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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

19 BOLLEGRAAF PATENTS AND BRANDS
20 B.V., BOLLEGRAAF RECYCLING
21 MACHINERY B.V., LUBO SYSTEMS
22 B.V., LUBO USA, LLC, and VAN DYK
23 BALER CORP.,

24 Plaintiffs,

25 v.

26 POLYMERIC TECHNOLOGY, INC.,

27 Defendant.

CASE NO. 3:22-cv-01687

**COMPLAINT FOR (1) PATENT
INFRINGEMENT, (2) FEDERAL
TRADEMARK INFRINGEMENT, (3)
FALSE DESIGNATION OF ORIGIN, (4)
COMMON LAW TRADEMARK
INFRINGEMENT, (5) UNFAIR
COMPETITION AND BUSINESS
PRACTICES UNDER CALIFORNIA
STATE LAW, (6) FALSE AND
MISLEADING ADVERTISING UNDER
CALIFORNIA STATE LAW, AND (7)
UNFAIR COMPETITION UNDER
CALIFORNIA COMMON LAW**

DEMAND FOR JURY TRIAL

1 Bollegraaf Patents and Brands B.V. (“Bollegraaf Patents”), Bollegraaf Recycling Machinery
2 B.V. (“Bollegraaf Recycling”), Lubo Systems B.V. (“Lubo Systems”), Lubo USA, LLC (“Lubo USA”),
3 and Van Dyk Baler Corp. (“Van Dyk”) (collectively, “Plaintiffs”) file this Complaint against Defendant
4 Polymeric Technology, Inc. (“Poly-Tek” or “Defendant”) for infringement of U.S. Patent No.
5 10,259,011 (the “’011 patent”), federal trademark infringement, common law trademark infringement,
6 false designation of origin, unfair competition, and false and misleading advertising.

7 THE PARTIES

8 1. Plaintiff Bollegraaf Patents is a corporation organized under the laws of The
9 Netherlands with its principal place of business at Tweede Industrieweg 1, 9902 AM Appingedam, The
10 Netherlands.

11 2. Plaintiff Bollegraaf Recycling is a corporation organized under the laws of The
12 Netherlands with its principal place of business at Tweede Industrieweg 1, 9902 AM Appingedam, The
13 Netherlands.

14 3. Plaintiff Lubo Systems is a corporation organized under the laws of The Netherlands
15 with its principal place of business at Phileas Foggstraat 85, 7825 AW Emmen, The Netherlands.

16 4. Plaintiff Lubo USA is a limited liability company organized under the laws of
17 Connecticut with a principal place of business at 360 Dr. Martin Luther King Jr. Drive, Norwalk, CT
18 06854.

19 5. Plaintiff Van Dyk is a corporation organized under the laws of New York with its
20 principal place of business at 360 Dr. Martin Luther King Jr. Drive, Norwalk, CT 06854.

21 6. Lubo USA and Van Dyk operate together under the name Van Dyk Recycling Solutions
22 (“VDRS”).

23 7. On information and belief, Defendant Poly-Tek is a corporation organized under the
24 laws of California with its principal place of business at 1900 Marina Boulevard, San Leandro,
25 California 94577.

26 JURISDICTION AND VENUE

27 8. This action arises under the patent laws of the United States, Title 35 of the United
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1 States Code and under the trademark laws of the United States, Title 15 of the United States Code.
2 Accordingly, this Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and
3 1338(a). The California state unfair competition and common law claims joint the substantial and
4 related federal claims and form part of the same case or controversy. This Court therefore also has
5 jurisdiction over such claims under 28 U.S.C. § 1338(b) and 28 U.S.C. § 1367.

6 9. Defendant is subject to this Court's specific and general personal jurisdiction pursuant
7 to the California Long Arm Statute and/or in light of Defendant's systematic and continuous contact
8 with California, due at least to its substantial business in this State and judicial district, including:
9 regularly doing or soliciting business, engaging in other persistent conduct, and/or deriving substantial
10 revenue from infringing goods offered for sale, sold, and imported and services provided to California
11 residents vicariously through and/or in concert with its intermediaries, distributors, importers,
12 customers, and/or subsidiaries. For example, on information and belief, Defendant's principal place of
13 business and headquarters are located at 1900 Marina Boulevard, San Leandro, California, which is in
14 this Judicial District. (See <https://www.poly-tek.com/contact/>).

15 10. Venue is proper in this district as to Defendant under 28 U.S.C. §§ 1391 and 1400(b)
16 because, among other reasons, on information and belief, Defendant is a corporation organized and
17 existing under the laws of the State of California. Therefore, Defendant resides in this district.

18 INTRA-DISTRICT ASSIGNMENT

19 11. Pursuant to Civil Local Rules 3-5(b) and 3-2(c), because this action is an intellectual
20 property action, it is properly assigned to any division in this District.

21 THE '011 PATENT AND THE PATENTED TECHNOLOGY

22 12. Bollegraaf Recycling, founded in 1961, is a global corporation with a focus on state-of-
23 the-art recycling solutions, including technology for separating recyclable materials. One of Bollegraaf
24 Recycling's technology solutions for separating recyclable material is STARSCREEN®—a screening
25 system that includes axels on which rubber discs or "stars" are mounted. In operation, recyclable
26 material to be separated is distributed at one end of the screening system. The rotary motion of the
27 axels and rubber discs causes the material to be shaken and move forward along the screening system.
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1 Smaller material, that is desired to be separated out, falls through openings between the axels and the
2 rubber discs and is collected underneath the conveyor system. The size and spacing of the axels and
3 rubber discs vary, depending on the desired separation of the recyclable materials.

4 13. The STARSCREEN® system is a market success. Specifically, the STARSCREEN®
5 system has significantly changed the recycling and waste processing industry by providing a system
6 that results in high processing capacity, better purity, and low operating and maintenance costs to
7 maximize a user’s return on investment. The rubber discs can be fixed and, due to their “split” design
8 released more quickly, while at the same time allowing the discs to be fixed reliably.

9 14. As the rubber on the discs degrades or wear out, it is harder for the rubber discs to sort
10 materials. Thus, customers or end-users must routinely replace the rubber discs.

11 15. Lubo Systems, an exclusive licensee to the ’011 patent, is the exclusive manufacturer
12 of the STARSCREEN® system, including replacement rubber discs (“Lubo Rubber Discs”) for that
13 system.

14 16. Van Dyk and Lubo USA are sublicensees to the ’011 patent. Van Dyk is the exclusive
15 service provider for the STARSCREEN® system in the United States and holds long-term contracts
16 with customers throughout the United States for providing such services. VDRS is the exclusive
17 distributor of replacement discs for the STARSCREEN® system, manufactured by Lubo Systems.

18 17. True and correct images of the Lubo Rubber Discs manufactured by Lubo Systems,
19 distributed in the United States exclusively by VDRS, and serviced exclusively in the United States by
20 Van Dyk, are shown below.

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11 18. The Lubo Rubber Discs are marked with the '011 patent in accordance with 35 U.S.C.
12 § 287 and have been since in or around June 2019. The Lubo Rubber Discs were first sold in the United
13 States marked with the '011 patent in accordance with 35 U.S.C. § 287 in or around June 2019. A true
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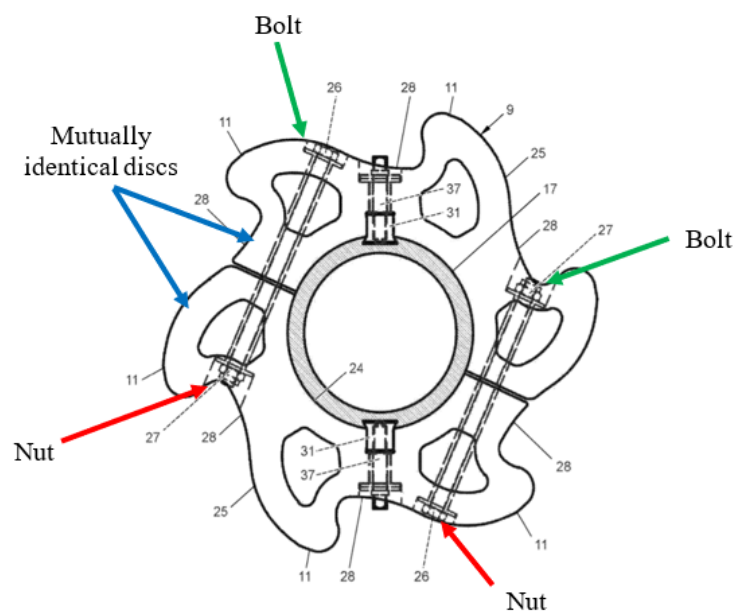
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22 and correct copy of an image of the Lubo Rubber Disc marked with the '011 patent is shown above.
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24 19. Plaintiffs have invested and continue to invest significantly in the acquisition and
25 maintenance of the equipment used to engineer and manufacture the STARSCREEN® technology,
26 including the rubber discs. In addition, Plaintiffs have invested and continue to invest substantially in
27 the design, engineering, research, development, manufacture, marketing, and sale of the
28 STARSCREEN® technology and associated rubber discs.

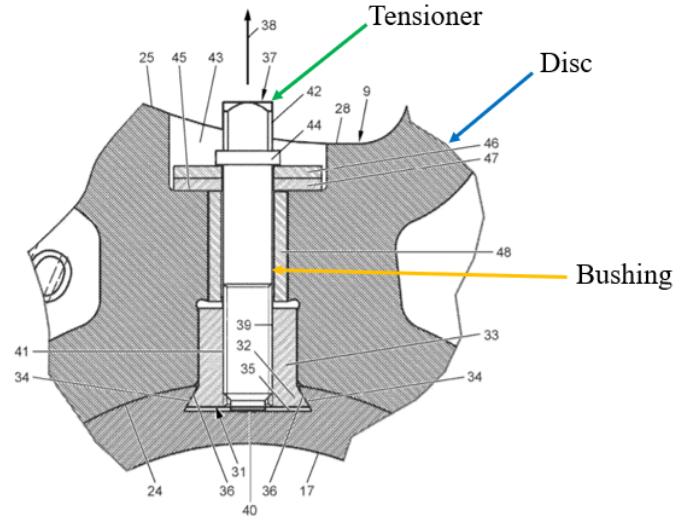
1 20. The '011 patent is titled "Disc for a Separating Conveyor Screen and Separating
2 Conveyor Screen Including Such a Disc." The '011 patent issued on April 16, 2019. Bollegraaf Patents
3 is the assignee of all rights, title, and interests in and to the '011 patent and holds the right to sue and
4 recover for past, present, and future infringement thereof. Lubo Systems is the exclusive licensee of
5 the '011 patent and holds the right to sue for past, present, and future infringement thereof. Lubo USA
6 and Van Dyk are sublicensees of the '011 patent and each hold the right to sue for past, present, and
7 future infringement thereof. A true and correct copy of the '011 patent is attached as Exhibit A.

8 21. The '011 patent is valid, enforceable, and was duly issued in full compliance with Title
9 35 of the United States Code. The '011 patent issued from U.S. Patent Application No. 15/634,424.

10 22. The '011 patent is generally directed to a disc for a separating conveyor that allows the
11 disc's position "to be fixed and released more quickly and to allow the discs to be fixed more reliably."
12 '011 patent at col. 1, ll. 8–9; col. 2, ll. 3–5. In particular, the disc of the '011 patent comprises, *inter*
13 *alia*: a disc body, at least one anchoring member, and at least one tensioner. *Id.* at col. 2, ll. 6–10. The
14 disc consists of "two mutually identical parts" which are clamped together using two nuts and bolts.
15 *Id.* at col. 4, ll. 56–60. The two parts are "releasable" to a "displaced condition" in which "a radial
16 passage for passing the shaft radially into and out of the opening is formed." *Id.* at col. 4, ll. 39–42.
17 This allows the discs "to be mounted on and dismantled from the shafts without dismounting of the
18 shafts." *Id.* at col. 4, ll. 43–45. Annotated FIG. 5 of the '011 patent is shown below.



23. The '011 patent discloses that the mutually identical discs are fixed to the shaft by



“anchoring members” disposed in a recessed slot extending along the length of the shaft. *Id.* at col. 5, ll. 12–16. The anchoring members are “tensioned by a tensioner . . . radially towards the disc body.” *Id.* at col. 5, ll. 28–30. The “tensioning member” may be “a bolt extending through a bushing.” *Id.* at col. 6, l. 31. Annotated FIG. 7 of the '011 patent is shown below.

THE BOLLEGRAAF AND LUBO TRADEMARKS

24. Bollegraaf Recycling’s, Lubo Systems’, and VDRS’s products and services are protected through a broad range of intellectual property rights. For example, Bollegraaf Recycling is the owner of the federal trademark registration for BOLLEGRAAF—U.S. Trademark Registration No. 2,665,462 (“the ’462 registration”). A true and correct copy of the ’462 registration is attached hereto as Exhibit B. In addition, Bollegraaf Patents is the owner of the federal registration for LUBO—U.S. Trademark Registration No. 3,572,616 (“the ’616 registration”). A true and correct copy of the ’616 registration is attached hereto as Exhibit C. Plaintiffs have continuously used the mark associated with the ’462 registration in the United States since in or around 1984 in California and in interstate commerce within the United States generally, in connection with their recycling systems. In addition, Plaintiffs have continuously used the mark in connection with the ’616 registration in the United States since in or around 1996 in California and in interstate commerce within the United States generally, in connection with their recycling systems.

25. Through Plaintiffs’ advertising and promotion of the LUBO and BOLLEGRAAF

1 marks, consumers have come to associate the LUBO and BOLLEGRAAF marks with Plaintiffs'
2 recycling systems.

3 DEFENDANT'S INFRINGING CONDUCT

4 26. Defendant manufactures, uses, sells, offers for sale and/or imports "Recycling stars and
5 discs" (hereafter, "Accused Products") in the United States.

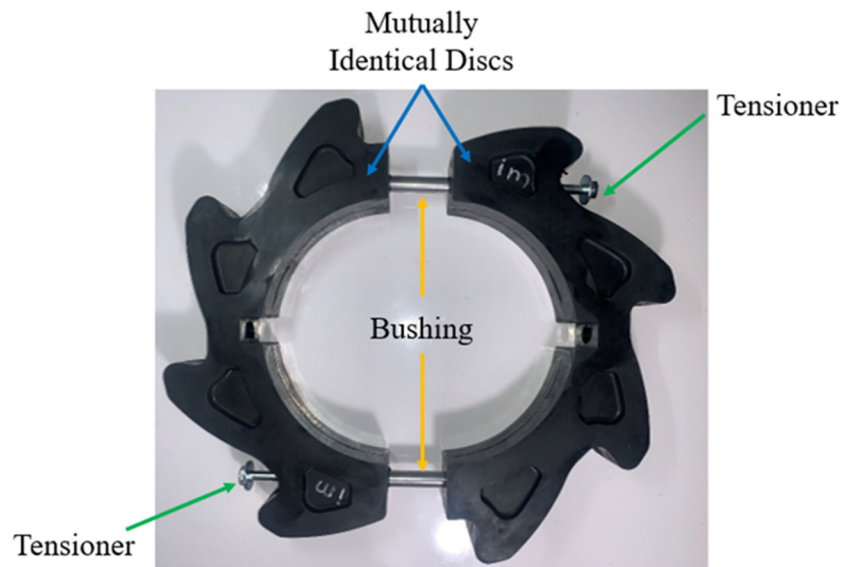
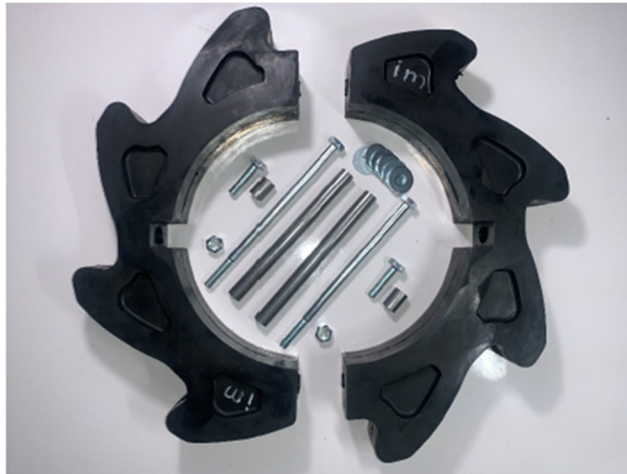
6 27. The Accused Products are discs for separating conveyor screens. For example, on its
7 website, Defendant advertises the Accused Products as "Most prominently we supply replacement
8 recycling stars for machine sorters such as . . . Lubo, Bollegraaf . . ." See, e.g., <https://www.poly-tek.com/products/recycling>
9 ("Poly-Tek Website"). Defendant uses the LUBO and BOLLEGRAAF
10 marks on the Poly-Tek Website without Plaintiffs' authorization or consent. Below is true and correct
11 copy of an image on the Poly-Tek Website, which shows Defendant's unauthorized use of Plaintiffs'
12 LUBO mark, circled in red.



23 <https://www.poly-tek.com/products/recycling/>

24 28. True and correct images of one of Defendant's Accused Products are shown below. The
25 Accused Products includes two mutually identical discs and a hardware kit. The hardware kit contains
26 (i) two long bolts, corresponding bushings, and nuts, (ii) two short bolts and corresponding bushings,
27 and (iii) six identical washers which fit the long and short bolts.

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29. The hardware kit permits the mutually identical discs to be clamped to and removed from the shaft of a “machinery sorter,” including, without limitation, Plaintiffs’ conveyor screen sorters. For example, the bushings are sized to fit snugly in preformed holes in the rubber molded portions and the long and short bolts fit inside the bushings.

30. The mutually identical discs are joined by pressing the bushings into their corresponding holes and are secured together by affixing the nuts to the ends of the bolts.

31. Defendant, on information and belief, uses, imports, offers for sale, and/or sells at least the Accused products. Defendant has harmed and will continue to cause damage and irreparable harm

1 to Plaintiffs' business, reputation, and consumer goodwill in this District and nationwide by
2 intentionally and knowingly using the LUBO and BOLLEGRAAF marks on its website, creating a
3 false association between the Accused Products and Plaintiffs, when no such association exists. On
4 information and belief, Defendant has sold the Accused Products to customers in the United States and
5 within this District. On information and belief, customers in this District and throughout the United
6 States have been deceived into believing that Defendant's Accused Products are associated with
7 Plaintiffs' recycling systems. Defendant has caused injury to the reputation and consumer goodwill
8 that Plaintiffs have spent many years and tremendous resources cultivating as the pioneer and leader in
9 the recycling industry. Defendant's conduct has further created consumer confusion in the marketplace
10 and harmed Plaintiffs' goodwill with its customers and business partners.

11 **COUNT I**

12 **(INDIRECT INFRINGEMENT OF U.S. PATENT NO. 10,259,011)**

13 32. Plaintiffs repeat and reallege paragraphs 1-30 as if fully set forth at length herein.

14 33. Plaintiffs have not licensed or otherwise authorized Defendant to make, use, offer for
15 sale, sell, or import any products that embody the inventions of the '011 patent.

16 34. Defendant has had notice of the '011 patent at least as of June 2019, when Lubo began
17 marking its rubber discs with the '011 patent and selling those rubber discs in the United States. In
18 addition, Defendant has known of the '011 patent since at least as early as the service date of this
19 Complaint.

20 35. Since at least the above-mentioned date when Defendant was on notice of its
21 infringement, Defendant has actively induced, under 35 U.S.C. § 271(b), its distributors, customers,
22 and/or end-users that use, sell, offer for sale and/or import the Accused Products to directly infringe at
23 least claim 1 of the '011 patent, with knowledge, and/or with willful blindness of the fact that the
24 induced acts constitute infringement of the '011 patent. Defendant's distributors, customers, and/or
25 end-users have directly infringed and are directly infringing, either literally and/or under the doctrine
26 of equivalents, at least claim 1 of the '011 patent through their selling, offering for sale, importation,
27 and/or using the Accused Products. Defendant induces this direct infringement through its affirmative
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1 acts of manufacturing, selling, distributing, and/or otherwise making available the Accused Products
2 and providing technical guides, product data sheets, demonstratives, advertisements, installation
3 guides, and other forms of support to induce their distributors, customers, and/or end-users to directly
4 infringe at least claim 1 the '011 patent. The Accused Products are designed so that when they are used
5 for their intended purpose, the user directly infringes at least claim 1 of the '011 patent. Defendant
6 knows and intends that its distributors, customers, and/or end-users who purchase the Accused Products
7 will use those products for their intended purpose.

8 36. Claim 1 of the '011 patent recites:

9 A disc for a separating conveyor screen, the disc having:

10 a disc body with a releasable part and with an opening in an axial direction for receiving a shaft
11 carrying the disc, the releasable part being displaceable when in released condition between
12 a displaced position leaving open a radial passage for passing the shaft radially into and out
13 of the opening and a mounted position for enclosing the shaft in the opening;

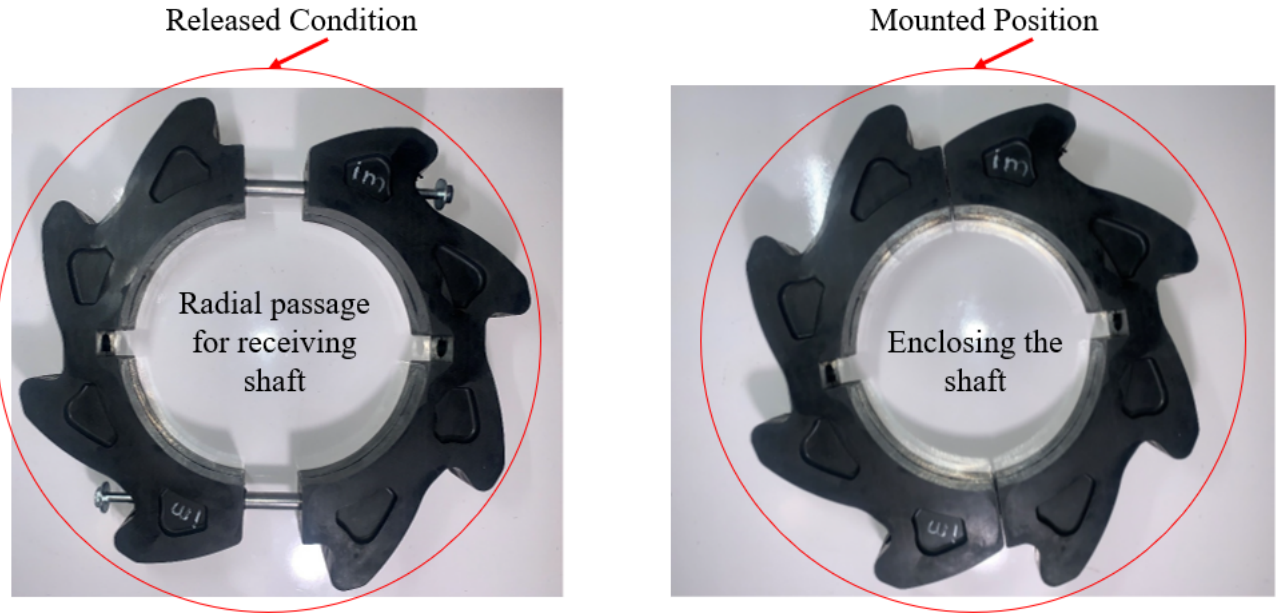
14 at least one anchoring member arranged for fixation in a recess in an outside surface of the
15 shaft; and

16 at least one tensioner for tensioning said anchoring member in a radially outward direction
17 towards said disc body.

18 37. On information and belief, Accused Products are discs for a separating conveyer screen.

19 For example, Defendant's website states that the "replacement recycling stars [are] for machine sorters
20 such as . . . Lubo, Bollegraaf . . ." *See, e.g., Poly-Tek Website.*

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11 40. On information and belief, when the Accused Products are attached to “machine

12 sorters,” at least one anchoring member is arranged for fixation in a recess in an outside surface of the

13 shaft.



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23 41. On information and belief, the Accused Products include at least one tensioner for

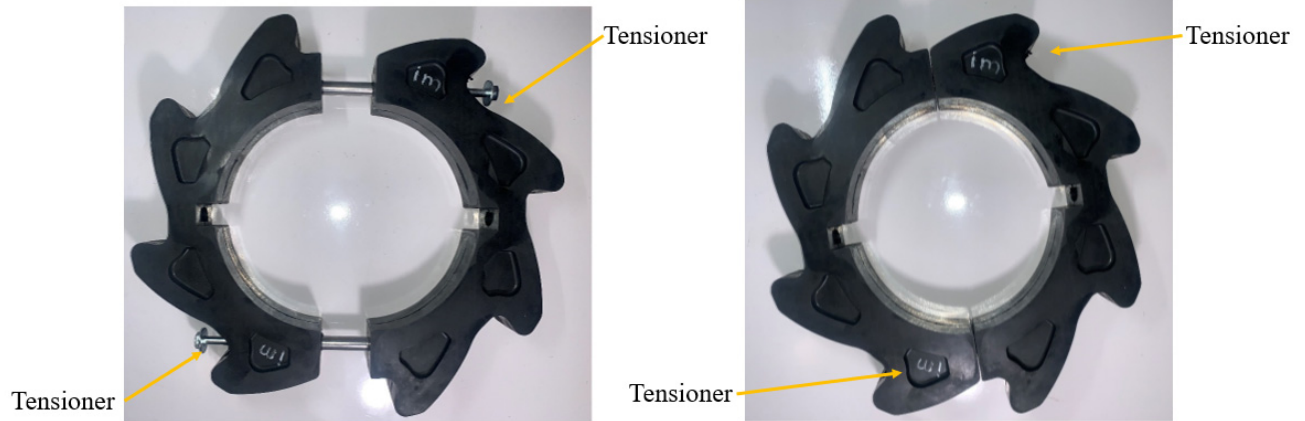
24 tensioning said anchoring member in a radially outward direction towards said disc body.

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8 42. On information and belief, and after having knowledge of the '011 patent as set forth
9 above, Defendant has contributorily infringed and continues to contributorily infringe the '011 patent
10 in violation of 35 U.S.C. 271(c).

11 43. Since at least the above-mentioned date when Defendant was on notice of its
12 infringement, Defendant has contributorily infringed at least claim 1 of the '011 patent under 35 U.S.C.
13 § 271(c). Specifically, since at least the above-mentioned date when Defendant was on notice of its
14 infringement, Defendant actively, knowingly, and intentionally has been and continues to materially
15 contribute to its distributors, customers, and/or end-users direct infringement of at least claim 1 of the
16 '011 patent, literally or under the doctrine of equivalents, by making, using, selling, offering for sale,
17 distributing, exporting from, and/or importing into the United States the Accused Products for use in a
18 manner that infringes at least claim 1 of the '011 patent. The Accused Products are specifically and
19 solely designed and intended for infringing use and have no substantial non-infringing use.

20 44. Defendant is liable, at minimum, to Plaintiffs in an amount that adequately compensates
21 Plaintiffs for Defendant's infringements, which, by law, cannot be less than a reasonable royalty,
22 together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

23 45. Plaintiffs have suffered, and will continue to suffer, irreparable harm for which there is
24 no adequate remedy at law, unless Defendant's infringement is enjoined by this Court.

25 46. Defendant's conduct in infringing the '011 patent renders this case exceptional within
26 the meaning of 35 U.S.C. § 285.

27 47. On information and belief, Defendant's infringement has been and continues to be
28 willful.

COUNT II

(TRADEMARK INFRINGEMENT UNDER 15 U.S.C. § 1114)

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3 48. Plaintiffs repeat and allege all of the factual allegations made above and incorporate
4 them herein by reference.

5 49. This cause of action for trademark infringement arises under Section 32 of the Lanham
6 Act, 15 U.S.C. § 1114, and is for infringement of trademarks registered on the Principal Register of the
7 USPTO at U.S. Registration Nos. 2,665,462 and 3,572,616 (collectively, the “Asserted Trademarks”).

8 50. Bollegraaf Recycling is the exclusive owner of the ’462 registration, and Bollegraaf
9 Patents is the exclusive owner of the ’616 registration.

10 51. The Asserted Trademarks are nonfunctional and inherently distinctive and/or have
11 acquired secondary meaning within the relevant market.

12 52. Defendant’s unauthorized use of the Asserted Trademarks on the Poly-Tek website is
13 likely to cause confusion, mistake, or deception in that actual or potential customers are likely to believe
14 that the Accused Products are provided by, sponsored by, approved by, licensed by, affiliated or
15 associated with, or emanate from Plaintiffs, and Defendant’s acts constitute trademark infringement.

16 53. Defendant’s unauthorized use of the Asserted Trademarks in commerce in the United
17 States wand within this District constitutes trademark infringement in violation of Section 32 of the
18 Lanham Act, 15 U.S.C. § 1114.

19 54. As a result of Defendant’s wrongful conduct, Plaintiffs have suffered—and unless
20 Defendant’s conduct is permanently enjoined, will continue to suffer—actual damages and irreparable
21 harm, as to which it has no adequate remedy at law.

22 55. Because Defendant’s actions have been willful, Plaintiffs are entitled to treble damages,
23 and, this being an exceptional case, reasonable attorneys’ fees.

24 56. Additionally, as a direct and proximate result of Defendant’s wrongful conduct,
25 Plaintiffs have been injured in this District and elsewhere and have lost money and profits, and such
26 harm will continue unless Defendant’s acts are enjoined by the Court. Plaintiffs have no adequate
27 remedy at law for Defendant’s continuing violation of Plaintiffs’ rights.
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COUNT III

(FALSE DESIGNATION OF ORIGIN UNDER 15 U.S.C. § 1125(a))

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3 57. Plaintiffs repeat and reallege all of the factual allegations made above and incorporate
4 them herein by reference.

5 58. The acts of Defendant alleged herein, including the unauthorized use of the Asserted
6 Trademarks on the Poly-Tek website is likely to cause confusion, mistake or deception of purchasers
7 and potential purchasers as to the origin, sponsorship, or approval of the Accused Products by Plaintiffs.

8 59. By using the Asserted Trademarks, Defendant has falsely and misleadingly described
9 and suggested that the Accused Products emanate or are sponsored or approved by Plaintiffs.

10 60. The false association actually deceived or has the tendency to deceive a substantial
11 segment of users about the quality and characteristics of Plaintiffs brands and services within this
12 District and the United States. The deception is material and is likely to influence and has caused users
13 to falsely associate Defendant with Plaintiffs.

14 61. The Asserted Trademarks have achieved market penetration throughout the United
15 States generally, and California and in this District specifically.

16 62. Plaintiffs have prior common law trademark rights in the Asserted Marks based on their
17 adoption and continuous use of the marks in interstate commerce in connection with Plaintiffs'
18 recycling systems and services. Consumers recognize the Asserted Trademarks as designating
19 Plaintiffs as the source of the recycling systems and services.

20 63. On information and belief, before Defendant's first use of the Asserted Trademarks,
21 Defendant was aware of the Asserted Trademarks and thereafter had either actual notice and knowledge
22 or constructive notice of the Asserted Trademarks.

23 64. On information and belief, Defendant's conduct as described herein has been and
24 continues to be intentional, willful, and without regard for Plaintiffs' business and reputation as well
25 as Plaintiffs' intellectual property. Defendant's conduct has caused and will continue to cause Plaintiffs
26 to suffer monetary loss to its business, reputation, customers, and goodwill.

27 65. Defendant's unauthorized use of the Asserted Trademarks in commerce in the United
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1 States and within this District constitutes false designation of origin in violation of Section 43(a) of the
2 Lanham Act, 15 U.S.C. § 1125(a).

3 66. As a result of Defendant’s wrongful conduct, Plaintiffs have suffered—and unless
4 Defendant’s conduct is permanently enjoined, will continue to suffer—actual damages and irreparable
5 harm, as to which it has no adequate remedy at law.

6 67. Because Defendant’s actions have been willful, Plaintiffs are entitled to treble damages,
7 and, this being an exceptional case, reasonable attorneys’ fees.

8 68. Additionally, as a direct and proximate result of Defendant’s wrongful conduct,
9 Plaintiffs have been injured in this District and have lost money and profits, and such harm will continue
10 unless Defendant’s acts are enjoined by the Court. Plaintiffs have no adequate remedy at law for
11 Defendant’s continuing violation of Plaintiffs’ rights.

12 **COUNT IV**

13 **(TRADEMARK INFRINGEMENT UNDER CALIFORNIA COMMON LAW)**

14 69. Plaintiffs repeat and reallege all of the factual allegations made above and incorporate
15 them herein by reference.

16 70. The Asserted Trademarks are nonfunctional and inherently distinctive and/or have
17 acquired secondary meaning within the relevant market.

18 71. The Asserted Trademarks have achieved market penetration throughout California and
19 this District specifically, and elsewhere.

20 72. Plaintiffs had prior common law trademark rights in the Asserted Trademarks based on
21 their adoption and continuous commercial use of Asserted Trademarks in connection with Plaintiffs’
22 products and services in California before Defendant. Consumers in California recognize the Asserted
23 Trademarks as designating Plaintiffs as the source of goods and services on which it is used.

24 73. Defendant’s commercial and unauthorized use of the Asserted Trademarks with their
25 products and services, including but not limited to the Accused Products, in California, as set forth
26 above, is likely to, and does in fact, deceive consumers and/or cause confusion or mistake as to the
27 affiliation, connection, or association of Defendant with Plaintiffs, or as to the origin, sponsorship, or
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1 approval by Plaintiffs of Defendant's goods, services, or commercial activities.

2 74. On information and belief, before Defendant's first use of the Asserted Trademarks,
3 Defendant was aware of the Asserted Trademarks, and thereafter had either actual notice and
4 knowledge, or constructive notice, of the Asserted Trademarks.

5 75. On information and belief, Defendant's direct infringement of the Asserted Trademarks
6 as described herein has been and continues to be intentional, willful, and without regard to Plaintiff's
7 rights.

8 76. Defendant's unauthorized use of the Asserted Trademarks in commerce in California
9 constitutes trademark infringement in violation of California common law.

10 77. As a result of Defendant's wrongful conduct, Plaintiffs have suffered—and unless
11 Defendant's conduct is permanently enjoined, will continue to suffer—actual damages and irreparable
12 harm, as to which it has no adequate remedy at law. Plaintiffs are entitled to recover Defendant's
13 profits, Plaintiffs' ascertainable damages, and Plaintiffs' cost of suit. Because Defendant's conduct is
14 willful, Plaintiffs are also entitled to recover reasonable attorneys' fees.

15 **COUNT V**

16 **(UNFAIR COMPETITION AND BUSINESS PRACTICES UNDER CAL. BUS. & PROF.**

17 **CODE § 17200, ET SEQ.)**

18 78. Plaintiffs repeat and reallege all of the factual allegations made above and incorporate
19 them herein by reference.

20 79. As discussed above, Plaintiffs have valid and protectable prior rights in the Asserted
21 Trademarks. The Asserted Trademarks does not serve any function other than to identify Plaintiffs as
22 the source of such products and services. The Asserted Trademarks are also inherently distinctive, and,
23 through Plaintiffs' long use, have come to be associated with Plaintiffs as the source of the product or
24 service on which it is used.

25 80. Defendant's use of the Asserted Trademarks is likely to cause confusion as to the source
26 of Defendant's product and services, and is likely to cause others to be confused or mistaken into
27 believing that there is a relationship between Defendant and Plaintiffs, or that Defendant's products
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1 and services are affiliated with or sponsored by Plaintiffs or of similar quality and durability.

2 81. Additionally, Defendant's use of the Asserted Trademarks has caused, and continues to
3 cause economic injury to Plaintiffs, which has lost customers to Defendant on account of consumer
4 confusion. Defendant continues to use Plaintiffs' industry reputation to promote their own business.

5 82. Defendant knew or should recognize that the intentional use of the Asserted Trademarks
6 is likely to cause pecuniary loss and loss of user base to Plaintiffs.

7 83. Defendant knew or should recognize that the intentional use of the Asserted Trademarks
8 is likely to injure Plaintiffs by lessening the goodwill associated with Plaintiffs' products and services.

9 84. On information and belief, Defendant's conduct as described herein has been and
10 continues to be intentional, willful, and without regard to Plaintiffs' business and reputation.
11 Defendant's conduct has caused, and will continue to cause, Plaintiffs to suffer monetary loss to its
12 business, reputation, users, and goodwill.

13 85. The above-described acts and practices by Defendant constitute at least trademark
14 infringement under Section 32 of the Lanham Act, 15 U.S.C. §1114, and false designation of origin
15 under California common law, and under Sections 43(a) of the Lanham Act, 15 U.S.C. §1125(a), and
16 43(c) of the Lanham Act, 15 U.S.C. §§ 1125(c), and are therefore wrongful and unlawful acts in
17 violation of California Business & Professions Code § 17200, *et seq.*

18 86. The above-described acts and practices by Defendant are unjustified, inflict injury on
19 Plaintiffs business and consumer goodwill, and serve no public benefit, and are therefore also unfair
20 acts in violation of California Business & Professions Code § 17200, *et seq.*

21 87. Defendant acted willfully and intentionally, with full knowledge of Plaintiffs' prior
22 rights in the distinctive Asserted Trademarks, and with intent to cause confusion or mistake, or to
23 deceive customers into falsely associating Defendant and Plaintiffs or between Defendant's products
24 and services and Plaintiffs' products and services.

25 88. The unlawful and fraudulent business practices of Defendant described above present a
26 continuing threat to, and are meant to deceive members of the public, in that Defendant continues to
27 promote its products and services by wrongfully trading on the goodwill of the Asserted Trademarks.

28

1 89. Defendant should be required to account to Plaintiffs any and all profits earned as a
2 result of its unlawful and fraudulent actions, or provide Plaintiffs with any other restitutionary relief as
3 the Court deems appropriate.

4 90. Additionally, as a direct and proximate result of Defendant's wrongful conduct,
5 Plaintiffs have been injured in this District and have lost money and profits, and such harm will
6 continue unless Defendant's acts are enjoined by the Court. Plaintiffs have no adequate remedy at law
7 for Defendant's continuing violation of Plaintiffs' rights.

8 **COUNT VI**

9 **(FALSE AND MISLEADING ADVERTISING**

10 **UNDER CAL. BUS. & PROF. CODE § 17500, ET SEQ.)**

11 91. Plaintiffs repeat and reallege all of the factual allegations made above and incorporate
12 them herein by reference.

13 92. Defendant has, by its conduct described above, intentionally and knowingly copied and
14 imitated the Asserted Trademarks and Plaintiffs' products and services in violation of California
15 Business and Professions Code § 17500, *et. seq.*

16 93. Defendant's intentional copying and imitation of the Asserted Trademarks and
17 Plaintiffs' products and services caused injury to Plaintiffs' business, reputation, goodwill, and
18 intellectual property rights. As a direct and proximate result of Defendant's intentional copying and
19 imitation of the Asserted Trademarks and Plaintiffs' products and services, Plaintiffs have suffered and
20 will continue to suffer irreparable harm.

21 94. As a direct and proximate result of Defendant's intentional copying and imitation of the
22 Asserted Trademarks and Plaintiffs' products and services, Plaintiffs have suffered loss, damage and
23 injury entitling Plaintiffs to restitution of all amounts unlawfully gained by Defendant, including
24 disgorgement of profits earned by Defendant for sales of the Accused Products and associated services.
25 Such harm will continue unless Defendant's acts are enjoined by the Court. Plaintiffs have no adequate
26 remedy at law for Defendant's continuing violation of Plaintiff's rights.

COUNT VII

(UNFAIR COMPETITION UNDER CALIFORNIA COMMON LAW)

1
2
3 95. Plaintiffs repeat and reallege all of the factual allegations made above and incorporate
4 them herein by reference.

5 96. The Asserted Trademarks are nonfunctional and inherently distinctive and/or have
6 acquired secondary meaning within the relevant market.

7 97. The Asserted Trademarks have achieved market penetration throughout the United
8 States generally, and California and this District specifically.

9 98. As discussed above, Plaintiffs have prior common law trademark rights in the Asserted
10 Trademarks based on their adoption and continuous commercial use of the Asserted Trademarks in
11 California before Defendant. Consumers in California recognize the Asserted Trademarks as
12 designating Plaintiffs as the source of products and services.

13 99. Defendant's commercial use of the Asserted Trademarks in the Poly-Tek website, as set
14 forth above, is likely to, and does in fact, deceive consumers or cause confusion or mistake as to the
15 affiliation, connection, or association of Defendant with Plaintiffs, or as to the origin, sponsorship, or
16 approval by Plaintiffs of Defendant's goods, services, or commercial activities.

17 100. On information and belief, before Defendant's first use of the Asserted Trademarks,
18 Defendant was aware of the trademark and thereafter had either actual notice and knowledge, or
19 constructive notice, of the Asserted Trademarks.

20 101. On information and belief, Defendant's direct infringement of the Asserted Trademarks
21 as described herein has been and continues to be intentional, willful, and without regard to Plaintiff's
22 rights. Defendant's acts constitute fraud, oppression, and malice.

23 102. Defendant knew or should recognize that falsely associating itself with Plaintiffs'
24 brands and services is likely to cause pecuniary loss and loss of user base to Plaintiffs.

25 103. Defendant knew or should recognize that falsely associating themselves with Plaintiffs'
26 brands and services is likely to injure Plaintiffs by lessening the goodwill associated with Plaintiffs'
27 products and services.

28

1 104. On information and belief, Defendant’s conduct as described herein has been and
2 continues to be intentional, willful, and without regard for Plaintiffs’ business and reputation.
3 Defendant’s conduct has caused, and will continue to cause, Plaintiffs to suffer monetary loss to their
4 business, reputation, users, and goodwill.

5 105. Defendant’s unauthorized use of the Asserted Trademarks in commerce in California
6 constitutes unfair competition in violation of California common law.

7 106. As a result of Defendant’s wrongful conduct, Plaintiffs have suffered—and unless
8 Defendant’s conduct is permanently enjoined, will continue to suffer—actual damages and irreparable
9 harm, as to which it has no adequate remedy at law.

10 **DEMAND FOR JURY TRIAL**

11 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a jury trial on
12 all issues and claims so triable.

13 **PRAYER FOR RELIEF**

14 Wherefore, Plaintiffs respectfully request that the Court enter judgment in their favor against
15 Defendant, granting the following relief:

- 16 a. Entry of judgment for Plaintiffs on all of its counts;
- 17 b. An order and judgment permanently enjoining Defendant and its officers, directors,
18 agents, servants, employees, affiliates, attorneys and all others acting in privity or in
19 concert with Defendant, and Defendant’s parents, subsidiaries, divisions, successors and
20 assigns, from:
- 21 i. Directly or indirectly infringing the ’011 patent;
 - 22 ii. Directly or indirectly infringing the Asserted Trademarks; and
 - 23 iii. Directly or indirectly engaging in false advertising, and engaging in unfair
24 business acts, practices, and/or conduct against Plaintiffs.
- 25 c. A judgement for an accounting of all damages, past and future, including lost profits,
26 sustained by Plaintiffs as a result of the acts of infringement and misconduct by
27 Defendant;
- 28

- 1 d. An award of general damages for injury to reputation and goodwill that Plaintiffs have
2 sustained as a result of Defendant’s infringement and misconduct.
- 3 e. A judgment and order requiring Defendant to pay damages under 35 U.S.C. § 284,
4 including up to treble damages as provided by 35 U.S.C. § 284, and any royalties
5 determined to be appropriate;
- 6 f. A judgment and order requiring Defendant to pay Plaintiffs pre-judgment and post-
7 judgment interest on damages awarded;
- 8 g. A judgment and order finding this to be an exceptional case and requiring Defendant to
9 pay the costs of this action (including all disbursements) and attorneys’ fees as provided
10 by 35 U.S.C. § 285;
- 11 h. A judgment and order enjoining Defendant from making, using, selling, offering for
12 sale, or importing into the United States the Accused Product or any colorable variation
13 thereof; and
- 14 i. Such other and further relief as the Court deems just and equitable.

15 Dated: March 16, 2022

Respectfully Submitted,

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