP trade dress.

12 **FOURTH CAUSE OF ACTION**

13 **(California Unfair Competition Against Defendants and Does 1 through 30)**

14 57. Plaintiff realleges and incorporates by reference each allegation
15 contained in paragraphs 1 through 56 as though fully set forth at this point.

16 58. This claim is for unfair competition under the California Business and
17 Professions Code § 17200.

18 59. This court has supplemental jurisdiction under 28 U.S.C. §§ 1337 and
19 1367.

20 60. California Business and Professions Code § 17200 et seq. ("§17200")
21 prohibits the act of "unfair competition," including any unlawful, unfair, or fraudulent
22 business act or practice.

23 61. Defendants conduct, including, misusing client lists, misappropriating
24 copyrighted work, and unlawfully using RBP's proprietary information, as described above
25 constitutes unlawful, unfair, and fraudulent business acts or practices.

26 62. Plaintiff seeks an injunction preventing Defendants from continuing to
27 engage in unfair business practices within the meaning of §17200.

28 63. Plaintiff respectfully request judgment as hereinafter set forth.

FIFTH CAUSE OF ACTION

(Breach of Contract Against Defendants and Does 1-30)

64. Plaintiff realleges and incorporates by reference each allegation contained in paragraphs 1 through 63 as though fully set forth at this point.

65. Defendants have breached the RBP manufacturing and sales agreement, and upon information and belief have entered into or attempted to enter into agreements with RBP's competitors to sell inferior quality grilles at discounted prices while still branding product with RBP trademarks and trade dress.

66. RBP on information and belief, alleges that Defendants have misrepresented royalty statements and substantially underreported accounting of RBP product sales.

67. Defendants conduct is a breach and is a direct and proximate cause of damages to RBP.

68. As a direct result of the breach of the contract by Defendants, Plaintiff has been damaged in an amount not yet fully ascertainable but that will be determined by an accounting and at trial.

SIXTH CAUSE OF ACTION

(State Law Trademark Infringement Against Defendants and Does 1-30)

69. Plaintiff realleges and incorporates by reference each allegation contained in paragraphs 1 through 67 as though fully set forth at this point.

70. RBP is the owner of U.S. Trademark Nos. 3,540,149, 3,790,749, and 3,543,209 which confers on RBP the exclusive right to use these trademarks in commerce. A true and correct copy of each U.S. Trademark Registration is attached hereto as Exhibit B. The trademark registrations referred to above are in full force and effect, and have never been abandoned. RBP continues to preserve its rights with respect to these trademark registrations.

71. The trademarks referred to above are inherently distinctive in appearance and have become through widespread public acceptance, a distinctive designation or source of origin of goods offered by RBP and have acquired secondary meaning in the

1 marketplace. The trademarks constitute an asset of incalculable value as a symbol of RBP in
2 its quality of goods and goodwill.

3 72. The marks have been used in commerce in connection with the sale of
4 RBP grilles continuously since at least the earliest date of issue. The marks appear clearly on
5 packaging, advertisements, product brochures, point of purchase materials and on RBP
6 branded products.

7 73. RBP is informed and believes and based thereon alleges that Defendants
8 have used the RBP trademarks on Defendants' website and products creating the impression
9 that Defendants are authorized to use RBP's trademarks.

10 74. RBP is informed and believes and based thereon alleges that Defendants
11 use of the Plaintiff's trademarks in commerce constitute trademark infringement and false
12 designation.

13 75. Defendants are well aware of RBP's trademark rights and agreed by way
14 of contract not to use RBP's trademarks without express authority of RBP. Defendants have
15 obtained no such authority.

16 76. RBP is informed and believes and based thereon alleges that Defendants
17 have derived, received, and will continue to receive its profits from Defendants infringement
18 of RBP's trademark rights in an amount not yet ascertainable, but will be as of the time of
19 trial.

20 77. RBP is informed to believes, and based thereon alleges that Defendants
21 will continue to infringe RBP's registered trademarks to the irreparable injury of RBP to
22 which RBP has no adequate remedy of law unless Defendants are enjoined by this court from
23 doing so.

24 78. Plaintiff has been damaged and continues to be damaged as a result of
25 Defendants' infringement of its trademarks. Plaintiff is informed and believes, and based
26 thereon alleges that this unauthorized sale of RBP marked products by Defendants has
27 resulted in lost sales and has reduced the business and profit of RBP all to RBP's damage in
28 the amount not yet ascertained.

PRAAYER FOR RELIEF

1. On the First through Sixth Causes of Action For:
 - (a) Actual damages to be determined at trial plus pre- and post-judgment interest against Defendants;
 - (b) Punitive damages; and,
 - (c) Attorneys' fees and costs;
2. On the First through Fourth and Sixth Cause of Action For:
 - (a) An order preliminarily enjoining Defendants, their agents, servants, employees and assigns and all those acting in concert with them from engaging in sales or marketing activity related to the RBP grille market; and,
3. On All Causes of Action For:
 - (a) Such other and further relief as the Court may deem just.

Dated: October 20, 2010

RBP Performance, Inc.

By

Eric B. Alspaugh, Esq.
General Counsel

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury on all claims that are triable by jury.

Dated: October 20, 2010

RBP Performance, Inc.

By:

Eric B. Alspaugh, Esq.
General Counsel