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THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

HOMAX PRODUCTS INC.,

Plaintiff,

v.

DYNACRAFT INDUSTRIES, INC.,

Defendant.

NO. 06-0990-JCC

DEFENDANT DYNACRAFT  
INDUSTRIES, INC.'S ANSWER AND  
COUNTERCLAIMS

**JURY DEMAND**

In response to the allegations of the Complaint for Declaratory Judgment, Trade Dress Noninfringement and Invalidity; No Breach of Confidentiality Agreement by plaintiff Homax Products, Inc. (“Homax”), and as Counterclaims, defendant Dynacraft Industries, Inc. (“Dynacraft”) alleges as follows.

**I. ANSWER**

1. Regarding paragraph 1, Dynacraft admits the action purports to seek declaratory judgment regarding several allegations. Dynacraft denies the remaining allegations.
2. Regarding paragraph 2, Dynacraft admits the Court has jurisdiction over this action in accordance with the cited statutes. Dynacraft denies the remaining allegations.
3. Regarding paragraph 3, Dynacraft admits the Court has supplemental jurisdiction over Homax’s purported breach of confidentiality agreement claim. Dynacraft denies the remaining allegations.

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4. Regarding paragraph 4, Dynacraft admits the allegations.

5. Regarding paragraph 5, Dynacraft admits the allegations.

6. Regarding paragraph 6, Dynacraft admits the allegations.

7. Regarding paragraph 7, Dynacraft admits the allegations.

8. Regarding paragraph 8, Dynacraft admits the allegations.

9. Regarding paragraph 9, Dynacraft admits that, among other activities, Dynacraft manufactures and distributes paint and varnish removal products. Dynacraft denies it is solely a manufacturer and distributor of such products, and denies any remaining allegations.

10. Regarding paragraph 10, Dynacraft admits the allegation.

11. Regarding paragraph 11, Dynacraft is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies them.

12. Regarding paragraph 12, Dynacraft admits that, among other activities, Dynacraft manufactures and distributes paint and varnish removal products. Dynacraft denies it is solely a manufacturer and distributor of such products, and denies any remaining allegations.

13. Regarding paragraph 13, Dynacraft is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies them.

14. Regarding paragraph 14, Dynacraft is without knowledge or information sufficient to form a belief as to the truth of the allegations and, on that basis, denies them.

15. Regarding paragraph 15, Dynacraft admits the allegation.

16. Regarding paragraph 16, Dynacraft admits the allegation.

17. Regarding paragraph 17, Dynacraft admits representatives of Dynacraft and Homax held a meeting on June 22, 2005. Dynacraft also admits one purpose in the meeting was to discuss a possible business relationship with or acquisition by Homax. Dynacraft is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding Homax's intent and, on that basis, denies the remaining allegations.

1           18.     Regarding paragraph 18, Dynacraft admits the parties discussed Dynacraft's  
2 business. Dynacraft denies the discussion was limited only to general business. Dynacraft  
3 denies any remaining allegations.  
4

5  
6  
7           19.     Regarding paragraph 19, Dynacraft admits the allegation.  
8

9           20.     Regarding paragraph 20, Dynacraft admits representatives of Dynacraft and  
10 Homax discussed the history of each company. Dynacraft denies the remaining allegations.  
11

12  
13           21.     Regarding paragraph 21, Dynacraft admits the parties did not reach agreement to  
14 merge or enter a formal partnership. Dynacraft denies the remaining allegations.  
15

16  
17           22.     Regarding paragraph 22, Dynacraft admits the allegation.  
18

19           23.     Regarding paragraph 23, Dynacraft admits the allegation.  
20

21           24.     Regarding paragraph 24, Dynacraft denies the allegation.  
22

23           25.     Regarding paragraph 25, Dynacraft admits Homax sells color changing paint  
24 strippers. Dynacraft denies the remaining allegations.  
25

26  
27           26.     Regarding paragraph 26, Dynacraft admits Homax sells color changing paint  
28 strippers under at least the JASCO and BIX brands.  
29

30  
31           27.     Regarding paragraph 27, Dynacraft admits it sells color changing paint strippers  
32 under the READY STRIP trademark. Dynacraft also admits all of its color changing paint  
33 stripper products carry Dynacraft's "Back to Nature" trademark. Dynacraft denies the remaining  
34 allegations.  
35  
36

37  
38  
39           28.     Regarding paragraph 28, Dynacraft admits white plastic containers are used in the  
40 home improvement product industry for products not including paint stripper, varnish remover  
41 and similar products. Dynacraft denies the remaining allegations.  
42  
43

44  
45           29.     Regarding paragraph 29, Dynacraft admits Homax's JASCO BIX color changing  
46 paint strippers are packaged with labels that contain the words "PAINT STRIPPER," and "color  
47 changing." Dynacraft admits the text "PAINT STRIPPER" appears in white text, but denies the  
48 text is solely against an orange background. Dynacraft denies the remaining allegations.  
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1           30.     Regarding paragraph 30, Dynacraft is without knowledge or information  
2  
3 sufficient to form a belief as to the truth of the allegations and, on that basis, denies them.

4  
5           31.     Regarding paragraph 31, Dynacraft admits Homax’s BIX color changing paint  
6  
7 stripper is packaged with labels that include the words “PAINT STRIPPER” and “Nature’s  
8  
9 Own.” Dynacraft admits the text “PAINT STRIPPER” appears in white text, but denies the text  
10  
11 is solely against an orange background. Dynacraft denies the remaining allegations.

12  
13           32.     Regarding paragraph 32, Dynacraft admits its color changing paint stripper  
14  
15 products include the text “READY STRIP.” Dynacraft admits the text is the largest text font on  
16  
17 the label. Dynacraft denies the remaining allegations.

18  
19           33.     Regarding paragraph 33, Dynacraft denies the allegations.

20  
21           34.     Regarding paragraph 34, Dynacraft admits the term “paint stripper” is descriptive.  
22  
23 Dynacraft denies the remaining allegations.

24  
25           35.     Regarding paragraph 35, Dynacraft denies the allegations.

26  
27           36.     Regarding paragraph 36, Dynacraft admits its READY STRIP color changing  
28  
29 paint stripper includes green in the background of the product label and that the shade of green  
30  
31 varies. Dynacraft denies the remaining allegation.

32  
33           37.     Regarding paragraph 37, Dynacraft admits environmental friendliness is  
34  
35 important for the Dynacraft Color Changing Product. Dynacraft is without knowledge or  
36  
37 information sufficient to form a belief as to the truth of the remaining allegations and, on that  
38  
39 basis, denies them.

40  
41           38.     Regarding paragraph 38, Dynacraft denies the allegation.

42  
43           39.     Regarding paragraph 39, Dynacraft is without knowledge or information  
44  
45 sufficient to form a belief as to the truth of the allegations and, on that basis, denies them.

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47           40.     Regarding paragraph 40, Dynacraft is without knowledge or information  
48  
49 sufficient to form a belief as to the truth of the allegations and, on that basis, denies them.  
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1           41.     Regarding paragraph 41, Dynacraft admits all versions of READY STRIP Plus  
2  
3 are green when applied to a paint surface and change color to white or pale green when ready to  
4 strip. Dynacraft denies any remaining allegations.  
5

6  
7           42.     Regarding paragraph 42, Dynacraft admits the allegations.  
8

9           43.     Regarding paragraph 43, Dynacraft admits the allegations.  
10

11          44.     Regarding paragraph 44, Dynacraft admits the allegations.  
12

13          45.     Regarding paragraph 45, Dynacraft admits the allegations.  
14

15          46.     Regarding paragraph 46, Dynacraft admits its May 5, 2006 letter demands that  
16 Homax cease sales of its JASCO/BIX and BIX color changing paint strippers. Dynacraft denies  
17 any remaining allegations.  
18

19          47.     Regarding paragraph 47, Dynacraft admits the allegations.  
20

21          48.     Regarding paragraph 48, Dynacraft admits the allegations.  
22

23          49.     Regarding paragraph 49, Dynacraft admits Homax's counsel sent a letter dated  
24 May 22, 2006 in which he discussed Dynacraft's May 5, 2006 letter. Dynacraft denies Homax's  
25 summary and the remaining allegations.  
26

27          50.     Regarding paragraph 50, Dynacraft admits that its counsel sent a letter on  
28 June 16, 2006 to Homax in which the quoted language appears. Dynacraft denies the remaining  
29 allegations.  
30

31          51.     Regarding paragraph 51, Dynacraft incorporates its respective admissions and  
32 denials above.  
33

34          52.     Regarding paragraph 51, Dynacraft admits a justiciable controversy and denies  
35 any remaining allegations  
36

37          53.     Regarding paragraph 53, Dynacraft incorporates its respective admissions and  
38 denials above.  
39

40          54.     Regarding paragraph 54, Homax alleges only the relief it seeks. Dynacraft denies  
41 any allegations.  
42  
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1 55. Regarding paragraph 55, Dynacraft incorporates its respective admissions and  
2 denials above.

3  
4 56. Regarding paragraph 56, Homax alleges only the relief it seeks. Dynacraft denies  
5 any allegations.  
6

7  
8 57. Regarding paragraph 57, Dynacraft incorporates its respective admissions and  
9 denials above.  
10

11  
12 58. Regarding paragraph 54, Homax alleges only the relief it seeks. Dynacraft denies  
13 any allegations.  
14

15  
16 59. Regarding paragraph 59, Dynacraft incorporates its respective admissions and  
17 denials above.  
18

19  
20 60. Regarding paragraphs 60-66, Homax alleges only the relief it seeks. Dynacraft  
21 denies any allegations.  
22

23  
24 61. To the extent any allegations of the Complaint are not addressed above, they are  
25 denied.  
26

27  
28 WHEREFORE, defendant Dynacraft prays that all relief requested by plaintiff Homax be  
29 denied, and that Dynacraft be granted the relief demanded in the counterclaims.  
30

## 31 32 II. COUNTERCLAIMS

33  
34 For its counterclaims, Dynacraft alleges as follows:

35  
36 1. Dynacraft is a New Jersey corporation having a principal place of business at  
37 28 Harrison Avenue, Englishtown, New Jersey.  
38

39  
40 2. Homax is a Delaware corporation and a resident of the State of Washington,  
41 having a principal place of business in this district at 200 Westerly Road, Bellingham,  
42 Washington.  
43

44  
45 3. This is an action for federal trademark infringement under the provisions of the  
46 Trademark Act of 1946, 15 U.S.C. § 1051 et seq., Unfair Competition under the Lanham Act, 15  
47 U.S.C. § 1125(a), and Washington statutory and common law regarding consumer protection,  
48  
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1 breach of confidentiality, and trade secret misappropriation. This Court has jurisdiction over the  
2  
3 subject matter of these claims pursuant to 28 U.S.C. § 1331 (federal question), and over the  
4  
5 associated state law claims pursuant to 28 U.S.C. § 1338(b) (related unfair competition claims)  
6  
7 and § 1367 (supplemental jurisdiction).  
8

9 4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because the  
10  
11 substantial part of events or omissions giving rise to the claims asserted herein occurred in this  
12  
13 district, defendant resides in this district, and defendant is subject to personal jurisdiction in this  
14  
15 district.  
16

17 5. Dynacraft has been in business for over 18 years and has developed a large  
18  
19 number of distinctive home improvement products. Among other products, Dynacraft markets  
20  
21 and sells a full line of environmentally friendly color changing paint strippers. Among these are  
22  
23 various versions of Dynacraft's "READY STRIP" color changing paint stripper that have been  
24  
25 sold continuously since 1996.  
26

27 6. Dynacraft was the first company to market and sell color changing paint stripper.  
28  
29 Dynacraft packaged its color changing paint strippers in round white plastic buckets with  
30  
31 prominent usage of the color green and sold the product in one quart, half-gallon, gallon and five-  
32  
33 gallon containers. Dynacraft has sold its color changing paint strippers with packaging including  
34  
35 these features (the "Color Change Packaging") through television and direct response advertising  
36  
37 since 1996, investing millions dollars in its advertising and promotional efforts.  
38

39 7. During this time, Dynacraft marketed the environmentally friendly characteristics  
40  
41 of its products under the Back to Nature brand, including its color changing paint stripper, in part  
42  
43 by marking the Color Change Packaging and associated packaging and advertising prominently  
44  
45 with the "Back to Nature" trademark (the "Back to Nature Mark").  
46

47 8. Dynacraft also marketed its color changing paint strippers in part by marking the  
48  
49 Color Change Packaging and associated packaging and advertising prominently with the "Color  
50  
51 Change" trademark (the "Color Change Mark").

1           9.       Dynacraft registered “Back to Nature” in United States Trademark Registration  
2  
3 No. 2,651,255 in class 2 for products including paint and varnish remover. Dynacraft registered  
4  
5 the “Back to Nature” logo in United States Trademark Registration No. 2,638,487 in class 2 for  
6  
7 products including paint and varnish remover. Dynacraft has used the Back to Nature Mark  
8  
9 continuously since December 1991.

10  
11           10.       Dynacraft also used and promoted the inherently distinctive design, shape, color,  
12  
13 and overall appearance of its Color Change Packaging since at least 1996 to identify its product  
14  
15 and to distinguish it from those made and sold by others.. Dynacraft has done so by among other  
16  
17 things, prominently displaying the Back to Nature Mark. and the Color Change Mark on the Color  
18  
19 Change Packaging and related packaging, containers, and displays. Dynacraft has commonly  
20  
21 displayed the Back to Nature Mark., the Color Change Mark, and the inherently distinctive  
22  
23 design, shape, color, and overall appearance of the Color Change Packaging in advertising and  
24  
25 other United States’ promotional efforts.

26  
27           11.       Dynacraft’s advertising and promotional efforts created demand for its products in  
28  
29 at least the direct sales and retail markets and, in part, caused consumers to associate the Back to  
30  
31 Nature Mark., the Color Change Mark, and the inherently distinctive design, shape, color, and  
32  
33 overall appearance of the Color Change Packaging with Dynacraft and its Back to Nature brand.

34  
35           12.       The Color Change Packaging is non-functional, and as a result of the use, sales  
36  
37 and advertising by Dynacraft described herein, the Back to Nature Mark., the Color Change  
38  
39 Mark, and the inherently distinctive design, shape, color, and overall appearance of the Color  
40  
41 Change Packaging have developed and now have a secondary and distinctive meaning to  
42  
43 consumers.

44  
45           13.       The Back to Nature Mark and the Color Change Mark are protected as common  
46  
47 law trademarks by virtue of its longstanding and consistent use.

48  
49           14.       Dynacraft changed the formulation of the color changing paint stripper product  
50  
51 contained in the Color Change Packaging in 2005 (the “Color Changing Product”). Dynacraft has



1 continued prominently displaying the Back to Nature Mark and the Color Change Mark on the  
2  
3 Color Change Packaging and related packaging, containers, and displays. Dynacraft has  
4  
5 continued to commonly display the Back to Nature Mark., the Color Change Mark, and the  
6  
7 inherently distinctive design, shape, color, and overall appearance of the Color Change Packaging  
8  
9 in advertising and other United States' promotional efforts for the Color Changing Product.

10  
11 15. Dynacraft and Homax started to discuss a possible business relationship or  
12  
13 acquisition in April 2004. Representatives of Dynacraft and Homax met at the National  
14  
15 Hardware Show on our about May 11, 2004.

16  
17 16. On June 29, 2004, Dynacraft and Homax entered into a "Confidentiality and  
18  
19 Nondisclosure Agreement" in preparation for further discussions regarding a business relationship  
20  
21 or acquisition.

22  
23 17. The Confidentiality and Nondisclosure Agreement states that Homax is  
24  
25 considering the possible acquisition of Dynacraft and "wishes to receive certain information  
26  
27 regarding the business of Dynacraft which Dynacraft considers to be confidential or proprietary  
28  
29 information.

30  
31 18. The Confidentiality and Nondisclosure Agreement defines confidential  
32  
33 information as "all information disclosed directly or indirectly by Dynacraft" and expressly  
34  
35 includes the financial or business condition of Dynacraft, its marketing information and business  
36  
37 strategy, its research and development, its processes of manufacture, and the design or technology  
38  
39 behind the products it manufactures.

40  
41 19. The Confidentiality and Nondisclosure Agreement states "Homax agrees that it  
42  
43 shall not disclose, give, sell, license, lease, copy, distribute, reproduce or otherwise make  
44  
45 available the Confidentiality Information in whole or in part, to any third person, organization or  
46  
47 entity including some but not limited to, its own subsidiaries and/or affiliates, without the prior  
48  
49 written consent of Dynacraft."  
50  
51

1           20.     The Confidentiality and Nondisclosure Agreement also prohibits Homax from  
2  
3 using “the confidential information for its own commercial or economic benefit.”  
4

5           21.     Representatives of Homax, including at least Ross Clawson and representatives  
6  
7 from Olympus Partners, attended a meeting at Dynacraft headquarters on June 22, 2005 for the  
8  
9 purpose of discussing a business relationship or acquisition (“Homax Factory Tour”).  
10

11          22.     All discussions between Dynacraft and Homax during the Homax Factory Tour  
12  
13 were covered by the Confidentiality and Nondisclosure Agreement. During the Homax Factory  
14  
15 Tour, Dynacraft representatives disclosed to Homax certain confidential information related to  
16  
17 Dynacraft and its products (“Dynacraft Trade Secrets”).  
18

19          23.     The Dynacraft Trade Secrets included at least the financial information of  
20  
21 Dynacraft, the ingredients of the Color Changing Product, including the components of the  
22  
23 formulation, active ingredients, mechanism for its color change, and its manufacturing process.  
24

25          24.     Mr. Clawson and other Homax representatives also toured the Dynacraft  
26  
27 manufacturing facility. During this tour, Mr. Clawson and other representatives of Homax  
28  
29 viewed the manufacturing process for the Color Changing Product in progress, and viewed bulk  
30  
31 ingredients for the Color Changing Product.  
32

33          25.     Before the Confidentiality and Nondisclosure Agreement and its discussions with  
34  
35 Dynacraft, Homax had never made or sold a color changing paint stripper product.  
36

37          26.     On information and belief, Homax had not completed the formulation for JASCO,  
38  
39 JASCO BIX or BIX Color Changing paint stripper at the time of the Homax Factory Tour.  
40

41          27.     Homax completed and published the Material Safety Data Sheet for its color  
42  
43 changing paint stripper on July 27, 2005.  
44

45          28.     On information and belief, after Dynacraft’s disclosure of confidential  
46  
47 information to Homax, Homax completed development of a color changing paint stripper.  
48  
49  
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51

1           29.     On information and belief, a reasonable opportunity for discovery will show  
2  
3 Homax developed packaging for a color changing paint stripper after Dynacraft disclosed  
4  
5 confidential information to Homax.  
6

7           30.     On information and belief, a reasonable opportunity for discovery will show  
8  
9 Homax completed the selection of text to include “Nature’s Own” on packaging for a color  
10  
11 changing paint stripper after Dynacraft disclosed confidential information to Homax.  
12

13           31.     On information and belief, a reasonable opportunity for discovery will show  
14  
15 Homax completed the selection of round white plastic containers in one-quart and half-gallon  
16  
17 sizes for its color changing paint stripper after Dynacraft disclosed confidential information to  
18  
19 Homax.  
20

21           32.     On information and belief, a reasonable opportunity for discovery will show  
22  
23 Homax first sold a color changing paint stripper after Dynacraft disclosed confidential  
24  
25 information to Homax.  
26

27           33.     By at least May 2006, Homax began selling a copy of Dynacraft’s Color  
28  
29 Changing Product.  
30

31           34.     Homax sells at least two versions of color changing paint stripper products, as  
32  
33 shown in Exhibit A (“Infringing Products”). Homax markets and sells the Infringing Products  
34  
35 under the JASCO BIX and BIX trade names.  
36

37           35.     Homax’s Infringing Products are sold in containers copied from Dynacraft’s  
38  
39 inherently distinctly design, shape, color, and overall appearance of its Color Change Packaging.  
40

41           36.     On information and belief, Homax used the Dynacraft Trade Secrets to develop  
42  
43 its Infringing Products.  
44

45           37.     On information and belief, Homax used the Dynacraft Trade Secrets to market  
46  
47 and sell its Infringing Products.  
48

49           38.     Homax’s Infringing Products includes the use of “Nature’s Own” prominently  
50  
51 displayed on at least the BIX branded color changing paint stripper packaging.

1 39. Homax's use of Dynacraft's inherently distinctive design, shape, color, and  
2 overall appearance for the Infringing Products was without knowledge or permission of  
3 Dynacraft.  
4

5  
6  
7 40. Homax's use of the "Nature's Own" text infringes Dynacraft's Mark, and its use  
8 of the inherently distinctive design, shape, color, and overall appearance of Dynacraft's Color  
9 Change Packaging for the Infringing Products are likely to cause confusion with consumers  
10 regarding the origin, sponsorship, or approval of Homax's goods.  
11

12  
13 41. On information or belief, the activities of Homax, as set forth herein, constitute  
14 willful, malicious and intentional infringement of Dynacraft's trademark, contract and statutory  
15 rights, and were commenced despite Homax's knowledge that the sale of deceptively similar  
16 goods and wholesale copying of Dynacraft's Color Change Packaging and Color Changing  
17 Product was and is in direct convention of Dynacraft's rights.  
18  
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20  
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24  
25 **II. FIRST CAUSE OF ACTION**  
26 **(Federal Unfair Competition, Infringement of Trade Dress:**  
27 **Violation of 15 U.S.C. § 1125(a))**  
28

29 42. Dynacraft repeats and realleges the allegations contained in paragraphs 1 through  
30 41 above.  
31

32  
33 43. Homax's conduct alleged above in connection with the promotion and sale of its  
34 goods constitutes unfair competition, and false designation of origin, in violation of Section 43 of  
35 the Lanham Act, 15 U.S.C. § 1125(a).  
36  
37

38 44. Homax knew, or should have known, of Dynacraft's trademark rights. Homax's  
39 false description and false designation of origin has been knowing, willful and deliberate, making  
40 this an exceptional case within the meaning of 15 U.S.C. § 1117.  
41  
42

43 45. To the extent its damages can be measured, Dynacraft has been and will continue  
44 to be damaged by Homax's acts in an amount to be proven at trial.  
45  
46

47 46. Dynacraft has been and continues to be damaged as a result of Homax's acts in a  
48 manner that cannot be fully measured or compensated in economic terms. Homax's acts have  
49  
50  
51

1 damaged and will continue damaging Dynacraft's reputation and good will, and put Dynacraft in  
2 a position where it cannot control its reputation and good will. Dynacraft will continue to suffer  
3 irreparable harm unless Homax is enjoined.  
4  
5

6  
7 **III. SECOND CAUSE OF ACTION**  
8 **(Federal Trademark Infringement: Violation of 15 U.S.C. § 1114)**  
9

10 47. Dynacraft repeats and realleges the allegations contained in paragraphs 1 through  
11 46 above.  
12

13 48. Dynacraft owns U.S. Federal Trademark Registration No. 2,651,255 for the Mark.  
14 This registration is in full force and effect and is enforceable.  
15

16 49. Homax's actions constitute the use in interstate commerce of a reproduction,  
17 copy, or colorable imitation of a registered mark in connection with the sale, offering for sale,  
18 distribution and advertising of goods and services or in connection with such use in violation of  
19 Section 32 of the Lanham Act, 15 U.S.C. § 1114.  
20  
21  
22  
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24

25 50. Homax's actions also constitute the use in interstate commerce of a reproduction,  
26 copy, or colorable imitation of a registered mark applied to labels, packages, wrappers,  
27 receptacles and advertisements intended to be used in commerce upon or in connection with the  
28 sale, offering for sale, distribution, or advertising of goods or services on or in connection with  
29 such use, in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.  
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35 51. Homax's actions are likely to cause confusion and mistake and are likely to  
36 deceive consumers.  
37  
38

39 52. Homax knew or should have known of Dynacraft's rights. Homax's actions have  
40 been knowing, willful and deliberate, making this an exceptional case within the meaning of  
41 U.S.C. § 1117.  
42  
43  
44

45 53. To the extent its damages can be measured, Dynacraft has been and will continue  
46 to be damaged by Homax's acts in an amount to be proven at trial.  
47  
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1           54.     Dynacraft has been and continues to be damaged as a result of Homax's acts that  
2  
3 cannot be fully measured or compensated in economic terms. Homax's acts have damaged and  
4  
5 will continue damaging Dynacraft's reputation and good will, and put Dynacraft in a position  
6  
7 where it cannot control its reputation and good will. Dynacraft will continue to suffer irreparable  
8  
9 harm unless Homax is enjoined.

10  
11                                   **IV.     THIRD CAUSE OF ACTION**  
12                                   **(Common Law Trademark Infringement)**  
13

14           55.     Dynacraft repeats and realleges the allegations contained in paragraphs 1 through  
15  
16 54 above.

17  
18           56.     The Back to Nature Mark and the Color Change Mark are enforceable trademarks  
19  
20 owned by Dynacraft.

21  
22           57.     Homax's marketing of its Infringing Products is likely to misdirect and cause  
23  
24 confusion to customers, including current and prospective Dynacraft customers. Homax's  
25  
26 marketing of its Infringing Products is likely to confuse a significant number of customers into  
27  
28 believing that Homax's products or services are sponsored by or are otherwise associated with  
29  
30 Dynacraft, or that the parties' products or services come from a common source.  
31

32           58.     Homax's knowing, willful and deliberate use of the Back to Nature Mark and the  
33  
34 Color Change Mark constitutes trademark infringement under the common law of the State of  
35  
36 Washington.  
37

38           59.     To the extent its damages can be measured, Dynacraft has been and will continue  
39  
40 to be damaged by Homax's acts in an amount to be proven at trial.

41  
42           60.     Dynacraft has been and continues to be damaged as a result of Homax's acts that  
43  
44 cannot be fully measured or compensated in economic terms. Homax's acts have damaged and  
45  
46 will continue damaging Dynacraft's reputation and good will, and put Dynacraft in a position  
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48 where it cannot control its reputation and good will. Dynacraft will continue to suffer irreparable  
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50 harm unless Homax is enjoined.  
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**V. FOURTH CAUSE OF ACTION**  
**(Violations of Washington Unfair Business Practices—Consumer Protection Act)**

61. Dynacraft repeats and realleges the allegations contained in paragraphs 1 through 60 above.

62. The foregoing acts of Homax constitute unfair methods of competition, and unfair deceptive acts or practices in the conduct of trade or commerce, in violation of RCW 19.86.020.

63. Homax's conduct affected and was contrary to the public interest, intended to mislead a substantial portion of the public, and has injured Dynacraft in its business and property in the State of Washington.

64. To the extent its damages can be measured, Dynacraft has been and will continue to be damaged by Homax's acts in an amount to be proven at trial.

65. Dynacraft has been and continues to be damaged as a result of Homax's acts that cannot be fully measured or compensated in economic terms. Homax's acts have damaged and will continue damaging Dynacraft's reputation and good will, and put Dynacraft in a position where it cannot control its reputation and good will. Dynacraft will continue to suffer irreparable harm unless Homax is enjoined.

**VI. FIFTH CAUSE OF ACTION**  
**(Violations of Washington Common Law Unfair Competition)**

66. Dynacraft repeats and realleges the allegations contained in paragraphs 1 through 65 above.

67. The foregoing acts of Homax constitute unfair competition under the common law of the State of Washington.

68. Homax's conduct was undertaken in bad faith.

69. To the extent its damages can be measured, Dynacraft has been and will continue to be damaged by Homax's acts in an amount to be proven at trial.

70. Dynacraft has been and continues to be damaged as a result of Homax's acts that cannot be fully measured or compensated in economic terms. Homax's acts have damaged and

1 will continue damaging Dynacraft's reputation and good will, and put Dynacraft in a position  
2  
3 where it cannot control its reputation and good will. Dynacraft will continue to suffer irreparable  
4  
5 harm unless Homax is enjoined.  
6

7 **VII. SIXTH CAUSE OF ACTION**  
8 **(Misappropriation of Trade Secrets)**  
9

10 71. Dynacraft repeats and realleges the allegations contained in paragraphs 1 through  
11  
12 70 above.  
13

14 72. Homax knew or had reason to know that its knowledge of Dynacraft's  
15  
16 confidential information, including the Dynacraft Trade Secrets, was acquired under  
17  
18 circumstances giving rise to a duty to maintain its secrecy or limit its use.  
19

20 73. Homax misappropriated confidential information, including the Dynacraft Trade  
21  
22 Secrets, belonging to Dynacraft.  
23

24 74. Dynacraft takes and has taken commercially reasonable steps to protect its trade  
25  
26 secrets, including the Dynacraft Trade Secrets. The Dynacraft Trade Secrets derive independent  
27  
28 economic value from not being generally known to, and not being readily ascertainable by proper  
29  
30 means by, other persons who can obtain economic value from their disclosure or use.  
31

32 75. Homax's acts constitute misappropriation of trade secrets pursuant to RCW 19.  
33  
34 108.010 *et seq.*  
35

36 76. To the extent its damages can be measured, Dynacraft has been and will continue  
37  
38 to be damaged by Homax's misappropriation of trade secrets in an amount to be proven at trial.  
39

40 77. Dynacraft has been and continues to be damaged as a result of Homax's acts that  
41  
42 cannot be fully measured or compensated in economic terms. Homax's acts have damaged and  
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44 will continue damaging Dynacraft's reputation and good will, and put Dynacraft in a position  
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46 where it cannot control its reputation and good will. Dynacraft will continue to suffer irreparable  
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48 harm unless Homax is enjoined.  
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**VIII. SEVENTH CAUSE OF ACTION  
(Breach of Contract)**

78. Dynacraft repeats and realleges the allegations contained in paragraphs 1 through 77 above.

79. Beginning on June 29, 2004, and at all later times relevant to this lawsuit, Homax was bound by the Confidentiality and Nondisclosure Agreement.

80. The Confidentiality and Nondisclosure Agreement is valid.

81. Homax breached the Confidentiality and Nondisclosure Agreement.

82. To the extent its damages can be measured, Dynacraft has been and will continue to be damaged by Homax's breach of the Confidentiality and Nondisclosure Agreement in an amount to be proven at trial.

83. Dynacraft has been and continues to be damaged as a result of Homax's acts that cannot be fully measured or compensated in economic terms. Homax's acts have damaged and will continue damaging Dynacraft's reputation and good will, and put Dynacraft in a position where it cannot control its reputation and good will. Dynacraft will continue to suffer irreparable harm unless Homax is enjoined.

**IX. JURY DEMAND**

Dynacraft respectfully requests a trial by jury of all issues so triable.

**X. PRAYER FOR RELIEF**

WHEREFORE, Dynacraft seeks the following relief against Homax.

A. An award of damages in an amount to be proven at trial;

B. Prejudgment and postjudgment interest;

C. An award of increased damages, including treble damages or treble profits

whichever is greater, pursuant to 15 U.S.C. § 1117, RCW 19.86.090, RCW 19.108.030(2), or as otherwise permitted by law;

1 D. An award of unjust enrichment that Homax enjoyed from its unlawful acts  
2  
3 pursuant to RCW 19.108.030 or as otherwise permitted by law;

4  
5 E. An award of attorneys' fees and costs pursuant to 15 U.S.C. § 1117, RCW  
6  
7 19.86.090, RCW 19.108.050, or as otherwise permitted by law;

8  
9 F. A preliminary and permanent injunction precluding Homax, its officers,  
10  
11 employees, directors, agents, servants, subsidiaries, affiliates, and all persons in active concert  
12  
13 with them from the unauthorized use of Dynacraft's Mark, trade dress, trade secrets, and  
14  
15 confidential information, including from sales of its Infringing Products, or any other paint  
16  
17 stripper product that is deceptively similar to, or that would be mistaken in origin with,  
18  
19 Dynacraft's Color Changing Products; and

20  
21 G. Such other and further relief as the Court deems just and equitable.

22  
23 DATED October 2, 2006.

24  
25  
26 s/ Ryan J. McBrayer

27 Jerry A. Riedinger, WSBA #25828

28 Ryan J. McBrayer, WSBA #28338

29 PERKINS COIE LLP

30 1201 Third Avenue, Suite 4800

31 Seattle, Washington 98101-3099

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39 Of Counsel:

40 Dan DeLaRosa

41 DeLaRosa and Assoc.

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43 New York, NY 10021

44 Phone: (212) 570-6597

45 Fax: (212) 570-9053

46  
47  
48  
49 Attorneys for Defendant

50 Dynacraft Industries, Inc.

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2  
3  
4 **CERTIFICATE OF SERVICE**  
5

6 I hereby certify that on October 2, 2006, I electronically filed the foregoing with the  
7 Clerk of the Court by using the CM/ECF System, which will send a notice of electronic filing to  
8 the following:  
9

10  
11  
12  
13 Brian G. Bodine  
14 brianbodine@dwt.com  
15 Kaustuv Mukul Das  
16 kmdas@dwt.com  
17 Davis Wright Tremaine, LLP  
18 1501 Fourth Avenue  
19 Suite 2600  
20 Seattle, WA 98101-1688  
21 (206) 628-7623/(206) 903-3723  
22  
23  
24

Steven P. Fallon  
sfallon@gbclaw.net  
Greer Burns & Crain Ltd  
300 S. Wacker Drive, 25th Floor  
Chicago, IL 60606  
(312) 987-4004/(312) 360-9315

25  
26 I further certify that on October 2, 2006, I sent via U.S. Mail, postage prepaid, a copy of  
27 the foregoing to the following:  
28

29  
30  
31 Philip M, Kolehmainen  
32 Laura R. Wanek  
33 Green Burns & Crain, Ltd.  
34 300 South Wacker Drive, 25th Floor  
35 Chicago, IL 60606  
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37  
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39  
40 /s/ Ryan J. McBrayer  
41 Ryan J. McBrayer  
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THE SAFER CHOICE

**BIX**

Nature's Own

**PAINT STRIPPER**

NO METHYLENE CHLORIDE • LOW ODOR • BIODEGRADABLE



REMOVES  
MULTIPLE LAYERS  
OF PAINT



No Methylene Chloride • Stays Wet to Work Longer

**CAUTION! IRRITANT. MAY BE HARMFUL IF SWALLOWED OR INHALED. MILD EYE, SKIN AND RESPIRATORY TRACT IRRITANT. READ CAREFULLY WARNINGS ON BACK OF PACKAGE**

1 QUART

946 mL

REMOVES  
✓ VARNISH  
✓ LACQUER  
✓ OIL PAINT  
✓ LATEX PAINT

Avoid contact with eyes, or skin. CAUTION: Irritant. KEEP OUT OF REACH OF CHILDREN. Wash thoroughly after use. Do not use on lead-based paint. Contains methylene chloride. For use on interior or exterior surfaces. Emergency: Call 1-800-4-A-SEAL. Clean up with water. WARNING: May cause skin irritation. WARNING: May cause respiratory irritation. LEAD: This product does not contain lead or lead compounds.

EXHIBIT A, Page 2