

**IN THE UNITED STATES DISTRICT COURT
FOR DISTRICT OF MINNESOTA**

JFXD TRX ACQ LLC, a Florida Limited
Liability Company,

Plaintiff,

v.

TORQUE FITNESS, LLC, a Minnesota
Limited Liability Company,

Defendant.

CIVIL ACTION NO. 23-cv-523

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT AND TRADEMARK INFRINGEMENT

Plaintiff, JFXD TRX ACQ LLC, (“TRX” or “Plaintiff”), by its attorneys and in support of its Complaint against TORQUE FITNESS, LLC, (“Torque” or “Defendant”), alleges as follows:

Nature of the Action

1. TRX brings this action against Torque regarding the making, using, selling, and/or importation of products that infringe TRX’s intellectual property rights and other practices by Torque that amount to unfair competition.

2. One or more products offered for sale by Torque infringes multiple patents owned by TRX. One such product is labelled as “Torque Black Pro Suspension Straps” at the url: <https://www.torquefitness.com/products/torque-branded-pro-suspension-straps> (the “Torque Device”). A copy of the webpage appearing at this url is attached as Exhibit A. Another infringing product sold by Torque is labelled as “Blue Pro Suspension Straps” at

the url: <https://www.torquefitness.com/products/crankit-pro-suspension-straps> (the “Blue Device” and together with the Torque Device, the “Accused Products”). A copy of the webpage appearing at this url is attached as Exhibit B.

3. The Accused Products infringe at least one claim of multiple patents owned by TRX including U.S. Pat. No. D831,764, U.S. Pat. No. 10,857,413, and U.S. Pat. No. 11,400,334 (the “Asserted Patents”).

4. In addition, Torque’s actions amount to trademark infringement and/or unfair competition in that Torque displays and uses trademarks owned by TRX without TRX’s authorization, including use of U.S. Trademark Reg. Nos. 3,202,696 and 3,384,871 for the mark TRX®, U.S. Trademark Reg. Nos. 3,255,160 and 3,255,161 for the mark SUSPENSION TRAINING® and common law mark SUSPENSION TRAINER™ (the “TRX Marks”).

5. TRX seeks to enjoin Torque from infringing, and continuing to infringe on, TRX’s intellectual property and/or competing unfairly with TRX in violation of federal and state law, by importing, advertising, promoting, marketing, offering for sale and selling the Accused Products as well as other actions of Defendant.

6. TRX also seeks the award of its damages, attorneys’ fees, costs and other relief, and an accounting and disgorgement of Torque’s profits.

The Parties

7. Plaintiff, JFXD TRX ACQ LLC, is a Florida Limited Liability Company having its principal place of business at 501 Palm Trail, Delray Beach, Florida 33483 and does business as TRX. TRX sells its products in the United States and around the world.

8. Upon information and belief, TORQUE FITNESS, LLC is a Minnesota Limited Liability Company having a registered office address of 13750 Crosstown Drv NW #104, Andover, MN 55304 with its principal place of business at 11201 Xeon St. NW, Coon Rapids, MN 55448.

Jurisdiction and Venue

9. This Court has jurisdiction over the subject matter pursuant to 28 U.S.C. §§ 1331 and 1338 because one or more counts arise under the laws of the United States, more particularly 15 U.S.C. §§ 1114 and 1125 (The Lanham Act -- Registered (§ 1114) and unregistered (§ 1125)), 35 U.S.C. § 271 (The Patent Act). This Court has supplemental jurisdiction over the State Law claims pursuant to 28 U.S.C. § 1367.

10. Upon information and belief, Torque sells its products, including the Accused Products, alone and in combination with other products across the United States including in this District. Upon information and belief, Torque advertises its products, including the Accused Products, to consumers across the United States and in this District. Upon information and belief, Torque has a principal place of business and resides in this District.

11. Upon information and belief, Torque also, via online channels, exports and sells from the United States to other jurisdictions around the world where revenue is generated in the United States.

12. Venue is proper in this District under 28 U.S.C. § 1391(b)(1, 2) and 28 U.S.C. § 1400.

Factual Allegations

13. TRX acquired the Asserted Patents and other patents and intellectual property from Fitness Anywhere LLC via an assignment of intellectual property dated August 26, 2022. The assignment transferred all rights, title and interest in the Asserted Patents, the TRX Marks, and other intellectual property to TRX, including the right to sue and recover damages for past, present, and future infringements. The assignment was recorded with the United States Patent and Trademark Office (“USPTO”) on September 7, 2022 at reel/frame 061387/0263.

14. TRX sells products and services directly to consumers and through distributors. One such product that is widely-known and/or famous in the fitness industry is the TRX® Home2 System. This product can be found at TRX’s website www.trxtraining.com. An image of the product is shown below.



15. TRX products implement body weight-based exercise and are widely used across the world under TRX's various brands and trademarks such as TRX®, SUSPENSION TRAINING®, and SUSPENSION TRAINER™.

16. The TRX Marks have been continuously used in commerce in the United States in connection with the relevant goods and/or services before any use by Torque.

17. On October 23, 2018, the USPTO issued U.S. Pat. No. D831,764 (the "'764 Patent"), entitled FLEXIBLE STRAP WITH A DUAL STITCH PATTERN. TRX is the sole owner of all rights, title and interest in the '764 Patent. A copy of the '764 Patent is attached as Exhibit C.

18. On December 8, 2020, the USPTO issued U.S. Pat. No. 10,857,413 (the "'413 Patent"), entitled APPARATUS, KIT, AND METHOD FOR PERFORMING STRAP-

BASED EXERCISES. TRX is the sole owner of all rights, title and interest in the '413 Patent. A copy of the '413 Patent is attached as Exhibit D.

19. On August 2, 2022, the USPTO issued U.S. Pat. No. 11,400,334 (the "'334 Patent"), entitled EXERCISE DEVICE WITH A PAIR OF HANDGRIP ASSEMBLIES. TRX is the sole owner of all rights, title and interest in the '334 Patent. A copy of the '334 Patent is attached as Exhibit E.

20. TRX marks its products directly and/or virtually to provide notice to the public of its patents, including notice of the Asserted Patents.

21. On January 23, 2007, the USPTO registered U.S. Trademark Reg. No. 3,202,696 (the "'696 Mark") for the mark TRX® for use in connection with manually operated multipurpose exercise, fitness, and sporting equipment, and instructional material sold together therewith as unit. This mark has been in continuous use in the United States since at least as early as January 31, 2005. This registration has been renewed and been declared incontestable under applicable trademark law. TRX is the sole owner of all rights, title and interest in this registration and the related goodwill. A copy of the registration certificate for the '696 Mark is attached in Exhibit F.

22. On February 19, 2008, the USPTO registered U.S. Trademark Reg. No. 3,384,871 (the "'871 Mark") for the mark TRX® for use in connection with physical fitness conditioning classes; physical fitness consultation; physical fitness instruction; physical education services. This mark has been in continuous use in the United States since at least

as early as January 31, 2005. This registration has been renewed and been declared incontestable under applicable trademark law. TRX is the sole owner of all rights, title and interest in this registration and the related goodwill. A copy of the registration certificate for the ‘871 Mark is attached in Exhibit F.

23. On June 26, 2007, the USPTO registered U.S. Trademark Reg. No. 3,255,160 (the “160 Mark”) for the mark SUSPENSION TRAINING® for use in connection with manually-operated exercise equipment. This mark has been in continuous use in the United States since at least as early as December 1, 2005. This registration has been renewed and been declared incontestable under applicable trademark law. TRX is the sole owner of all rights, title and interest in this registration and the related goodwill. A copy of the registration certificate for the ‘160 Mark is attached in Exhibit F.

24. On June 26, 2007, the USPTO registered U.S. Trademark Reg. No. 3,255,161 (the “161 Mark”) for the mark SUSPENSION TRAINING® for use in connection with physical education services; physical fitness consultation; physical fitness instruction. This mark has been in continuous use in the United States since at least as early as December 1, 2005. This registration has been renewed and been declared incontestable under applicable trademark law. TRX is the sole owner of all rights, title and interest in this registration and the related goodwill. A copy of the registration certificate for the ‘161 Mark is attached in Exhibit F.

25. TRX has been using the mark SUSPENSION TRAINING™ in U.S. Commerce continuously since at least as early as December 1, 2005. The SUSPENSION TRAINING™ mark has been used across the United States, including in the state of Minnesota well before any use by Torque. Consumers have come to understand that the SUSPENSION TRAINING™ mark indicates TRX as the source of the related goods and/or services.

26. TRX has provided notice to the public of its trademarks, including the TRX Marks, by using the ® symbol for registered marks and the ™ symbol for common law marks.

27. After acquiring the intellectual property and other assets from Fitness Anywhere LLC, TRX began investigating infringement of its intellectual property as the new owner and steward of the TRX brand. TRX became aware that Torque was selling the Accused Product and other products that infringe one or more of TRX's patents. TRX also became aware of the unauthorized use of the TRX Marks and other practices of Torque that amount to unfair competition.

28. TRX has spent and continues to spend substantial sums of money, time and effort to develop, produce, advertise and promote its products using the TRX Marks.

29. TRX and the previous owners of the relevant intellectual property have spent substantial resources to stop continual and on-going infringement by copy-cats, counterfeiters, and infringers that seek to profit from TRX's substantial goodwill and status in the marketplace to the detriment of TRX. Torque is an infringer that, despite having

been notified of its unauthorized, infringing activity by TRX, continues to trade off of the goodwill TRX has generated in the marketplace.

30. In January of 2023, TRX's General Counsel contacted Torque and advised Torque that the Accused Product infringed the Asserted Patents and its activity amounted to trademark infringement and/or unfair competition. Torque continues to sell the Accused Product despite receiving notice of TRX's patents and the infringement arising from Torque's sales of the Accused Product. In addition, the activity that amounts to unfair competition still appears on Torque's website.

31. The Accused Product and other products of Torque are directly competing with TRX's products.

32. TRX has not authorized the activity of Torque and/or licensed the Asserted Patents or the TRX Marks to Torque.

COUNT I
(Patent Infringement of the '764 Patent)

33. Plaintiff restates and incorporates by reference the allegations asserted in each of the preceding paragraphs as though fully set forth herein.

34. Exhibit G is a preliminary claim chart that demonstrates that the Accused Product includes each and every element of at least one claim of the '764 Patent such that the Accused Product directly infringes, and/or has induced others to infringe, and/or has committed acts of contributory infringement of the claims of the '764 Patent in violation

of 35 U.S.C. § 271 et seq. Upon information and belief, Torque has committed acts of infringement by making, using, importing, selling, and/or offering to sell products within or outside of the United States, and/or importing products into the United States, including but not limited to the Accused Product.

35. Torque will continue to infringe the '764 Patent unless enjoined by this Court. As a result of the infringing conduct of Torque, TRX has suffered, and will continue to suffer, irreparable harm for which there is no adequate remedy at law. Accordingly, TRX is entitled to temporary, preliminary, and/or permanent injunctive relief against such infringement pursuant to 35 U.S.C. § 283.

36. As a result of Torque's infringement of the '764 Patent, TRX has been damaged, and will be further damaged, and is entitled to be compensated for such damages pursuant to 35 U.S.C. § 284 in an amount that presently cannot be ascertained but that will be determined at trial.

37. Because Torque knew of TRX as a market leader and because Torque had actual and/or constructive notice of TRX's patents, including the Accused Patents, Torque willfully infringed and continues to infringe the Asserted Patents. As a result, TRX is entitled to trebling of damages pursuant to 35 U.S.C. § 284, and to the designation of this case as exceptional pursuant to 35 U.S.C. § 285, whereby Plaintiff is entitled to an award of its attorneys' fees.

COUNT II
(Patent Infringement of the '413 Patent)

38. Plaintiff restates and incorporates by reference the allegations asserted in each of the preceding paragraphs as though fully set forth herein.

39. Exhibit H is a preliminary claim chart that demonstrates that use of the Accused Product includes each and every element of at least one claim of the '413 Patent. Upon information and belief, Torque has directly infringed the '413 Patent by performing each and every step of claim 1 and/or has induced others to infringe, and/or has committed acts of contributory infringement of the claims of the '413 Patent in violation of 35 U.S.C. § 271 et seq. Upon information and belief, Torque has committed acts of infringement by making, using, importing, selling, and/or offering to sell products within or outside of the United States, and/or importing products into the United States, including but not limited to the Accused Product.

40. Torque will continue to infringe the '413 Patent unless enjoined by this Court. As a result of the infringing conduct of Torque, TRX has suffered, and will continue to suffer, irreparable harm for which there is no adequate remedy at law. Accordingly, TRX is entitled to temporary, preliminary, and/or permanent injunctive relief against such infringement pursuant to 35 U.S.C. § 283.

41. As a result of Torque's infringement of the '413 Patent, TRX has been damaged, and will be further damaged, and is entitled to be compensated for such damages pursuant

to 35 U.S.C. § 284 in an amount that presently cannot be ascertained but that will be determined at trial.

42. Because Torque knew of TRX as a market leader and because Torque had actual and/or constructive notice of TRX's patents, including the Accused Patents, Torque willfully infringed and continues to infringe the Asserted Patents. As a result, TRX is entitled to trebling of damages pursuant to 35 U.S.C. § 284, and to the designation of this case as exceptional pursuant to 35 U.S.C. § 285, whereby Plaintiff is entitled to an award of its attorneys' fees.

COUNT III
(Patent Infringement of the '334 Patent)

43. Plaintiff restates and incorporates by reference the allegations asserted in each of the preceding paragraphs as though fully set forth herein.

44. Exhibit I is a preliminary claim chart that demonstrates that the Accused Product includes each and every element of at least one claim of the '334 Patent such that the Accused Product directly infringes, and/or has induced others to infringe, and/or has committed acts of contributory infringement of the claims of the '334 Patent in violation of 35 U.S.C. § 271 et seq. Upon information and belief, Torque has committed acts of infringement by making, using, importing, selling, and/or offering to sell products within or outside of the United States, and/or importing products into the United States, including but not limited to the Accused Product.

45. Torque will continue to infringe the '334 Patent unless enjoined by this Court. As a result of the infringing conduct of Torque, TRX has suffered, and will continue to suffer, irreparable harm for which there is no adequate remedy at law. Accordingly, TRX is entitled to temporary, preliminary, and/or permanent injunctive relief against such infringement pursuant to 35 U.S.C. § 283.

46. As a result of Torque's infringement of the '334 Patent, TRX has been damaged, and will be further damaged, and is entitled to be compensated for such damages pursuant to 35 U.S.C. § 284 in an amount that presently cannot be ascertained but that will be determined at trial.

47. Because Torque knew of TRX as a market leader and because Torque had actual and/or constructive notice of TRX's patents, including the Accused Patents, Torque willfully infringed and continues to infringe the Asserted Patents. As a result, TRX is entitled to trebling of damages pursuant to 35 U.S.C. § 284, and to the designation of this case as exceptional pursuant to 35 U.S.C. § 285, whereby Plaintiff is entitled to an award of its attorneys' fees.

COUNT IV

Trademark Infringement Under Lanham Act - 15 U.S.C. § 1114(1)

48. Plaintiff restates and incorporates by reference the allegations asserted in each of the preceding paragraphs as though fully set forth herein.

49. TRX has continuously used TRX® and SUSPENSION TRAINING® in interstate commerce since its date of first use in association with multiple goods including strap-based exercise devices. TRX has developed significant recognition throughout the United States, in the consuming public and in the industry, with respect to such mark in association with these goods.

50. Torque has used the mark TRX on or in connection with the Blue Device, at least, on its website. As shown in Exhibit B, the website title of the webpage reads “TRX Suspension Training Straps for Home Gyms / Torque Fitness.” Torque’s use of the marks TRX® and SUSPENSION TRAINING® causes confusion among consumers such that consumers would be mistakenly led to believe that Torque’s products or services are associated with, endorsed by, affiliated with, or otherwise connected with TRX when they are not. TRX has not authorized such trademark use by Torque.

51. Torque’s use of TRX® and/or SUSPENSION TRAINING® on a directly competitive and lower-priced substitute product both for identical-type products and services, which directly compete with each other, and are sold through the same or directly competing channels of trade to the same class of consumers amounts to trademark infringement.

52. Torque’s wrongful actions are likely to cause and, if not enjoined, will cause, deception, confusion in the marketplace, mis-association and irreparable harm to TRX and

TRX's goodwill and exclusive trademark ownership rights, for which TRX has no adequate remedy at law.

53. Upon information and belief, the choice of using TRX's marks in its own proprietary website is deliberate, willful and in complete disregard for Plaintiff's rights, of which Torque has actual and/or constructive knowledge.

54. Upon information and belief, such acts of Torque are willful and render Torque liable with respect to all remedies provided in 15 U.S.C. §§ 1116, 1117, and 1118, including injunctive relief, treble damages, profits, destruction of infringing articles, attorneys' fees and costs. Torque willfully infringed and continues to infringe TRX's registered marks. As a result, TRX is entitled to trebling of damages pursuant to 15 U.S.C. § 1117(a), and to the designation of this case as exceptional, whereby Plaintiff is entitled to an award of its attorneys' fees.

COUNT V

Trademark Infringement Under Lanham Act - 15 U.S.C. § 1125

55. Plaintiff restates and incorporates by reference the allegations asserted in each of the preceding paragraphs as though fully set forth herein.

56. TRX has continuously used the mark SUSPENSION TRAINER™ in interstate commerce since at least as early as December of 2005 with various goods and services, including manually-operating exercise devices. The mark SUSPENSION TRAINER™ has become distinctive in the marketplace as a source-identifier for TRX's goods and/or

services. TRX has developed significant recognition throughout the United States, in the consuming public and in the industry, with respect to such mark in association with exercise equipment and services.

57. Torque has used the mark **SUSPENSION TRAINER** on or in connection with the Blue Device, at least, on its website. As shown in Exhibit B, the text of webpage reads “These suspension trainer straps are the toughest and most durable suspension system worldwide to withstand 24/7 commercial club or gym use.” Torque’s use of the mark **SUSPENSION TRAINER** causes confusion among consumers such consumers would be mistakenly lead to believe that Torque’s products or services are associated with, endorsed by, affiliated with, or otherwise connected with TRX when they are not. TRX has not authorized such trademark use by Torque. In addition, the claims in this statement, on information and belief, independently amount to unfair competition in that they are unsupported statements without factual or test data to demonstrate their veracity.

58. Torque’s use of the mark **SUSPENSION TRAINER** is on a directly competitive and lower-priced substitute product both for identical-type products and services, which directly compete with each other, and are sold through the same or directly competing channels of trade to the same class of consumers.

59. Torque’s wrongful actions are likely to cause and, if not enjoined, will cause, deception, confusion in the marketplace, mis-association and irreparable harm to TRX and

TRX's goodwill and exclusive trademark ownership rights, for which TRX has no adequate remedy at law.

60. Upon information and belief, the choice of using TRX's marks in its own proprietary website is deliberate, willful and in complete disregard for Plaintiff's rights, of which Torque has actual and/or constructive knowledge.

61. Upon information and belief, such acts of Torque are willful and render Torque liable with respect to all remedies provided in 15 U.S.C. §§ 1116, 1117, and 1118, including injunctive relief, damages, profits, destruction of infringing articles, attorneys' fees and costs. Torque willfully infringed and continues to infringe TRX's marks. As a result, TRX is entitled to trebling of damages pursuant to 15 U.S.C. § 1117(a), and to the designation of this case as exceptional, whereby Plaintiff is entitled to an award of its attorneys' fees.

COUNT VI

Trademark Infringement under Minnesota Common Law

62. Plaintiff restates and incorporates by reference the allegations asserted in each of the preceding paragraphs as though fully set forth herein.

63. Torque's use of TRX®, SUSPENSION TRAINING® and/or the common law equivalent SUSPENSION TRAINER™ is on a directly competitive and lower-priced substitute product both for identical-type products and services, which directly compete

with each other, and are sold through the same or directly competing channels of trade to the same class of consumers.

64. Torque's wrongful actions are likely to cause and, if not enjoined, will cause, deception, confusion in the marketplace, mis-association and irreparable harm to TRX and TRX's goodwill and exclusive trademark ownership rights, for which TRX has no adequate remedy at law.

65. Upon information and belief, such acts of Torque are willful and render Torque liable with respect to all remedies provided by Minnesota law including injunctive relief, damages, profits, destruction of infringing articles, attorneys' fees and costs.

COUNT VII

Unfair Competition Under Minnesota Uniform Deceptive Trade Practices Act

66. Plaintiff restates and incorporates by reference the allegations asserted in each of the preceding paragraphs as though fully set forth herein.

67. Torque, by the acts complained of herein, have sold and continue to sell patent infringing products and have used and continue to use the TRX Marks without authorization of TRX and in violation of the Minnesota Uniform Deceptive Trade Practices Act.

68. Torque's use of the TRX Marks as described above causes a likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services offered by Torque on its website and elsewhere. Torque's activity as described

above also causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by TRX when TRX has not authorized or permitted Torque's activity.

69. Upon information and belief, Torque also make broad claims of quality and resistance without having tested every other piece of exercise equipment in the world.

70. Torque's wrongful actions are likely to cause and, if not enjoined, will cause, deception, confusion in the marketplace, miss-association and irreparable harm to TRX and TRX's goodwill and exclusive trademark ownership rights, for which TRX has no adequate remedy at law.

71. Upon information and belief, such acts of Torque are willful and render Torque liable with respect to all remedies provided by Minnesota law including injunctive relief, damages, profits, destruction of infringing articles, attorneys' fees and costs.

72. Defendant's actions are deliberate, willful and in complete disregard for Plaintiff's rights, of which Defendant has actual and constructive knowledge. As a result, costs and attorney's fees in addition to an injunctive relief must be granted.

JURY DEMAND

Plaintiff hereby requests a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff TRX prays:

(a) That Torque and its agents be permanently enjoined from importing, distributing, selling the Accused Products;

(b) That Torque and its agents be permanently enjoined from using or displaying TRX's marks or any name or mark confusingly similar thereto as part of any portion of the process of advertisement and/or sale of any goods or services.

(c) That Torque be required to pay to TRX such damages as TRX has sustained in consequence of Torque's infringement of TRX's patents and trademarks and said unfair competition, and to account for all gains, profits and advantages derived by Torque as a result of their infringement and/or unfair competition.

(d) That the actions by Torque be deemed willful and/or exceptional and Torque be required to pay all enhanced damages the Court deems proper within the provisions of the patent and trademark statutes.

(e) That Torque be required to pay to TRX the costs of this action and reasonable attorneys' fees.

(f) Any such further relief as the Court deems appropriate and just.

Date: March 3, 2023

Respectfully submitted,

s/ Sybil L. Dunlop

Sybil L. Dunlop, Reg. No. 0390186

GREENE ESPEL PLLP

222 S 9th Street, Suite 2200

Minneapolis, MN 55402

sdunlop@greeneespel.com

(612) 373-0830

John Munro (Pro hac vice forthcoming)

Duane Morris LLP

190 S. LaSalle St., Suite 3700

Chicago, IL 60603-3433

jemunro@duanemorris.com

(312) 499-6786

Attorneys for JFXD TRX ACQ LLC