UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

ADAMA STUDIOS LLC and TERRA STUDIO LTD., PLAINTIFFS, v. SHUNCHAO TANG a/k/a VERTPLANTER.COM, DEFENDANT.	CIVIL ACTION No. 23-cv-5842 JURY TRIAL DEMANDED **COMPLAINT**

Plaintiffs Adama Studios LLC and Terra Studio Ltd. complaining of the defendant, through their undersigned counsel, allege as follows:

NATURE OF THE CASE

1. This case involves blatant piracy of Plaintiffs' rights through the copying and passing off of a unique, proprietary product, the tevaplanter® hyrdoponic planter, and associated trademark and marketing materials.

2. Plaintiffs invented and developed the tevaplanter® hyrdoponic planter over a period of years, a unique, innovative product, advertised at the site *tevaplanter.com*, which appears thus:

3. The design of the tevaplanter® hyrdoponic planter is the subject of two U.S. patents, one of which Defendant has infringed by selling a blatant copy. The tevaplanter was devised to enable growth of plants upon the exterior surface of the ceramic device, which is porous and enables sourcing of water to plants growing on the exterior surface. The exterior surface has a pattern of indentations which enable anchoring of roots over the uneven surface, provide a seat for seeds prior to germination, and hold droplets of water on the surface, giving the seeds time to germinate. The system is completely hydroponic, permitting the growth of plants without any soil.

4. The product represents a major breakthrough in this area of design, and generated one of the most successful campaigns on the crowd-sourcing site, *kickstarter.com.*

5. Adding to the piracy, Defendant has (a) misappropriated copyrighted photographs, graphics and text owned by Plaintiffs and used in their promotional website and materials, by copying same and using them in his own website and literature; (b) used the *#tevaplanter* designation on social media to confuse the consuming public into believing that his product is associated with Plaintiffs and (c) made false claims about the materials used in his product, including using photos that actually show Plaintiffs' product, but purporting to be Defendant's

6. Defendant has also misappropriated the visual concept and story of Plaintiffs' marketing materials. Even a comparison of Defendant's website, *vertplanter.com*, with Plaintiffs', *tevaplanter.com,* reveals an attempt to take a free ride off Plaintiff's ingenuity and reputation.

7. Plaintiffs accordingly seek relief from this Court for Defendant's acts of patent, copyright and trademark infringement, and false advertising.

JURISDICTION

8. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1338 to the extent the complaint raises claims under the Patent Laws of the United States, 35 U.S.C. §

1, *et seq*, Copyright Act, and Trademark Act of 1946, 15 U.S.C. § 1051, *et seq*. The court also has jurisdiction pursuant to 28 U.S.C. §§ 1367 and 1338(b) to the extent the controversy concerns trademark rights, unfair competition and deceptive trade practices under New York and common law.

9. Defendant is subject to the personal jurisdiction of this Court, in that he has offered for sale and sold infringing product to New York, including through the use of his own website and the Amazon website, and shipped same to New York.

THE PARTIES

10. Plaintiff ADAMA STUDIOS LLC ("Adama Studios") is a limited liability company organized under the laws of Delaware, having an office at 81 Woodhollow Road, Roslyn Heights, New York.

11. Plaintiff TERRA STUDIO LTD. ("Terra Studio") is a corporation organized under the laws of the State of Israel, having an office in Herzliya, Israel.

12. Defendant SHUNCHAO TANG a/k/a VERTPLANTER.COM ("Tang" or "Defendant") is an individual having an address at No. 172, Pinglong West Road, Fucheng Ao Neighborhood Committee, Pinghu Street Longgang Dist, Shenzhen CHINA 518000, and has also claimed an address at 1942 Broadway St STE 314C, Boulder, Colorado 80302. Mr. Tang operates the website *vertplanter.com*, through which he sells infringing product throughout the United States, including New York, as well as selling through the platform *Amazon.com*. Mr. Tang is accordingly subject to the personal jurisdiction of this Court pursuant to Rule 4 of the Federal Rules of Civil Procedure and the laws of New York.

FACTS COMMON TO ALL COUNTS

The TEVAPLANTER® Product and Related Intellectual Property

13. The invention for the tevaplanter product was first conceived in 2018, by Eran Zarhi and Elad Burko, and was reduced to practice in 2019.

14. The tevaplanter is an innovative design of a ceramic container which is filled with water, not soil, and allows for various plants to be planted and grow on the outside of the container. The inventors created a proprietary ceramic, which when combined with the unique design, provides an attractive, easy to use growing system for indoor plants, specially designed to permit plants to grow only on the outside ceramic surface, and be watered from a specially designed interior volume of the container.

15. Terra Studio and Adama Studio were formed to commercialize the tevaplanter. Adama Studio is a wholly owned subsidiary of Terra Studio, and is responsible for the sale and marketing of the product in the United States.

16. Messrs. Zarhi and Burko first applied for patent protection with the United States Patent and Trademark Office on May 14, 2019, and since then have filed several additional U.S. patent applications. Subsequently, all rights were assigned to Terra Studio, which is now the owner of all patent rights.

17. Among patents and patent applications, Terra Studio is the owner of U.S. Patent No. 11,576,315 (the "'315 Patent"), which is related to Messrs. Zahri and Burko's earliest that was filed on May 14, 2019. A copy of the '315 Patent is attached as Complaint Exhibit A[1]

[1] Due to a clerical error, the '315 Patent issued showing the name of the patent owner as "Terra Studios Ltd." Terra Studio has filed a Petition to correct this error with the Patent Office, and to list the correct assignee name as "Terra Studio Ltd."

18. Adama Studios has used the term TEVAPLANTER to identify the source of the product and has used that trademark to designate the source of the product. Adama owns U.S. Trademark Registration No. 6,495,232 for the TEVAPLANTER mark for planters for flowers and plants. A copy of that registration is attached as Complaint Exhibit B. The TEVAPLANTER Registration and the mark it reflects are valid and subsisting.

19. Adama Studios promoted the tevaplanter on two websites: on the crowdsourcing website *kickstarter.com*, and also on its own website, *tevaplanter.com*. In the course of the creation and design of these websites, Adama Studios created significant original content, including text, photographs, and graphics. Adama Studios has marketed the tevaplanter in the United States, and in doing so has developed marketing materials to aid this effort.

20. Adama Studios registered the Copyright of its *kickstarter.com* website as a compilation of text, photographs and graphics with the United States Copyright Office, No. TXu 2-381-272. A copy of the registration and deposit copy, reflecting the tevaplanter site at *kickstarter.com*, are attached as Complaint Exhibit C.

Defendants' Infringing and Piratical Actions

Defendants' Product

21. Defendant has imported, offered for sale and sold in U.S. Commerce, including to New York, planter products (referenced herein as the "VertPlanter Product") which embody and infringe upon on or more claims of the '315 Patent.

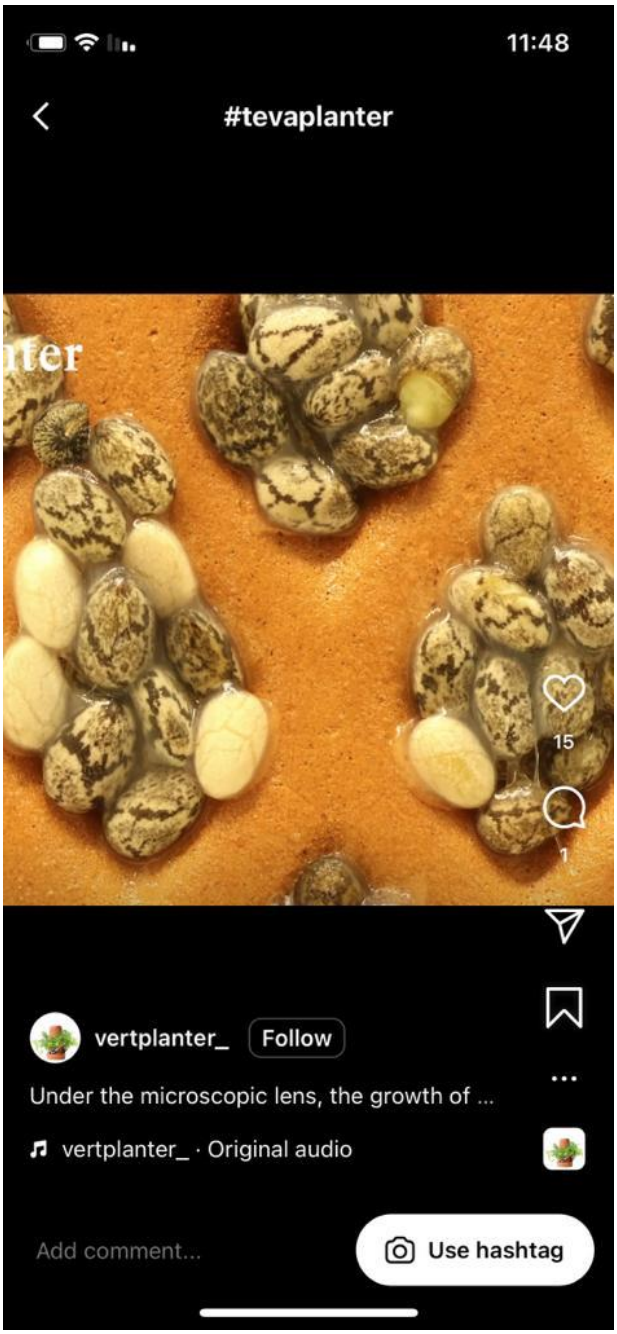
22. Attached as Complaint Exhibit D is a claim chart showing how Defendants' VertPlanter Product infringes Claims 1, 2, 3, 4, 6, 7, 10, 11, 12 and 13 of the '315 Patent. The claim chart is incorporated herein.

23. This act of infringement was in willful disregard for Plaintiffs' patent rights.

Defendants' Misuse of the TEVAPLANTER Trademark

24. Defendant used the TEVAPLANTER to confuse the consuming public.

25. Specifically, Defendant included the designation #tevaplanter in social media, including Instagram, as part of the promotion of its product, as shown in the following screenshot:



Defendant owns no rights in the tevaplanter designation, and in fact uses a different one, VertPlanter, to identify his product. Defendant used the #tevaplanter designation for the specific purpose of confusing the public into believing there is an association with Plaintiffs, when that is not so, and to exploit the public's initial interest in Plaintiff's product and divert that interest to its own product.

Defendants' Misappropriation Of Copyright Text, Photographs and Graphics

26. In creating its website, vertplanter.com, as well as the instructional insert used with his product, Defendant directly copied from Adama Studios sites text, photographs, and graphics.

27. Attached as Complaint Exhibit E is a chart showing some of the copying of these copyrighted elements.

False Advertising

28. Defendant has also engaged in false advertising on his website.

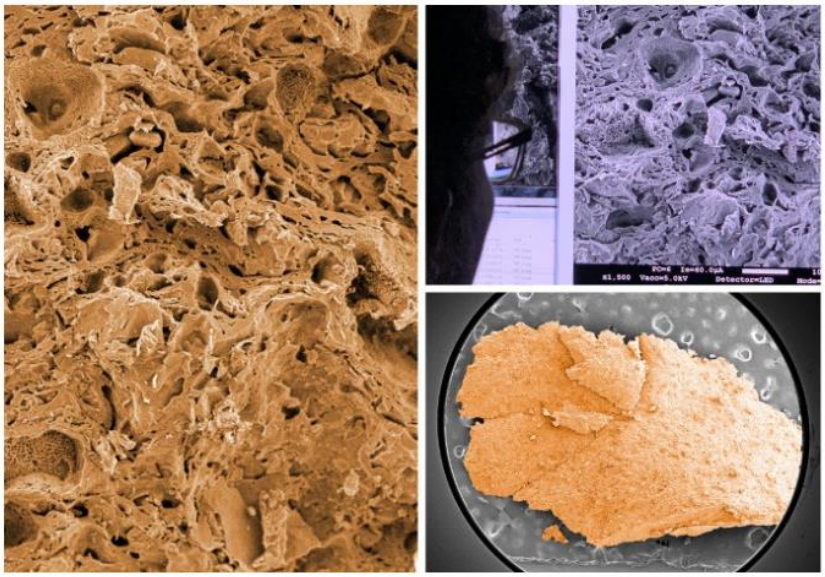
29. The website contains the following claim:

Porous Ceramic Material

Combining the idea of hydroponics and the concept of porous material was the key. We created our proprietary ceramic material that has just the right amount of porosity and hygroscopic tendencies to allow water to diffuse through the material and allow the plant to grow on the surface of the material.

30. The claim that Defendant "created . . . a proprietary ceramic material" is false. The clay used in Defendants' product is ordinary clay.

31. The picture used in the insert accompanying Defendants' product is not of Defendants' product, but rather is an exact copy of a photograph taken by an electron microscope of Plaintiff's product. That photograph appears on Plaintiff's site, thus:



Electron microscope at 1,000x magnification

The same appears in Defendant's insert thus:

32. Defendant's acts of patent, copyright and trademark infringement, and false advertisement, taken together, evidence an intent to pirate Plaintiffs' innovative idea and business. These actions have caused tremendous and irreparable harm to Plaintiffs.

Plaintiffs' Attempts To Stop Defendants

33. Plaintiffs' counsel sent a cease-and-desist letter to Defendants on March 21, 2023. Defendant continued its wrongful actions set forth above.

34. In addition, Plaintiffs have filed numerous notices under the Digital Millenium Copyright Act with Shopify, the host of Defendant's website. Defendants avoided these notices by making minor changes to their site. More recently, Defendant filed a conclusory Counter-Notice, and continues its wrongful actions.

COUNT I

Infringement of U.S. Patent No. 11,576,315
35 U.S. Code § 271

35. Plaintiffs repeat and reincorporate by reference the foregoing paragraphs as if set forth fully.

36. The patent application that issued into the '315 Patent was filed on February 23, 2022, was assigned application No. 17/678,402, and was published as US 2022/0174897 on June 9, 2022. '315 Patent was duly issued by the United States Patent and Trademark Office on February 14, 2023. The '315 Patent has been in full force and effect since its issuance. Terra Studio owns by assignment the entire right, title, and interest in and to the '315 patent, including the right to seek damages for past, current, and future infringement thereof. Its wholly owned subsidiary, Adama Studios, is responsible for the marketing and sale of product in the United States.

37. Since the issuance of the '315 Patent, Defendant has been selling and offering for sale his own product, which, as discussed herein, infringes upon the '315 Patent.

38. Defendant has infringed and continues to infringe Claims 1, 2, 3, 4, 6, 7, 10, 11, 12 and 13 of the '315 Patent, pursuant to 35 U.S.C. § 271(a), literally or under the doctrine of equivalents, by making, using, offering to sell, selling, and/or importing into the United States the Vertplanter Product, without authority or license. The Vertplanter Product infringes for the reasons stated in the claim chart attached as Complaint Exhibit D.

39. Defendant also indirectly infringes the '315 patent, including the identified claims, pursuant to 35 U.S.C. § 271(b), by (among other things) and with specific intent or willful blindness, actively inducing infringement by others, such as Amazon.com, which Defendant has caused to sell and distribute the patented invention via a sale of the Vertplanter product; and also by end user customers, which Defendant has caused to use the patented invention.

40. Plaintiffs have no adequate remedy at law, and are suffering irreparable harm and damage as a result of the acts of Defendants detailed above in an amount to be determined at trial.

COUNT II

Copyright Infringement
17 U.S. Code §§ 106 and 501

41. Plaintiffs repeat and reincorporate by reference the foregoing paragraphs as if set forth fully.

42. Defendant had access to Plaintiffs' websites and all the content therein, including Adama Studios' postings on the *kickstarter.com* and *tevaplanter.com* websites.

43. Plaintiff infringed the copyright in the text, photograph and graphics contained in these websites, by copying same, and incorporating them into his own website and an instructional insert which Defendant includes with his Vertplanter Product.

44. Defendant further infringed these copyrights by distributing copies of the copyrighted works to the public as part of the sale of the Vertplanter Product.

45. Defendant further infringed these copyrights by publicly displaying these works on his website.

46. Defendant also engaged in contributory copyright infringement by inducing Amazon to sell and distribute the Vertplanter Product, which includes the copied content as incorporated in the insert accompanying the product.

47. Plaintiffs have no adequate remedy at law, and are suffering irreparable harm and damage as a result of the acts of Defendants detailed above in an amount to be determined at trial.

COUNT III

FEDERAL TRADEMARK INFRINGEMENT
15 U.S.C. § 1114(1)

48. Plaintiffs repeat and reincorporate by reference the foregoing paragraphs as if set forth fully.

49. Plaintiff Adama Studios owns the mark TEVAPLANTER and the U.S. Registration for same, as shown in Complaint Exhibit B. That mark and registration are valid and subsisting.

50. Defendant used the designation #tevaplanter on social media, in a willful attempt to trade off Plaintiff's name and reputation, and to create at least initial interest confusion, to lure consumers into investigating his product and diverting their interest to him.

51. Accordingly, Defendant has used in commerce a reproduction, counterfeit, copy, or colorable imitation of Plaintiffs' registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive, all in violation of 15 U.S.C. 1114(a).

52. Plaintiffs have no adequate remedy at law, and are suffering irreparable harm and damage as a result of the acts of Defendants detailed above in an amount to be determined at trial.

COUNT IV

FEDERAL UNFAIR COMPETITION
15 U.S.C. § 1125

53. Plaintiffs repeat and reincorporate by reference the foregoing paragraphs as if set forth fully.

54. Adama Studios owns and has rights in the TEVAPLANTER trademark for planters for flowers and plants. The mark is a strong mark and is valid and subsisting, in that it is an arbitrary mark in relation to the products offered.

55. In addition to using the TEVAPLANTER mark, Defendant has closely copied the design, layout and story of Plaintiffs' websites, and used same in a bad faith attempt to confuse the public and trade off Plaintiff's brand and reputation.

56. The activities of Defendants complained of herein constitute willful and intentional uses, appropriations and infringements of the TEVAPLANTER trademark; completely and deliberately disregard Plaintiffs' rights and were commenced and have continued in spite of Defendants' knowledge that the use of the marks in the manner described herein was and is in direct contravention of Plaintiffs' rights, all in violation of 15 U.S.C. § 1125(a).

57. The use by Defendants of copies of the TEVAPLANTER trademark in the manner described herein has been without the consent of Plaintiffs, is likely to cause confusion and mistake in the minds of the purchasing public and the trade that the products sold and offered for sale by Defendant are those of Plaintiffs, when they are not.

58. Plaintiffs have no adequate remedy at law, and are suffering irreparable harm and damage as a result of the acts of Defendants detailed above in an amount to be determined at trial.

COUNT V

FEDERAL FALSE ADVERTISING
15 U.S.C. § 1125

59. Plaintiffs repeat and reincorporate by reference the foregoing paragraphs as if set forth fully.

60. As described above, Defendants have made false or misleading statements about the products offered on their website. The use of such false statements tends to deceives consumers.

61. The advertised products travel in interstate commerce, in that Defendants offer them on platforms (Amazon, vertplanter.com) dedicated to sales throughout the United States, and Defendants have sold these products to multiple other states, including New York.

62. Plaintiffs are being harmed and injured both in terms of declining sales and loss of good will, in the manner detailed above.

63. Plaintiffs have no adequate remedy at law, and are suffering irreparable harm and damage as a result of the acts of Defendants detailed above in an amount to be determined at trial.

COUNT VI

Deceptive Business Practices and Advertisement
N.Y. General Business Law §§ 349 and 350

64. Plaintiffs repeat and reincorporate by reference the foregoing paragraphs as if set forth fully.

65. The activities of Defendants complained of herein constitute deceptive business practices and false advertising in violation of N.Y. General Business Law §§ 349 and 350.

66. These activities by Defendant have caused loss and irreparable harm to Plaintiffs.

67. Plaintiffs have no adequate remedy at law, and are suffering irreparable harm and damage as a result of the acts of Defendants detailed above in an amount to be determined at trial.

COUNT VII

COMMON LAW UNFAIR COMPETITION

68. Plaintiffs repeat and reincorporate by reference the foregoing paragraphs as if set forth fully.

69. The activities of Defendant complained of herein constitute common law unfair competition.

70. Plaintiffs have no adequate remedy at law, and are suffering irreparable harm and damage as a result of the acts of Defendants detailed above in an amount to be determined at trial.

WHEREFORE Plaintiff requests the following relief from the Court:

1. That Defendants, their agents, servants, employees and attorneys, and those in active concert or participation with them or any of them, be preliminarily and then permanently enjoined and restrained:

(a) From further infringing the '315 Patent;

(b) From further infringing Adama Studios' copyrighted text, photographs and graphics;

(c) From imitating, copying, reproducing, or using in any manner the TEVAPLANTER mark, including in the manner complained of herein;

(b) From further engaging in false or deceptive advertising in the offering for sale of its products;

(c) From representing, suggesting in any fashion to any third party, or performing any act which may give rise to the belief that Defendant, his business, or any of his goods and services, are authorized or sponsored by Plaintiffs; and

(d) From otherwise competing unfairly with Plaintiffs in any manner.

2. That the Court order all third parties engaged by Defendant, including Amazon and Shopify, from further enabling Defendant to list his infringing product or otherwise engaging in infringement.

3. That Defendant be ordered to conduct a consumer recall offering each purchaser of his infringing product for a full refund for return of the product.

4. That Plaintiffs be awarded damages pursuant to all applicable statutes, including 35 U.S.C. § 284, 17 U.S.C. § 504, 15 U.S.C. § 1117 and N.Y. General Business Law § 349(h).

5. That Defendant be required, pursuant to 17 U.S.C. § 504, 15 U.S.C. § 1117 and the common law, to account to Plaintiffs for any and all profits derived by him from his acts of trademark infringement and unfair competition, and for all damages sustained by Plaintiffs by reason of Defendant's actions complained of herein, and that such award be trebled in accordance with

6. That pursuant to 35 U.S.C. § 285, 15 U.S.C. § 1117 and N.Y. General Business Law § 349(h), Plaintiffs have and recover from Defendant, Plaintiffs' reasonable attorneys' fees, costs and disbursements of this civil action.

7. That Plaintiffs be awarded both pre-judgment and post-judgment interest on each and every damage award.

8. That Plaintiffs have such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiffs demand trial by jury as to all issues so triable.

Dated: New York, New York
August 1, 2022

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