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**To be admitted pro hac vice*

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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

VERTERRA, LTD., a Delaware
corporation and
MICHAEL DWORK, an individual,

Plaintiffs,

v.

DTOCS LLC, an Oregon corporation,

Defendant.

Case No. 3:23-cv-00914

**COMPLAINT FOR PATENT
INFRINGEMENT, TRADEMARK
INFRINGEMENT, UNFAIR
COMPETITION AND FALSE
DESIGNATION AND UNFAIR
TRADE PRACTICES**

DEMAND FOR JURY TRIAL

Plaintiffs VerTerra, Ltd. (“VerTerra”) and Michael D. Dwork (“Mr. Dwork”) (collectively “Plaintiffs”), through their undersigned attorneys, for their Complaint against Defendant Dtocs LLC (“Defendant” or “Dtocs”), allege as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over the patent infringement claims asserted in this Complaint under 28 U.S.C. §§ 1331 and 1338(a) because the claims herein arise under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. § 271. This Court has original jurisdiction over the claims asserted pursuant to the Lanham Act, 15 U.S.C. § 1051, *et seq.*, including 15 U.S.C. § 1121.

2. Because Plaintiffs and Defendant are citizens of different states and the matter in controversy exceeds \$75,000 exclusive of fees and costs, this Court also has subject matter jurisdiction under 28 U.S.C. § 1332.

3. This Court also has supplemental jurisdiction under 28 U.S.C. § 1367 over the state law claims asserted herein because the state law claims are so related to the patent infringement and/or Lanham Act claims that they form a part of the same case or controversy.

4. This Court has general and specific personal jurisdiction over Defendant Dtocs because Defendant has its principal place of business in the State of Oregon and regularly transacts business in the State of Oregon and in this District. In addition, Defendant’s infringing acts have occurred, at least, in Oregon.

5. Venue is proper in this district under 28 U.S.C. § 1391(b) because Defendant Dtocs resides in this District. Venue for the patent infringement claims is proper in this District under 28 U.S.C. § 1400(b) because Defendant has committed acts of infringement and has a regular and established place of business in this District.

NATURE OF THE ACTION

6. This is an action by VerTerra and Mr. Dwork against Defendant Dtocs for: (1) patent infringement under 35 U.S.C. § 271 *et. seq.*, (“the Patent Act”) for infringement of U.S. Patent Nos. D987,365 (“the ’365 Patent”) and D836,988 (“the ’988 Patent”) (collectively, “the Patents-in-Suit”); (2) trademark infringement, unfair competition, and false designation of origin under 15 U.S.C. § 1051 *et. seq.* (“the Lanham Act”) for infringement of U.S. Trademark Registration Nos. 3,613,058; 3,761,195; and 5,712,071 (collectively, “the Trademarks-in-Suit”); (3) trademark infringement, unfair competition, and false designation of origin under Oregon common law, and unlawful business and trade practices under Or. Stat. § 646.608; and (4) trademark infringement and unfair competition under California common law, unfair competition under Cal. Civ. Code § 17200, and false advertising under Cal. Civ. Code § 17500.

THE PARTIES

7. Michael Dwork is a natural person residing in the state of Connecticut. Mr. Dwork is the inventor and owner of the Patents-in-Suit. Mr. Dwork is the Chief Executive Officer of VerTerra.

8. VerTerra Ltd. is a Delaware corporation with its principal place of business at 90A Washington Street, Norwalk, CT 06854. VerTerra is the owner of the Trademarks-in-Suit and holds an exclusive license to the Patents-in-Suit. VerTerra commercializes the intellectual property owned by Mr. Dwork, including the Patents-in-Suit.

9. On information and belief, Dtocs LLC is an Oregon limited liability company with its principal place of business at 14512 NW Cosmos Street, Portland, Oregon 97229.

10. Dtocs LLC has designated a registered agent for service, Pallavi Pande, located at 14512 NW Cosmos Street, Portland, Oregon 97229.

VERTERRA'S BUSINESS, BRAND, AND TECHNOLOGY

11. Since 2006, VerTerra has designed and sold unique eco-friendly disposable dinnerware, marrying design, functionality, and sustainability. VerTerra seeks to be a stylishly sustainable alternative to disposable paper and plastic plates. An example of one of VerTerra's dinnerware products is shown below:



12. VerTerra is an industry leader in designing, developing, marketing, and selling eco-friendly disposable dinnerware in the United States and around the world. VerTerra's clean and stylish design has been recognized by the Smithsonian and awarded numerous times by the Natural Products Association, The NY Restaurant Association, and the International Hotel Motel Association.

13. Over the years, VerTerra has spent significant time and resources researching, designing, and developing new and innovative technology and products.

14. For example, VerTerra is the creator of the palm leaf plate, which are plates made in substantial part of the base, cushion, keel and stalk of abscised fronds. VerTerra has also developed techniques to form dinnerware from other sustainable materials such as leftover wood and rice paper.

15. VerTerra's many innovations have been recognized through the grants of multiple patents by the United States Patent and Trademark Office and other patent offices around the world. VerTerra has also cultivated a brand, second to none in the disposable dinnerware industry, which is known for making innovative, high-quality, sustainable products.

16. VerTerra takes great care to protect and carefully manage its intellectual property portfolio, including its patents, copyrights, trademarks, trade secrets, and confidential information, as they are valuable assets of the company.

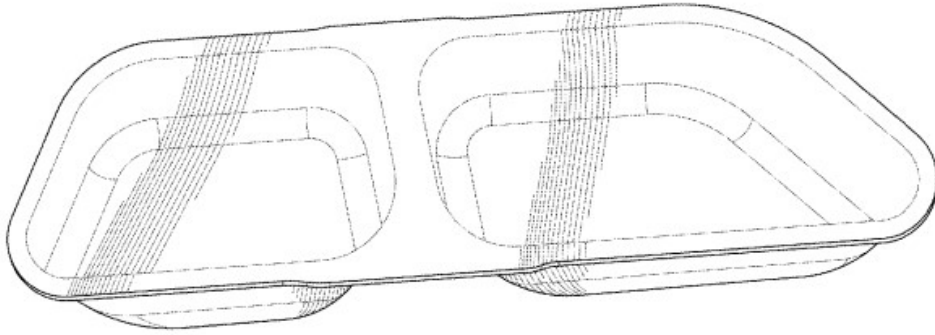
VERTERRA'S PATENTS-IN-SUIT

VerTerra's '988 Patent

17. On January 1, 2019, United States Patent No. D836,988 titled "BOWL" was duly and legally issued from United States Patent Application No. 29/622,381, filed on October 17, 2017. Attached hereto as Exhibit A is a true and correct copy of the '988 Patent.

18. Michael Dwork owns the '988 Patent and has owned the '988 Patent for all relevant times. VerTerra holds an exclusive license to the '988 Patent and has held an exclusive license to the '988 Patent for all relevant times, including the right to sue for and collect past, present and future damages for all the time periods during which it has been the exclusive licensee of the '988 Patent. Michael Dwork holds the right to sue for and collect past, present and future damages for any and all time periods during which VerTerra has not been the exclusive licensee of the '988 Patent.

19. The '988 Patent relates to bowls. (See Exhibit A at 1, Claim.) The Claim of the '988 Patent claims a bowl with the following design:



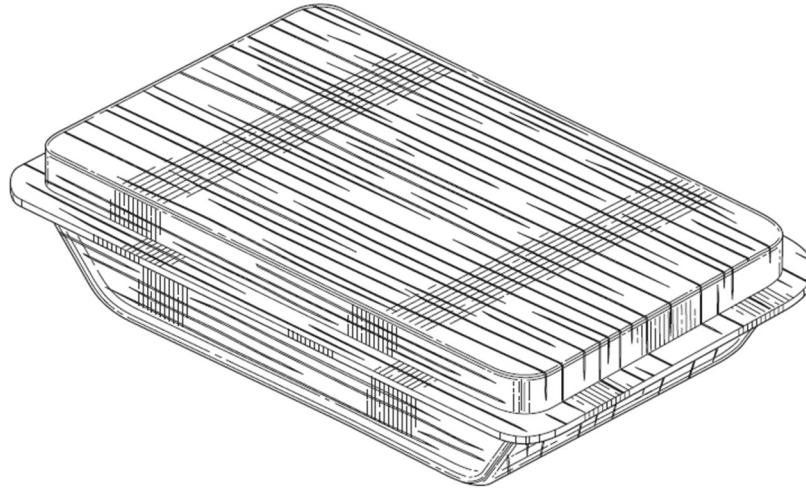
(See Exhibit A, FIG 1.)

VerTerra's '365 Patent

20. On May 30, 2023, United States Patent No. D987,365 titled “PALM LEAF LID AND A PALM LEAF FOOD CONTAINER” was duly and legally issued from United States Patent Application No. 29/775,969, filed on March 26, 2021. Attached hereto as Exhibit B is a true and correct copy of the '365 Patent.

21. Michael Dwork owns the '365 Patent, and has owned the '365 Patent for all relevant times. VerTerra holds an exclusive license to the '365 Patent and has held an exclusive license to the '365 Patent for all relevant times, including the right to sue for and collect past, present and future damages for all the time periods during which it has been the exclusive licensee of the '365 Patent. Michael Dwork holds the right to sue for and collect past, present and future damages for any and all time periods during which VerTerra has not been the exclusive licensee of the '365 Patent.


22. The '365 Patent relates to palm leaf lids and palm leaf food containers. (See Exhibit B at 1, Claim.) The Claim of the '365 Patent claims a bowl with the following design:



(See Exhibit B, FIG 1.)

VERTERRA'S TRADEMARKS-IN-SUIT

23. VerTerra is the owner of U.S. Trademark Registration No. 3,613,058 for the mark VERTERRA, used in connection with biodegradable cutlery in International Class 8; biodegradable paper pulp-based to-go containers for food in International Class 16; and dinnerware in International Class 21. Said registration was registered on the Principal Register in International Class 16 and 21 on January 1, 2008, with a first use in commerce date of January 1, 2008. Said registration was registered on the Principal Register in International Class 8 on January 31, 2009, with a first use in commerce date of January 31, 2009. This registration is incontestable. A report from the TSDR database of the USPTO for this mark is attached as Exhibit C.

24. VerTerra is the owner of U.S. Trademark Registration No. 3,761,195 for the mark , used in connection with disposable table plates and dinnerware in International Class 21. Said registration was registered on the Principal Register on January 1, 2009, with a

first use in commerce date of January 1, 2009. This registration is incontestable. A report from the TSDR database of the USPTO for this mark is attached as Exhibit D.

25. VerTerra is the owner of U.S. Trademark Registration No. 5,712,071 for the mark DINNERWARE FROM FALLEN LEAVES, used in connection with disposable table plates, biodegradable paper pulp-based plates, bowls and cups all made in substantial part of the base, cushion, keel and stalk of abscised fronds in International Class 21. Said registration was registered on the Principal Register on April 2, 2019, with a first use in commerce date of January 1, 2009. A report from the TSDR database of the USPTO for this mark is attached as Exhibit E.

26. The Trademarks-in-Suit are valid and subsisting, and they are prima facie evidence of VerTerra's exclusive right to use said marks in connection with the goods specified in each registration.

27. In addition, U.S. Trademark Registration Nos. 3,613,058 and 3,761,195 ("the VerTerra Marks") are incontestable under Section 15 of the Lanham Act, 15 U.S.C. § 1065, which is conclusive evidence of the validity of the registered marks, of registration of the marks, of VerTerra's ownership of the marks, and of VerTerra's exclusive right to use the marks in commerce under Section 33(b) of the Lanham Act, 15 U.S.C. § 1115(b).

28. The Trademarks-in-Suit are well known in Oregon, California, and around the country, and they have been so for many years.

29. The Trademarks-in-Suit not only have been used by VerTerra in interstate commerce, but also have been advertised and promoted by VerTerra and have developed and represent valuable goodwill inuring to the benefit of VerTerra.

30. VerTerra extensively advertises its products through various media outlets, including but not limited to print, signage, and online channels. VerTerra has a YouTube channel, a Facebook and Instagram page, and a LinkedIn, Twitter, and Pinterest profile, which it uses to connect with its existing customers and to find new customers. VerTerra’s advertising makes prominent use of the Trademarks-in-Suit.

31. As a result, the Trademarks-in-Suit point directly and immediately to VerTerra and serve as VerTerra’s identity and persona in the eyes of customers and potential customers, and have done so for many years.

DEFENDANT’S PATENT INFRINGEMENT

The Infringing “Palm Leaf Rectangle 2 Portion Compartment Plate”

32. Since at least as early as May 19, 2022, Dtocs has continuously made, used, offered to sell, sold, or imported the “Palm Leaf Rectangle 2 Portion Compartment Plate,” as pictured below:

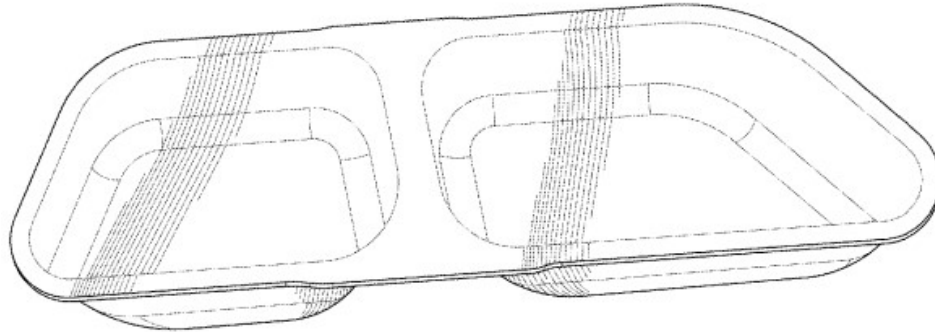


Palm Leaf Rectangle 2 Portion Compartment Plate, Dtocs, <https://dtocs.com/product/palm-leaf-rectangle-2-portion-compartment-plate/> (last visited June 22, 2023) (attached hereto as

Page 8 – **COMPLAINT FOR PATENT INFRINGEMENT AND TRADEMARK INFRINGEMENT**

Exhibit F) [<https://web.archive.org/web/20220519055536/https://dtocs.com/product/palm-leaf-rectangle-2-portion-compartment-plate/>].

33. VerTerra’s ’988 Patent claims a bowl, as depicted by the following design:



34. The design of the “2 Compartment Leaf Plate” is substantially the same as the design claimed in the ’988 Patent when viewed by an ordinary observer.

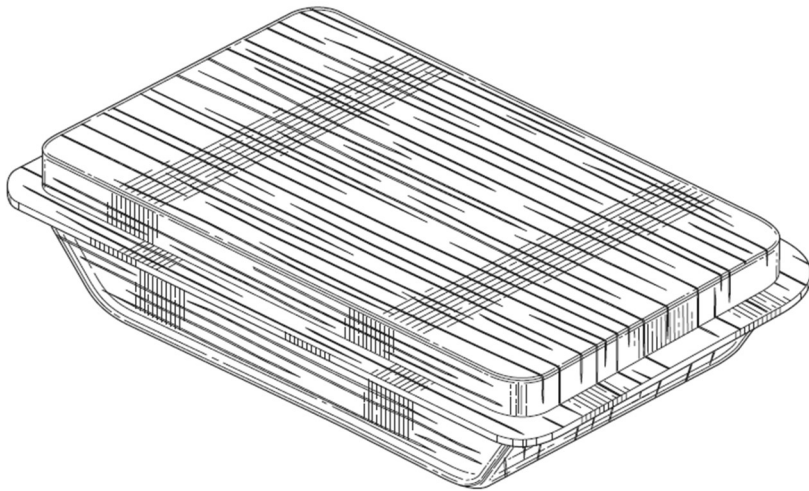
The Infringing “Dtocs Palm Leaf Take Out Food Containers With Lid”

35. Since at least as early as November 28, 2022, Dtocs has continuously made, used, offered to sell, sold, or imported the “Dtocs Palm Leaf Take Out Food Containers With Lid,” as pictured below:



Dtocs Palm Leaf Take Out Food Containers With Lid, Dtocs, dtocs.com/product/disposable-to-go-container/ (last visited June 22, 2023) (attached hereto as Exhibit G) [<https://web.archive.org/web/20221128024739/https://dtocs.com/product/disposable-to-go-container/>].

36. VerTerra’s ’365 Patent claims a palm leaf lid and a palm leaf food container, as depicted by the following design:



37. The design of the “Dtocs Palm Leaf Take Out Food Containers With Lid” is substantially the same as the design claimed in the ’365 Patent when viewed by an ordinary observer.

Defendant’s Knowledge of its Infringement

38. Dtocs has known of the existence of the Patents-in-Suit at least as of the date this Complaint was served.

39. On information and belief, Dtocs has known of the existence of the Patents-in-Suit prior to the date that this Complaint was served.

40. Plaintiffs have complied with any applicable requirements of the patent marking statute pertaining to the Patents-in-Suit.

DEFENDANT'S TRADEMARK INFRINGEMENT

41. Defendant Dtocs claims to produce “plastic-free areca palm leaf plate[s].” See Product Journey, Dtocs, <https://dtocs.com/areca-palm-plate-manufacturing-process/> (last visited June 22, 2023) (attached hereto as Exhibit H). Dtocs competes directly with VerTerra in the disposable dinnerware space.

Defendant's Infringement of the VerTerra Marks

42. On March 11, 2023, at the Natural Product Expo West trade show at the Anaheim Convention Center, at or about 8:20AM PST, Dtocs displayed its palm leaf plates, branded with the VerTerra Marks at its booth:



43. VerTerra has priority in the VerTerra Marks. VerTerra's U.S. Trademark Registrations Nos. 3,613,058 and 3,761,195 provide it with conclusive evidence of its rights in the

VERTERRA mark and the



mark that are the subjects of those

registrations. VerTerra's U.S. Trademark Registrations Nos. 3,613,058 and 3,761,195 provide it

with prima facie evidence of its rights in the VERTERRA mark and the



mark that are the subjects of those registrations.

44. Dtocs is, and it was at the time it began infringing the VerTerra Marks, aware of the vast and valuable goodwill and reputation represented and symbolized by the VerTerra Marks. Dtocs also is aware that VerTerra's customers and potential customers rely upon the VerTerra Marks as distinguishing VerTerra's products from the products of others. As such, Dtocs adopted the VerTerra Marks in bad faith in an effort to benefit from the goodwill associated with the VerTerra Marks.

45. Customers and others are likely to view Dtocs' products as one of VerTerra's products marketed under the same marks. Customers and potential customers are also likely to believe Dtocs is associated with, sponsored by, or affiliated with VerTerra and its products when that is not true. Dtocs' use of the VerTerra Marks creates a reasonable, but false, association with VerTerra and the VerTerra Marks, especially considering VerTerra's history of using the VerTerra Marks in conjunction with its products.

46. Dtocs' products have been, are, or will be promoted, offered, and sold in the same or overlapping channels of trade to the same customers or class of customers as those served by VerTerra.

47. Dtocs operates in the same geographic areas now served by VerTerra. Both Dtocs and VerTerra provide goods to customers across the United States.

48. Dtocs' use of the VerTerra Marks has always been and continues to be without the permission, consent, or authority of VerTerra.

49. Dtocs' use of the VerTerra Marks is likely to diminish the goodwill associated with the VerTerra Marks owned by Plaintiff.

50. Dtocs' use of the VerTerra Marks is likely to trick customers into having the false impression that Dtocs is an authorized dealer of VerTerra when the same is not true.

51. Dtocs' use of the VerTerra Marks at its booth at the Natural Product Expo West trade show constitutes "use in commerce" because such use was calculated to consummate sales of its palm leaf dinnerware goods.

52. Dtocs' unauthorized use of the VerTerra Marks is likely to cause confusion or mistake or to deceive customers into believing that Dtocs' unauthorized products advertised, promoted, and offered under the VerTerra marks are sponsored, licensed or authorized by, or affiliated, connected or otherwise associated with VerTerra or that VerTerra's products offered under the VerTerra marks are sponsored, licensed or authorized by, or affiliated, connected, or otherwise associated with Dtocs when the same is not true.

53. Dtocs' continued use of the VerTerra Marks is with full knowledge of the prior ownership by VerTerra of its VerTerra Marks, of VerTerra's rights to use and control the use of such marks, and of VerTerra's objections to Dtocs' continued use of the VerTerra Marks.

54. Dtocs has acted and continues to act without regard to VerTerra's trademark rights and goodwill in the VerTerra Marks.

55. Dtocs' unauthorized use of the VerTerra Marks in association with its products threatens to significantly injure VerTerra's interests. Specifically, Dtocs (a) has traded upon and threatens to further trade upon the significant and valuable goodwill in the VerTerra Marks; (b) is likely to cause public confusion as to the source, sponsorship, or affiliation of Dtocs' products or services; (c) has damaged and threatens to further damage VerTerra's significant and valuable goodwill in the VerTerra marks; (d) has injured and threatens to further injure VerTerra's right to use the VerTerra marks as the exclusive indicia of origin of VerTerra's products in the United States; and (e) has lessened the capacity of the VerTerra marks to serve as a unique indicator of goods sponsored by VerTerra.

56. Unless these infringing acts by Dtocs are restrained by this Court, they will cause irreparable injury to VerTerra and to the public, for which there is no adequate remedy at law. If Dtocs is permitted to continue, further damage and irreparable injury will be sustained by VerTerra, and others will be encouraged or induced to infringe upon VerTerra's VerTerra Marks. Through such infringement, the value of the VerTerra Marks will be substantially reduced or destroyed, for which VerTerra cannot be adequately compensated at law.

57. Dtocs' acts of trademark infringement, unfair competition, and false designation of origin complained of herein have been deliberate, willful, intentional, and in bad faith, with full knowledge and conscious disregard of VerTerra's rights. In view of the egregious nature of Dtocs' actions, this is an exceptional case within the meaning of Section 35(a) of the Lanham Act, 15 U.S.C. § 1117(a).

Defendant's Infringement of the DINNERWARE FROM FALLEN LEAVES Mark

58. Dtocs has displayed its palm leaf plates together with marks that are confusingly similar to DINNERWARE FROM FALLEN LEAVES across its website.

59. Dtocs uses marks that are confusingly similar to DINNERWARE FROM FALLEN LEAVES at its point-of-sale pages for products on its website:



The image is a screenshot of a product page on the Dtocs website. On the left, there is a large image of a rectangular, light-brown, textured plate made from palm leaves, with a smaller image of a plate filled with vegetables. The text on the page includes the Dtocs logo, the product name 'Palm Leaf 4 Portion Rectangle Compartment Plate', the price '\$48.60', and a detailed description of the product's features and benefits. The description mentions that the plates are 11x9 inches, sustainable, microwave safe, and biodegradable. It also lists key features and suggests uses for the plates, such as for lunch parties, camping, and food trucks.

HOME / PLATES / DINNER PLATES

Palm Leaf 4 Portion Rectangle Compartment Plate

\$48.60

Dtocs compostable palm leaf compartment plate measures 11×9 Inch. These 4 portion plates are sustainable & microwave safe. These palm leaf plates offer a bio-degradable & eco-friendly sturdy alternative to disposable paper plates, Styrofoam & bagasse plates. Like reusable bamboo plates, these eco-leaf plates can be reused for serving dry food as well. This palm leaf dinnerware is perfect for lunch parties, camping trips and food trucks. Key Features:

Palm Leaf 4 Portion Rectangle Compartment Plate, Dtocs, <https://dtocs.com/product/palm-leaf-rectangular-portion-compartment-plate/> (last visited June 22, 2023) (attached hereto as Exhibit I).



HOME / PLATTERS / CHEESE BOARDS

Palm Leaf Rectangle Plates 5×8 Inch

\$30.80 – \$58.30

Dtocs compostable palm leaf rectangle plates are made from naturally fallen leaves and measure 5×8 Inches. These disposable plates are sustainable and microwave safe. Areca palm leaf plate dinnerware set offers a biodegradable & eco-friendly sturdy alternative to paper plates and Styrofoam plates. Like reusable bamboo plates, these eco-leaf plates can be reused for serving dry food. Ideal for serving BBQ, fruits, burger, snacks etc. at corporate dinners, weddings, birthday party supplies. Key features:

Palm Leaf Rectangle Plates 5×8 Inch, Dtocs, <https://dtocs.com/product/palm-leaf-rectangle-plates-5x8-inch/> (last visited June 22, 2023) (attached hereto as Exhibit J).



HOME / PLATTERS / CHARCUTERIE SERVING TRAYS

Palm Leaf Platter Serving Trays 7×11 Inch

\$33.80

Dtocs palm leaf platter serving trays are made from naturally fallen leaves and measure 7 X 11 inch. These 100% biodegradable serving trays are perfect for platters, salads and burgers. Due to its sturdy and sustainable make, one can keep food for longer duration. These eco-friendly platter serving trays provide a plastic free alternative to reduce non-decomposable waste in the environment. These are made through a non-toxic and chemical free production process, thus safe for health. One can use these for serving charcuterie boards, cheese boards and fruits display.

Palm Leaf Platter Serving Trays 7×11 Inch, Dtocs, <https://dtocs.com/product/dtocs-palm-leaf-platter-serving-trays-7x11-inch/> (last visited June 22, 2023) (attached hereto as Exhibit K).



HOME / PLATTERS / CHARCUTERIE SERVING TRAYS

Compostable Palm Leaf Dinner Plates 10" Round

★★★★★

\$32.80

Dtocs 10 Inch round compostable palm leaf plate set. These disposable plates are sustainable and microwave safe. Areca palm leaf plate dinnerware set offers a bio-degradable & eco-friendly sturdy alternative to paper plates and Styrofoam plates. Like reusable bamboo plates, these eco-leaf plates can be reused for serving dry food. Ideal for serving full meals, dinner, BBQ, fruits etc. at corporate dinners, weddings, birthday party supplies. Key features:

Made from naturally fallen areca palm leaves

Ideal for:

- 
Weddings
- 
Camping
- 
Barbecues
- 
Dinners
- 
Parties
- 
Christmas
- 
Desserts

Compostable Palm Leaf Dinner Plates 10" Round, Dtocs, <https://dtocs.com/product/compostable-round-10-inch-dinner-plate/> (attached hereto as Exhibit L).

60. Likewise, in the “About Us” page, Dtocs states that its “tableware is made from naturally fallen palm leaves.” (See <https://dtocs.com/about-us/>.) Elsewhere, it states “Our flatware, plates, bowls are made from heavy weight ‘naturally fallen’ palm tree leaves.” (<https://dtocs.com/product/eco-friendly-natural-palm-leaf-round-disposable-7-dessert-plates/#:~:text=Dtocs%20natural%2C%20compostable%20tableware%20is,free%20of%20any%20chemicals%2Fresins.>) On its homepage, it states that its “tableware is made from naturally fallen areca palm leaves.” (<https://dtocs.com/>.)

61. VerTerra has priority in the DINNERWARE FROM FALLEN LEAVES mark. VerTerra’s U.S. Trademark Registration No. 5,712,071 provides it with prima facie evidence of its rights in the DINNERWARE FROM FALLEN LEAVES mark that is the subject of that registration.

62. Dtocs is, and it was at the time it began infringing the DINNERWARE FROM FALLEN LEAVES mark, aware of the vast and valuable goodwill and reputation represented and symbolized by VerTerra’s DINNERWARE FROM FALLEN LEAVES mark. Dtocs is aware that VerTerra’s customers and potential customers rely upon VerTerra’s DINNERWARE FROM FALLEN LEAVES mark as distinguishing VerTerra’s products from the products of others. As such, Dtocs adopted marks that are confusingly similar to the DINNERWARE FROM FALLEN LEAVES mark in bad faith in an effort to benefit from the goodwill associated with VerTerra’s DINNERWARE FROM FALLEN LEAVES mark.

63. Customers and others are likely to view Dtocs’ products as one of VerTerra’s products marketed under confusingly similar marks. Customers and potential customers are also

likely to believe Dtocs is associated with, sponsored by, or affiliated with VerTerra and its products when that is not true. Dtocs' use of marks that are confusingly similar to the DINNERWARE FROM FALLEN LEAVES mark creates a reasonable, but false, association with VerTerra and the DINNERWARE FROM FALLEN LEAVES mark, especially considering VerTerra's history of using the DINNERWARE FROM FALLEN LEAVES mark in conjunction with its products.

64. Dtocs' use of marks that are confusingly similar to the DINNERWARE FROM FALLEN LEAVES mark is intended to promote the sale of its products.

65. Dtocs' products have been, are, or will be promoted, offered, and sold in the same or overlapping channels of trade to the same customers or class of customers as those served by VerTerra.

66. Dtocs operates in the same geographic areas now served by VerTerra. Both Dtocs and VerTerra provide goods to customers across the United States.

67. Dtocs' use of marks that are confusingly similar to the DINNERWARE FROM FALLEN LEAVES mark has always been and continues to be without the permission, consent, or authority of VerTerra.

68. Dtocs' use of marks that are confusingly similar to the DINNERWARE FROM FALLEN LEAVES mark is likely to diminish the goodwill associated with the DINNERWARE FROM FALLEN LEAVES mark owned by Plaintiff.

69. Dtocs' unauthorized use of the DINNERWARE FROM FALLEN LEAVES mark is likely to cause confusion or mistake or to deceive customers into believing that Dtocs' unauthorized products advertised, promoted, and offered under marks that are confusingly similar to the DINNERWARE FROM FALLEN LEAVES mark are sponsored, licensed or

authorized by, or affiliated, connected or otherwise associated with VerTerra or that VerTerra's products offered under the DINNERWARE FROM FALLEN LEAVES mark are sponsored, licensed or authorized by, or affiliated, connected, or otherwise associated with Dtocs when the same is not true.

70. Dtocs' continued use of marks that are confusingly similar to the DINNERWARE FROM FALLEN LEAVES mark is with full knowledge of the prior ownership by VerTerra of its DINNERWARE FROM FALLEN LEAVES mark, of VerTerra's rights to use and control the use of such marks, and of VerTerra's objections to Dtocs' continued use of marks that are confusingly similar to the DINNERWARE FROM FALLEN LEAVES mark.

71. VerTerra has filed takedown requests on Amazon.com to remove Dtocs' product listings that include marks that are confusingly similar to the DINNERWARE FROM FALLEN LEAVES mark. Amazon.com has removed at least the following Dtocs products pursuant to those takedown requests:

- B09FLZV411: Dtocs Palm Leaf Disposable Charcuterie Platter Tray Set (25) (14"x10" Rectangle).
- B07Z59KC1R: Dtocs Palm Leaf Plates 8 Inch Round (Pack 50) | Bamboo Plate Like Sustainable Eco-Friendly, Biodegradable Compostable Disposable Dessert Dinner Plate Set for Wedding, Camping Birthday Party
- B08R1CBL5C: Dtocs Palm Leaf Plates Oval/Egg Combo Pack (50) | 10x6 Inch (25) And 5x7 Inch (25) Dessert Disposable Dinnerware | Bamboo Style Eco-friendly Compostable set for Wedding, Camping, Birthday Party
- B084TNTBKN: Dtocs Palm Leaf Platter Tray - 13x4 Inch Rectangular Disposable Sushi Serving Tray Set (25) | Compostable, Biodegradable Disposable Serving Plates For Wedding, Camping, Parties | Wooden, Bamboo Look
- B07X8Y3KY1: Dtocs Palm Leaf Soup Bowl 5 Inch Deep Square (Pack 50) | Eco-Friendly, Biodegradable, Organic, Compostable Disposable Dinnerware Set For Wedding, Camping, Birthday Parties | Looks Bamboo, Wooden

- B084TN3SY1: Dtocs Palm Leaf Plate 6 Inch Round Plate (Pack 50) | Disposable Bamboo Plate Like Eco-Friendly Compostable Dessert Plate Set | Elegant, Sturdy Appetizer Plates Like Heavy Duty Paper Plates
- B07Z6SKNJQ: Dtocs Palm Leaf Soup Bowl- 5 Inch Square (Pack 50) | Natural, Eco-Friendly, Compostable Disposable Bowl Dinnerware set For Serving Soup, Fruit, Cereal, Rice At Wedding, Party- Sturdy like Plastic
- B07YSM5FG9: Dtocs Palm Leaf Plates Rectangular Combo (50) |7x11 Inch (25) And 5x8 Inch (25) Disposable Dinnerware | Bamboo Style Eco-friendly, Biodegradable, Compostable set for Wedding, Camping & Birthday Party
- B09FQ6KRSX: Dtocs Palm Leaf Charcuterie Board 14x10 Inches (10 Pcs) | Serving Platters, Cheese Board, Bamboo Serving Trays for Party, Wedding, Catering | Compostable Sturdy Disposable Party Trays, Serving Boards
- B08QZ475P6: Dtocs Palm Leaf Plate Combo (50) - Round- 10 Inch (25) Dinner, 7 Inch (25) Dessert | Bamboo Plate Like Eco-Friendly, Compostable, Biodegradable Disposable Plates for Wedding, Camping, Parties, Natural
- B09FQ7V7PJ: Dtocs Palm Leaf Plate 4 Inch Square (Pack 50) | Bamboo Cocktail Plate Like Disposable Compostable Mini Appetizer Plate, Canape Plate | Fake Wood Dessert Plate Better Than Plastic Paper Plates

(Exhibit M.)

72. Dtocs has acted and continues to act without regard to VerTerra's trademark rights and goodwill in the DINNERWARE FROM FALLEN LEAVES mark.

73. Dtocs' unauthorized use of marks that are confusingly similar to the DINNERWARE FROM FALLEN LEAVES mark in association with its products threatens to significantly injure VerTerra's interests. Specifically, Dtocs (a) has traded upon and threatens to further trade upon the significant and valuable goodwill in VerTerra's DINNERWARE FROM FALLEN LEAVES mark; (b) is likely to cause public confusion as to the source, sponsorship, or affiliation of Dtocs' products or services; (c) has damaged and threatens to further damage VerTerra's significant and valuable goodwill in VerTerra's DINNERWARE FROM FALLEN LEAVES mark; (d) has injured and threatens to further injure VerTerra's right to use the

DINNERWARE FROM FALLEN LEAVES mark as the exclusive indicia of origin of VerTerra's products in the United States; and (e) has lessened the capacity of VerTerra's DINNERWARE FROM FALLEN LEAVES mark to serve as a unique indicator of goods sponsored by VerTerra.

74. Unless these infringing acts by Dtocs are restrained by this Court, they will cause irreparable injury to VerTerra and to the public, for which there is no adequate remedy at law. If Dtocs is permitted to continue, further damage and irreparable injury will be sustained by VerTerra, and others will be encouraged or induced to infringe upon VerTerra's DINNERWARE FROM FALLEN LEAVES mark. Through such infringement, the value of the DINNERWARE FROM FALLEN LEAVES mark will be substantially reduced or destroyed, for which VerTerra cannot be adequately compensated at law.

75. Dtocs' acts of trademark infringement, unfair competition, and false designation of origin complained of herein have been deliberate, willful, intentional, and in bad faith, with full knowledge and conscious disregard of VerTerra's rights. In view of the egregious nature of Dtocs' actions, this is an exceptional case within the meaning of Section 35(a) of the Lanham Act, 15 U.S.C. § 1117(a).

COUNT I

INFRINGEMENT OF UNITED STATES PATENT NO. D836,988

76. Plaintiffs repeat and reallege the allegations in each of the foregoing paragraphs as if fully set forth herein.

77. Michael Dwork owns all right, title, and interest in and to the '988 Patent, including the right to prosecute this action; to enforce the '988 Patent against infringement; and

to collect damages for any and all relevant times during which VerTerra has not been the exclusive licensee of the '988 Patent

78. VerTerra holds an exclusive license to the '988 Patent, including the right to prosecute this action; to enforce the '988 Patent against infringement; and to collect damages for all relevant times during which it has been the exclusive licensee of the '988 Patent.

79. The '988 Patent is generally directed to bowls.

80. Dtocs has infringed, and continues to infringe, the claim of the '988 Patent by making, using, selling, offering for sale, and/or importing the Palm Leaf Rectangle 2 Portion Compartment Plate into the United States.

81. As shown, for example and without limitation, in the attached claim chart, the design of the Palm Leaf Rectangle 2 Portion Compartment Plate is substantially the same as the design claimed in the '988 Patent when viewed by an ordinary observer. (*See Exhibit N.*)

82. Dtocs has deliberately or intentionally infringed the '988 Patent, at least since the date of this complaint. Its infringement of the '988 Patent has been and continues to be willful and deliberate making this case exceptional. Dtocs' willful infringement entitles Plaintiffs to treble damages under 35 U.S.C. § 284.

83. Plaintiffs have been damaged by Dtocs' infringement of the '988 Patent and will continue to be damaged in the future unless Dtocs is permanently enjoined from infringing the '988 Patent and from selling infringing products. Dtocs competes directly with VerTerra and Plaintiffs have no adequate remedy at law.

84. VerTerra has lost sales of its competing products due to Dtocs' infringement of the '988 Patent. Plaintiffs are entitled to receive an accounting for Dtocs' profits under 35 U.S.C.

§ 289, lost profits suffered by VerTerra, or at least a reasonable royalty under 35 U.S.C. § 284, for its damages caused by Dtocs' infringement.

85. Dtocs' infringement is willful making, at least for this reason, the case exceptional and entitles Plaintiffs to attorneys' fees and costs under 35 U.S.C. § 285.

COUNT II

INFRINGEMENT OF UNITED STATES PATENT NO. D987,365

86. Plaintiffs repeat and reallege the allegations in each of the foregoing paragraphs as if fully set forth herein.

87. Michael Dwork owns all right, title, and interest in and to the '365 Patent, including the right to prosecute this action; to enforce the '365 Patent against infringement; and to collect damages for any and all relevant times during which VerTerra has not been the exclusive licensee of the '365 Patent.

88. VerTerra holds an exclusive license to the '365 Patent, including the right to prosecute this action; to enforce the '365 Patent against infringement; and to collect damages for all relevant times during which it has been the exclusive licensee of the '365 Patent.

89. The '365 Patent is generally directed to palm leaf lids and palm leaf food containers.

90. Dtocs has infringed, and continues to infringe, the claim of the '365 Patent by making, using, selling, offering for sale, and/or importing the Dtocs Palm Leaf Take Out Food Containers With Lid into the United States.

91. As shown, for example and without limitation, in the attached claim chart, the design of the Dtocs Palm Leaf Take Out Food Containers With Lid is substantially the same as the design claimed in the '365 Patent when viewed by an ordinary observer. (*See Exhibit O.*)

92. Dtocs has deliberately or intentionally infringed the '365 Patent, at least since the date of this complaint. Its infringement of the '365 Patent has been and continues to be willful and deliberate making this case exceptional. Dtocs' willful infringement entitles Plaintiffs to treble damages under 35 U.S.C. § 284.

93. Plaintiffs have been damaged by Dtocs' infringement of the '365 Patent and will continue to be damaged in the future unless Dtocs is permanently enjoined from infringing the '365 Patent and from selling infringing products. Dtocs competes directly with VerTerra and Plaintiffs have no adequate remedy at law.

94. VerTerra has lost sales, and will likely lose sales in the future, of its competing products due to Dtocs' infringement of the '365 Patent. Plaintiffs are entitled to receive an accounting for Dtocs' profits under 35 U.S.C. § 289, lost profits suffered by VerTerra, or at least a reasonable royalty under 35 U.S.C. § 284, for its damages caused by Dtocs' infringement.

95. Dtocs' infringement is willful making, at least for this reason, the case exceptional and entitles Plaintiffs to attorneys' fees and costs under 35 U.S.C. § 285.

COUNT III

FEDERAL TRADEMARK INFRINGEMENT

96. VerTerra repeats and realleges the allegations in each of the foregoing paragraphs as if fully set forth herein.

97. VerTerra is the owner of U.S. Trademark Registration Nos. 3,613,058; 3,761,195; and 5,712,071 for the Trademarks-in-Suit. VerTerra's registered Trademarks-in-Suit are valid and subsisting, and they are prima facie evidence of VerTerra's exclusive right to use the Trademarks-in-Suit in commerce. In addition, the VerTerra Marks are incontestable under Section 15 of the Lanham Act, 15 U.S.C. § 1065, and it is therefore conclusive evidence of the

validity of the VerTerra Marks, of registration of the VerTerra Marks, of VerTerra's ownership of the VerTerra Marks, and of VerTerra's exclusive right to use the VerTerra Marks in commerce.

98. The acts of Dtocs complained of herein, including, but not limited to Dtocs' use of the VerTerra Marks on its products and use of marks that are confusingly similar to DINNERWARE FROM FALLEN LEAVES on its point-of-sale webpages, are likely to cause confusion, mistake, or deception as to origin, sponsorship, or approval and therefore constitute federal trademark infringement of the Trademarks-in-Suit in violation of 15 U.S.C. § 1114(1).

99. By reason of Dtocs' bad faith and willful infringement, VerTerra is entitled to recover actual damages, treble damages, an accounting for Dtocs' profits, attorney fees, the costs of this litigation pursuant to 15 U.S.C. § 1117, and injunctive relief pursuant to 15 U.S.C. § 1116.

COUNT IV

FEDERAL UNFAIR COMPETITION AND FALSE DESIGNATION

100. VerTerra repeats and realleges the allegations in each of the foregoing paragraphs as if fully set forth herein.

101. The acts of Dtocs complained of herein, including, but not limited to Dtocs' use of the VerTerra Marks on its products and use of marks that are confusingly similar to DINNERWARE FROM FALLEN LEAVES on its point-of-sale webpages, constitute false and misleading representations of fact in connection with Dtocs' goods that are likely to cause confusion as to the origin, sponsorship, or approval of the goods and therefore constitute unfair competition and false designation of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

102. By reason of Dtocs' bad faith and willful infringement, VerTerra is entitled to recover actual and treble damages, attorney fees, the costs of this litigation pursuant to 15 U.S.C. § 1117, and injunctive relief pursuant to 15 U.S.C. § 1116.

COUNT V

TRADEMARK INFRINGEMENT UNDER OREGON COMMON LAW

103. VerTerra repeats and realleges the allegations in each of the foregoing paragraphs as if fully set forth herein.

104. The acts of Dtocs complained of herein, including, but not limited to Dtocs' use of marks that are confusingly similar to DINNERWARE FROM FALLEN LEAVES on its point-of-sale webpages, are likely to cause confusion, mistake, or deception as to origin, sponsorship, or approval of the goods and therefore constitute trademark infringement under the common law of the State of Oregon.

105. By engaging in the foregoing acts, Dtocs has knowingly engaged in trademark infringement of the DINNERWARE FROM FALLEN LEAVES mark in violation of the common law of the State of Oregon.

106. VerTerra is entitled to recover actual and punitive damages for Dtocs' trademark infringement.

COUNT VI

**UNFAIR COMPETITION AND FALSE DESIGNATION UNDER OREGON
COMMON LAW**

107. VerTerra repeats and realleges the allegations in each of the foregoing paragraphs as if fully set forth herein.

108. The acts of Dtocs complained of herein, including, but not limited to Dtocs' use of marks that are confusingly similar to DINNERWARE FROM FALLEN LEAVES on its point-of-sale webpages, constitute false and misleading representations of fact in connection with Dtocs' goods that are likely to cause confusion as to the origin, sponsorship, or approval of the goods and therefore constitute unfair competition and false designation of origin under the common law of the State of Oregon.

109. By engaging in the foregoing acts, Dtocs has knowingly engaged in unfair competition and false designation of origin in violation of the common law of the State of Oregon.

110. VerTerra is entitled to recover actual and punitive damages for Dtocs' unfair competition and false designation of origin.

COUNT VII

UNFAIR TRADE PRACTICES

111. VerTerra repeats and realleges the allegations in each of the foregoing paragraphs as if fully set forth herein.

112. The acts of Dtocs complained of herein, including, but not limited to Dtocs' use of marks that are confusingly similar to DINNERWARE FROM FALLEN LEAVES on its point-of-sale webpages, constitute false and misleading representations of fact in connection with Dtocs' goods that are likely to cause confusion as to the origin, sponsorship, or approval of the goods and therefore constitute unlawful business and trade practices under Or. Stat. § 646.608.

113. By engaging in the foregoing acts, Dtocs has knowingly engaged in unlawful business and trade practices in violation of Or. Stat. § 646.608.

114. VerTerra is entitled to recover actual and punitive damages for Dtocs' unlawful business and trade practices.

COUNT VIII

TRADEMARK INFRINGEMENT UNDER CALIFORNIA COMMON LAW

115. VerTerra repeats and realleges the allegations in each of the foregoing paragraphs as if fully set forth herein.

116. The acts of Dtocs complained of herein, including, but not limited to Dtocs' use of the VerTerra Marks on its products displayed at the Natural Product Expo West trade show, are likely to cause confusion as to the origin, sponsorship, or approval of the goods and therefore constitute trademark infringement under the common law of the State of California.

117. By engaging in the foregoing acts, Dtocs has knowingly engaged in trademark infringement in violation of the common law of the State of California.

118. VerTerra is entitled to recover actual and punitive damages for Dtocs' trademark infringement.

COUNT IX

UNFAIR COMPETITION UNDER CALIFORNIA COMMON LAW

119. VerTerra repeats and realleges the allegations in each of the foregoing paragraphs as if fully set forth herein.

120. The acts of Dtocs complained of herein, including, but not limited to Dtocs' use of the VerTerra Marks on its products displayed at the Natural Product Expo West trade show, constitute false and misleading representations of fact in connection with Dtocs' goods that are likely to cause confusion, mistake, or deception as to origin, sponsorship, or approval of the

goods and therefore constitute unfair competition under the common law of the State of California.

121. By engaging in the foregoing acts, Dtocs has knowingly engaged in unfair competition in violation of the common law of the State of California.

122. VerTerra is entitled to recover actual and punitive damages for Dtocs' unfair competition.

COUNT X

UNFAIR COMPETITION UNDER CAL. BUS. PROF. CODE § 17200

123. VerTerra repeats and realleges the allegations in each of the foregoing paragraphs as if fully set forth herein.

124. The acts of Dtocs complained of herein, including, but not limited to Dtocs' use of the VerTerra Marks on its products displayed at the Natural Product Expo West trade show, constitute false and misleading representations of fact in connection with Dtocs' goods that are likely to cause confusion, mistake, or deception as to origin, sponsorship, or approval and therefore constitute unfair competition under Cal. Civ. Code § 17200.

125. By engaging in the foregoing acts, Dtocs has knowingly engaged in unfair competition in violation of Cal. Civ. Code § 17200.

126. VerTerra is entitled to recover actual and punitive damages for Dtocs' unfair competition.

DEMAND FOR JURY TRIAL

127. Plaintiffs hereby demands a jury trial on all issues so triable.

PRAYER FOR RELIEF

128. WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their favor and against Defendant on the claims set forth above and respectfully requests the Court grant the following relief:

- a. A judgment that Defendant has infringed United States Patent D987,365, and/or D836,988;
- b. A judgment that Defendant has infringed United States Trademark Registration Nos. 3,613,058; 3,761,195; and 5,712,071 in violation of 15 U.S.C. § 1114(1);
- c. A judgment that Defendant has engaged in unfair competition and false designation of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a);
- d. A judgment that Defendant has engaged in trademark infringement and unfair competition and false designation in violation of the common law of the state of Oregon;
- e. A judgment that Defendant has engaged in unlawful business and trade practices in violation of Or. Stat. § 646.608;
- f. A judgment that Defendant has engaged in trademark infringement and unfair competition in violation of the common law of the state of California;
- g. A judgment that Defendant has engaged in unfair competition in violation of Cal. Civ. Code § 17200;
- h. A judgment that Defendant has competed unfairly with VerTerra in bad faith;
- i. Defendant, its officers, agents, servants, employees, attorneys, and all those persons in active concert or participation with any of them, directly or indirectly,

be preliminarily and then permanently enjoined from using the Trademarks-in-Suit, and any other marks that are confusingly similar to or derived from the Trademarks-in-Suit;

- j. Defendant, its officers, directors, agents, servants, employees, attorneys, and all others acting under or through them, directly or indirectly, be preliminarily and then permanently enjoined from making, using, importing, selling, and/or offering for sale any product that infringes, directly or indirectly, United States Patent Nos. D987,365, and/or D836,988;
- k. Defendant, its officers, agents, servants, employees, attorneys, and all those persons in active concert or participation with any of them, be required to modify all marketing materials, internet and social media content, products, packaging, and promotional material to eliminate the Trademarks-in-Suit, and any other marks that are confusingly similar to or derived from the Trademarks-in-Suit;
- l. Defendant, its officers, agents, servants, employees, attorneys, and all those persons in active concert or participation with any of them, be required to deliver to the Court for destruction, or show proof of destruction of, any and all labels, prints, packages, wrappers, receptacles, and advertisements, and any other materials in Defendant's possession or control that use the Trademarks-in-Suit, and any other mark that is confusingly similar to or derived from the Trademarks-in-Suit;
- m. Defendant, its officers, agents, servants, employees, attorneys, and all those persons in active concert or participation with any of them, be required to take all reasonably available steps to remove the Trademarks-in-Suit, and any other mark

that is confusingly similar to or derived from the Trademarks-in-Suit, as a designator of Defendant's products from any listing in any business directory, yellow pages, internet directory, Facebook page, Instagram account, social media of any and all kinds, and any other listing or promotion service;

- n. Defendant be ordered to file with this Court and to serve upon Plaintiffs within 30 days after the entry and service on Defendant of an injunction, a report in writing and under oath setting forth in detail the manner and form in which Defendant has complied with the injunction;
- o. A judgment and order requiring Defendant to pay damages to VerTerra for all damages it sustains as a result of Defendant's trademark infringement, unfair competition, and false designation of origin, and those said damages be trebled, with interest;
- p. A finding that this case is exceptional under 15 U.S.C. § 1117(a) and a judgment and order directing Defendant to pay the costs of this action (including all disbursements) and attorney fees as provided by 15 U.S.C. § 1117(a), with interest;
- q. A judgment and order requiring Defendant to pay damages to Plaintiffs under 35 U.S.C. § 284, with interest, including treble damages for willful infringement as provided by 35 U.S.C. § 284, with interest;
- r. An accounting be directed to determine Defendant's profits resulting from Defendant's activities complained of herein, and that such profits be paid to Plaintiffs, increased as the Court finds to be just under the circumstances of this case under 35 U.S.C. § 289;

- s. Defendant and all others acting in concert with it be directed to pay punitive damages to deter Defendant and all others similarly situated from like unlawful conduct in the future due to Defendant's unfair competition;
- t. A finding that this case is exceptional under 35 U.S.C. § 285 and a judgment and order directing Defendant to pay the costs of this action (including all disbursements) and attorney fees as provided by 35 U.S.C. § 285, with interest; and
- u. Such other and further relief as this Court may deem just and equitable.

DATED this 22nd day of June, 2023.

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.

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*To be admitted *pro hac vice*