

ESTTA Tracking number: **ESTTA558654**

Filing date: **09/10/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding.	91209336
Applicant	Plaintiff California Products Corporation
Other Party	Defendant Plexicoat America, LLC and Robert M. Brodsky
Have the parties held their discovery conference as required under Trademark Rules 2.120(a)(1) and (a)(2)?	No

### **Motion for Suspension in View of Civil Proceeding With Consent**

The parties are engaged in a civil action which may have a bearing on this proceeding. Accordingly, California Products Corporation hereby requests suspension of this proceeding pending a final determination of the civil action. Trademark Rule 2.117.

California Products Corporation has secured the express consent of all other parties to this proceeding for the suspension and resetting of dates requested herein.

California Products Corporation has provided an e-mail address herewith for itself and for the opposing party so that any order on this motion may be issued electronically by the Board.

### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Respectfully submitted,  
/Andrea J Mealey/  
Andrea J. Mealey  
amealey@hinckleyallen.com  
ssperling@sperlinglaw.us  
09/10/2013

**IN THE UNITED STATES PATENT & TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**Mark: PLEXICRETE**  
**Serial No.: 85/630325**  
**Date of Filing: May 21, 2012**  
**Date of Publication: October 23, 2012**

---

CALIFORNIA PRODUCTS	*	
CORPORATION	*	
Opposer,	*	
	*	<b>Opposition No.: 91209336</b>
	*	
v.	*	
	*	
BRODSKY, ROBERT M	*	
	*	
Applicant.	*	
	*	

---

**CONSENTED TO MOTION FOR SUSPENSION OF OPPOSITION**  
**PENDING FEDERAL LITIGATION**

Pursuant to the *Trademark Trial and Appeal Board Manual of Procedures* § 510 and 37 C.F.R. § 2.117, Opposer, California Products Corporation, moves to suspend proceedings herein because the parties are currently engaged in a civil litigation in the United States Federal District Court for the District of Massachusetts before the Honorable Denise J. Casper, namely, *California Products Corporation v. Brodsky et al.*, (Civil Action No. 1:13-CV-11744) and such action may be dispositive of the issues herein. Attached hereto as Exhibits A is a true and correct copy of the Complaint which California Products Corporation filed in connection with the Federal civil action. Opposer has not attached the exhibits to the Complaint, but would be happy to provide the Board with copies of the exhibits should the Board so desire. As will be

noted from said pleadings, the civil action involves the Applicant's right to use the mark PLEXICRETE which is the subject of the captioned Opposition.

This motion to suspend the above-captioned Opposition is not made for purposes of delay, and, if granted, will reduce the costs of this litigation to the parties and aid in the efficient administration of justice. Applicant, through counsel, has consented to this Motion.

California Products Corporation reserves the right to request that the suspension be lifted and that the Board reset discovery and trial dates.

For the reasons discussed herein, California Products Corporation respectfully requests that the Board suspend this Opposition proceeding until a final, non-appealable judgment is entered in the pending Federal lawsuit between the parties hereto.

Respectfully submitted,

California Products Corporation

By its attorneys,

/Andrea J Mealey/  
Andrea J. Mealey  
Hinckley, Allen & Snyder LLP  
28 State Street  
Boston, MA 02109  
Tel: (617) 345-9000  
Fax: (617) 345-9020

Dated: September 10, 2013

**CERTIFICATE OF SERVICE**

I, Andrea J. Mealey, hereby certify that on this 10<sup>th</sup> day of September 2013, I served a true and accurate copy of the foregoing Consented to Motion for Suspension of Opposition Pending Federal Litigation, via First Class U.S. mail, postage prepaid upon counsel for the Applicant as follows:

Samuel Sperling  
The Sperling Law Office, PC  
1777 Reisterstown Road  
212 West  
Baltimore, MD 21208

/Andrea J Mealey/



## **PARTIES**

1. Plaintiff California Products Corporation is a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts, with a principal place of business at 150 Dascomb Road, Andover, Massachusetts 01810.

2. Defendant Plexicoat America, LLC is a Maryland limited liability company with a principal address at 1708 Whitehead Road Suite 102B Baltimore, Maryland, 21207.

3. Defendant David M. Brodsky is an individual with a principal address at 36 Diamond Crest Court, Baltimore, Maryland 21209.

4. Defendant Jeffrey Low is an individual with a principal address at 8402 Topping Road, Baltimore, Maryland 21208.

## **JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 15 U.S.C. §§ 1116, 1121, as this action arises under the United States trademark laws.

6. This Court has personal jurisdiction over all Defendants because, upon information and belief, they conduct business in Massachusetts and have committed acts of trademark infringement in Massachusetts.

7. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because both Plaintiff and Defendants do business in, have substantial contacts with, and a substantial part of the events giving rise to the claims herein occurred and continue to occur in this judicial district.

## **STATEMENT OF FACTS**

### **I. CPC's Business and Trademarks**

8. CPC has operated for nearly sixty (60) years as a manufacturer and distributor of surfacing systems.

9. CPC's surfacing systems are used for tennis courts, athletic tracks, courts for multiple sports, jogging paths and walkways, and other applications. The systems are offered in a full range of standard colors and can be also created as custom colors for these varied applications. CPC's surfacing systems are offered in commercial, governmental and residential installations, and can be either indoors or outdoors.

10. Over the past almost 60 years, CPC has grown to become the world's largest manufacturer of acrylic sports surfacing systems and surface preparation products, all of which are advertised, marketed and sold under a family of PLEXI Marks.

11. CPC is the owner of the following six (6) U.S. Trademark Registrations and one common law mark (collectively, the "PLEXI Marks"):

Mark:	PLEXICHROME
Registration No.:	1,759,340
Registration Date:	March 23, 1993
App. Date:	June 22, 1992
Date of First Use:	1953
Goods:	Class 2 - Surface coatings in the nature of paint for asphalt, concrete, and athletic surfaces such as tennis courts

Mark:	PLEXICOURT
Registration No.:	1,124,927
Registration Date:	September 11, 1979
App. Date:	September 22, 1978
Date of First Use:	February 29, 1972
Goods:	Class 19 - Paving material for tennis courts and similar play areas

Mark:	PLEXICUSHION
Registration No.:	971,728
Registration Date:	October 30, 1973
App. Date:	August 26, 1971
Date of First Use:	March 23, 1970

Goods: Class 19 - Resilient sub-surface coating compositions for asphalt and concrete

Mark: PLEXIPAVE

Registration No.: 894,446

Registration Date: July 14, 1970

App. Date: July 29, 1969

Date of First Use: February 28, 1961

Goods: Class 2 – Acrylic color coating filler for asphalt and concrete

Mark: PLEXITRAC

Registration No.: 971,727

Registration Date: October 30, 1973

App. Date: August 26, 1971

Date of First Use: August 12, 1970

Goods: Class 19 – Resilient elastomeric coating compositions for asphalt, concrete and wood

Mark: PLEXIFLOR

Registration No.: 1,950,495

Registration Date: January 23, 1996

App. Date: August 8, 1994

Date of First Use: 1991

Goods: Class 2 - Polymer surface coating composition for multisport gymnasium floors

True and accurate copies of the records for U.S. Trademark Reg. Nos. 1759340, 1124927, 894446, 971728, 971727 and 1950495 from the United States Patent and Trademark Office (“USPTO”) Trademark Electronic Search System (“TESS”) are attached hereto as Exhibits 1-6, respectively. CPC is also the owner of the common law mark PLEXIPATCH for a patching and leveling compound used to patch shallow depressions and cracks in asphalt and concrete surfaces. Copies of CPC’s PLEXIPATCH Product Sheet and Material Data Sheet are attached hereto as Exhibit 7.

12. CPC adopted and has consistently used each of the PLEXI Marks for surface coatings systems and materials for surface coating systems long before any date of first use that can be relied upon by Defendants.

13. In accordance with Sections 7(b), 22 and 33(a) of the Lanham Trademark Act, 15 U.S.C. §§ 1057(b), 1072, 1115(a), Registration Nos. 1759340, 1124927, 894446, 971728, 971727 and 1950495 constitute *prima facie* evidence of the validity of the registered marks and the registrations thereof, CPC's ownership of the marks shown in said registrations, and CPC's exclusive right to use the marks in commerce on or in connection with the goods named therein, without condition or limitation.

14. CPC's registration of each of the PLEXI Marks on the Principal Register is *prima facie* evidence of the validity of each such registration and creates a presumption that each of the PLEXI Marks is inherently distinctive.

15. The registrations for the PLEXI Marks constitute notice to Applicant of CPC's claim of ownership of the PLEXI Marks.

## **II. CPC's Use of its Trademarks**

16. CPC has widespread and substantial sales of surfacing systems that are designated by its PLEXI Marks and has installed surfacing systems identified by the PLEXI Marks throughout the United States and around the world.

17. CPC has spent substantial time and money in advertising and promoting its surfacing systems branded with the PLEXI Marks to its commercial and residential consumers. Over the last five years, CPC has spent on average \$600,000 dollars per year promoting its products branded under the PLEXI Marks. A portion of this advertising is on-line through targeted industry-specific web-sites, such as <www.thebluebook.com>, or its own web-site <www.plexipave.com>, which provides information regarding the different surfacing systems offered by CPC and shows each of the PLEXI Marks as used by CPC for its sports surfacing systems.

18. CPC has operated the website <www.plexipave.com> and had an Internet presence since approximately 1995. CPC also owns the domain name <plexicushion.com>, which it has owned since 2007, and the domain name <plexitrac.com>, both of which redirect users to the <www.plexipave.com> website.

19. The trademark PLEXIPAVE is featured prominently on the home page of <www.plexipave.com> as well as on numerous interior web pages. The other PLEXI Marks are featured prominently on interior web-pages. True and accurate copies of web pages showing the PLEXI Marks as used by CPC for its sports surfacing systems at <www.plexipave.com> are attached hereto as Exhibit 8.

20. The web-site <www.plexipave.com> also provides prospective customers with contact information for authorized applicators and distributors of PLEXI-PAVE and other PLEXI-Mark products throughout the United States. A true and accurate copy of the relevant web-page is attached hereto as Exhibit 9.

21. CPC's surfacing systems identified by the PLEXI Marks have been chosen and installed by many sport venues, such as stadiums in the United States hosting national tennis tournaments, including Del Ray Beach, Florida and Indian Wells, California and other United States Tennis Association sponsored events throughout the country. *See* attached Exhibit 10.

22. CPC's surfacing systems identified by the PLEXI Marks are also installed in approximately 80 Division I University and College campuses in the United States and were selected as the surface for the NCAA Division I Tennis Championships. *See* attached Exhibit 11.

23. CPC's surfacing systems and surfacing system products are promoted at trade shows and conferences attended by and targeting builders, general contractors and product suppliers for various athletic and entertainment facilities.

24. In addition to its tennis court applications, the PLEXI branded products are used in applications for multiple sport surfaces including basketball, volleyball and netball. *See* attached Exhibit 12.

25. Plaintiff's PLEXIPAVE mark as well as its other PLEXI Marks are well-known by its customers and associated with its uncompromising standards, high quality, and the performance of its surfacing products.

26. The goodwill in the PLEXI Marks extends throughout the United States where the PLEXIPAVE surfacing systems are sold and advertised under the PLEXI Marks.

### **III. Defendants' Business and Infringing Trademarks**

27. Upon information and belief, Brodsky is a United States individual who is a member in the limited liability company, Plexicoat America, LLC ("Plexicoat America").

28. Upon information and belief, Low is a United States individual who is a member in the limited liability company, Plexicoat America.

29. Upon information and belief, Plexicoat America is a United States based fabricator and installer of surfacing systems that are installed on top of cement and/or asphalt underlayments.

30. Brodsky is the applicant of record for the following United States Federal Trademark Applications:

Word Mark:	PLEXIDECK
Application No.:	85164386
Application Date:	October 29, 2010
Filing Basis:	1(b) Intent to Use

Goods:	Class 2 – Corrosion inhibiting paint type coatings for commercial marine use; Epoxy coating for use on concrete industrial floors; Floor coatings; Polymer coatings for concrete; Resin-based coatings for use on roofs, walls and pavements
Word Mark	PLEXICRETE
Application No.:	85630325
Application Date:	May 21, 2012
Filing Basis:	1(b) Intent to Use
Goods:	Class 17 – Rapid cure, high strength, polymer-based concrete patching compound

True and accurate copies of the record for U.S. Trademark App. Ser. Nos. 85164386 and 85630325 from the USPTO TESS are attached hereto as Exhibit 13.

31. Brodsky was also the applicant of record for a PLEXICOAT trademark, U.S. Trademark App. Ser. No. 85242855, but this application was subsequently abandoned.

32. Defendants two currently pending trademark applications have been opposed by CPC at the Trademark Trial and Appeals Board in Opposition Nos. 91199740 and 91209336, respectively. These cases are still ongoing.

33. On July 14, 2011, CPC, through its attorneys, sent a letter demanding that Defendants expressly abandon the PLEXIDECK application and that Plexicoat America change its corporate name. Defendants' counsel refused.

34. CPC and the Defendants have engaged in discussions since July 14, 2011 to settle these matters, including an October, 2012 meeting in Delaware attended by Low and Brodsky. At the meeting Brodsky, Low, and an executive from CPC directly discussed CPC's demand that Defendants cease and desist their infringing use of the PLEXI trademark. To date, the parties have not been able to reach a settlement regarding these issues.

35. Nonetheless, in deliberate and willful disregard of CPC's demands and with Defendants' knowledge and awareness of the PLEXI Marks, the Defendants continued to use the

infringing marks. Furthermore, Defendants increased their use of the infringing marks by filing an application to use the PLEXICRETE mark.

36. Defendants then undertook deliberately and knowingly to adopt the mark PLEXIPATCH for a patching product to be used on concrete and asphalt surfaces and introduced this product on July 9, 2013. A copy of Defendants' brochure introducing their PLEXIPATCH product is attached as Exhibit 14. On information and belief, this brochure was sent as an email to consumers in Massachusetts, including CPC, and in other parts of the United States.

37. Defendants' PLEXIPATCH mark is identical to CPC's mark and is used on the same products.

38. Defendants' marks PLEXIDECK, PLEXICOAT and PLEXICRETE all look and sound confusingly similar to CPC's PLEXI Marks, and their PLEXIPATCH mark is identical to CPC's PLEXIPATCH mark, and wrongly suggests that Plaintiff is somehow manufacturing, promoting, selling or sponsoring the Defendants' products. Nothing could be further from the truth and Defendants sell, advertise, market and promote their surfacing system and products to consumers in Massachusetts and other parts of the United States under the highly similar marks PLEXIDECK, PLEXICOAT and now PLEXICRETE and the identical mark PLEXIPATCH without authorization from CPC.

39. The term "PLEXI" is the first component in Defendants' marks and is the first word that is read by consumers. This is similar to each of the Plaintiff's PLEXI Marks that were registered and in use long before the Defendants' marks.

40. The second component of each of Defendants' marks is comprised of a descriptive term or a shortened form of a descriptive term, for Defendants' surfacing products, namely DECK, COAT, PATCH or CRETE (presumably, short for concrete). This is also similar

to each of the Plaintiff's PLEXI marks that use the terms CHROME, COURT, CUSHION, PAVE, TRAC, FLOR and PATCH respectively.

41. "PLEXI" is the primary and dominant feature in each and every one of Defendants' marks and is inevitably an integral component in the commercial impression that each of the marks PLEXIDECK, PLEXICOAT and PLEXICRETE makes on such consumers. These marks so closely resemble CPC's previously used and registered PLEXI Marks and create such a similar commercial impression as CPC's PLEXI Marks that Defendants infringing marks when applied to the goods sold by the Defendants are likely to deceive consumers and cause mistakes and confusion.

42. PLEXIPATCH as now adopted by Defendants is identical to CPC's PLEXIPATCH mark and creates the same commercial impression as CPC's PLEXIPATCH mark. As such, Defendants' infringing PLEXIPATCH mark is likely to deceive consumers and cause mistakes and confusion when applied to the goods sold by Defendants.

43. Defendants use these infringing marks in connection with the sale of surfacing products that are competitive with CPC's surfacing systems. Defendants' products are discussed in detail and marketed on their web-site <plexicoat.com>, and the infringing marks are widely present on the web-site. True and accurate copies of some of these web pages showing the infringing marks as used by the Defendants in connection with their surfacing products are attached hereto as Exhibit 15.

44. Furthermore, Defendants sell their respective surfacing products through the same channels as CPC, thus increasing the likelihood of a mistake or confusion. Both CPC and Defendants sell their surfacing products through their web-sites, a national network of dealers and distributors, and other industry specific web-sites such as <www.the bluebook.com>. With

respect to <www.thebluebook.com>, for example, CPC's trademarked products, such as PLEXICUSHION and PLEXIPAVE are advertised alongside Defendants infringing trademarked products, PLEXICOAT, for customers seeking tennis court construction in both Las Vegas, Nevada, and Minneapolis/St. Paul, Minnesota. True and accurate copies of these web-pages are attached hereto as Exhibit 16.

45. Defendants also sell their respective surfacing products in commerce to the same customers as CPC. CPC's PLEXI Marks are primarily associated with the sale of sports surfacing systems and surface preparation applications to athletic venues, hospitality venues, health-clubs and residential consumers. Defendants also target these customers as indicated by their advertisement in <www.thebluebook.com> in connection with tennis court construction in Nevada and Minnesota. *See id.* Testimonials and pictures from the Defendants' own web-site indicate that they have already successfully obtained these types of customers. One of the Defendants' web-pages contains a picture of a racquet sport facility, presumably because Defendants' products were installed in such as a facility. *See Exhibit 17*. Another web-page displays a quote from a customer who installed Defendant's products in a locker room and writes "AWESOME job on our locker room floors." *See Exhibit 18*.

#### **IV. Harm Caused by Defendant's Infringement**

46. Notwithstanding CPC's established rights in its PLEXI Marks, Defendants continue to knowingly use PLEXI formative marks in clear violation of CPC's earlier established rights. This use is likely to deceive consumers and cause confusion or mistake as Consumers are likely to incorrectly believe that the surfacing systems offered under Defendants' PLEXIDECK, PLEXICOAT, PLEXICRETE and PLEXIPATCH marks are produced by or are authorized, endorsed, related to or sponsored by CPC.

47. Consumers are also likely to expect that Defendants' PLEXIDECK, PLEXICOAT and PLEXICRETE surfacing systems are of the same high quality and standards as the PLEXIPAVE surfacing systems.

48. Consumers are inevitably going to expect that Defendants' PLEXIPATCH surface patching products are of the same high quality and standards as the PLEXIPATCH surface patching products offered by CPC.

49. CPC has no control over the quality of the products or the public perception of those products that Defendants offers under the PLEXIDECK, PLEXICOAT, PLEXICRETE and PLEXIPATCH marks.

50. Any failure, neglect, or default by Defendants or negative public perception of Defendants or the PLEXICOAT, PLEXICRETE and PLEXIPATCH surfacing system products will reflect adversely upon CPC.

51. The favorable goodwill that CPC has developed in its PLEXIPAVE, PLEXICUSHION and other PLEXI Marks is at risk as a result of Defendants' use of the highly similar word-marks PLEXIDECK, PLEXICOAT and PLEXICRETE and the identical mark PLEXIPATCH.

52. Defendants' use of PLEXICOAT, PLEXIDECK, PLEXICRETE and PLEXIPATCH in relation to surfacing systems and products related thereto, will also lessen the capacity of CPC's trademarks PLEXIPAVE, PLEXICUSHION, PLEXITRAC, PLEXICHROME, PLEXIFLOR, PLEXICOURT and PLEXIPATCH to identify and distinguish CPC's products, thereby causing harm to CPC.

53. CPC has suffered and will continue to suffer irreparable harm as a result of Defendants' use of the PLEXICOAT, PLEXIDECK, PLEXICRETE and PLEXIPATCH marks in connection with surfacing systems and surfacing system products.

54. CPC believes that, unless enjoined by this Court, Defendants intend to continue their course of conduct and wrongfully use, infringe upon and otherwise profit from CPC's registered, incontestable trademarks.

55. CPC has no adequate remedy at law to address all of the injuries that Defendants have caused and intended to cause by their conduct.

**COUNT I**  
**(Federal Trademark Infringement Under 15 U.S.C. § 1114(1))**

56. CPC restates and incorporates by reference the allegations contained in paragraphs 1 through 55 as if fully set forth herein.

57. CPC owns the U.S. Trademark Registrations for Reg. Nos. 1759340, 1124927, 894446, 971728, 971727 and 1950495.

58. CPC has used the marks shown in Reg. Nos. Reg. Nos. 1759340, 1124927, 894446, 971728, 971727 and 1950495 since a date prior to any date on which Defendants may rely.

59. Defendants' PLEXICOAT, PLEXIDECK, PLEXICRETE and PLEXIPATCH marks are highly similar to Plaintiff's PLEXI Marks in appearance, sound, and commercial impression.

60. Defendants surfacing systems and surfacing system related products using the PLEXICOAT, PLEXIDECK, PLEXICRETE and PLEXIPATCH marks are confusingly similar to, related to and directly competitive with CPC's products set forth in marks shown in Reg. Nos. 1759340, 1124927, 894446, 971728, 971727 and 1950495.

61. Defendant manufactures, sells, offers to sell, distributes and/or advertises to the same customers and through the same channels of trade as CPC.

62. Defendant sells, offers for sale, distributes, installs and/or advertises surfacing systems on or in connection with the PLEXICOAT, PLEXIDECK, PLEXICRETE and PLEXIPATCH marks such that they are likely to cause confusion, or to cause mistake or to deceive the relevant consuming public as to the source of the goods or the affiliation, connection or association of the Defendants with Plaintiff in violation of 15 U.S.C. § 1114(1), Section 32(1) of the Lanham Act.

## **COUNT II**

### **(False Designation of Origin and Unfair Competition Under 15 U.S.C. § 1125(a))**

63. CPC restates and incorporates by reference the allegations contained in paragraphs 1 through 62 as if fully set forth herein.

64. CPC owns the trademarks PLEXIPAVE, PLEXICUSHION, PLEXITRAC, PLEXICHROME, PLEXIFLOR, PLEXICOURT and PLEXIPATCH. CPC has owned and consistently and substantially used the trademarks PLEXIPAVE, PLEXICUSHION, PLEXITRAC, PLEXICHROME, PLEXIFLOR, PLEXICOURT and PLEXIPATCH for decades.

65. Accordingly, CPC adopted and has consistently used the terms PLEXIPAVE, PLEXICUSHION, PLEXITRAC, PLEXICHROME, PLEXIFLOR, PLEXICOURT and PLEXIPATCH as trademarks for a range of surfacing systems and products for surfacing systems prior to any date upon which Defendants may rely.

66. Defendant's marks are similar to Plaintiff's PLEXI Marks in appearance, sound, and commercial impression.

67. Defendants' PLEXICOAT, PLEXIDECK, PLEXICRETE and PLEXIPATCH branded surfacing systems and related products are confusingly similar to, related to, and directly competitive with CPC's surfacing systems and surfacing system products.

68. Defendants manufacture, sell, offer to sell, distribute, use in commerce and/or advertise to the same customers and through the same channels of trade as CPC.

69. Defendants sell, offer for sale, distribute, advertise, and/or use in commerce their surfacing systems and related products in connection with the PLEXICOAT, PLEXIDECK, PLEXICRETE and PLEXIPATCH marks such that the conduct is likely to cause confusion, or to cause mistake or to deceive the relevant consuming public as to the source of the goods or the affiliation, connection or association of the Defendants with Plaintiff in violation of 15 U.S.C. § 1125(a), Section 43(a) of the Lanham Act.

**COUNT III**  
**(Common Law Trademark Infringement)**

70. CPC restates and incorporates by reference the allegations contained in paragraphs 1 through 69 above as if fully stated herein.

71. The trademarks PLEXIPAVE, PLEXICUSHION, PLEXITRAC, PLEXICHROME, PLEXIFLOR, PLEXICOURT and PLEXIPATCH have become distinctive in the minds of consumers of CPC's surfacing systems as the result of CPC's extensive and continuous prior use and marketing, and are associated by the public with CPC's surfacing systems.

72. As a result of such association, Defendants use of the PLEXICOAT, PLEXIDECK, PLEXICRETE and PLEXIPATCH marks in connection with their advertisement and sale of competing surfacing systems and surfacing system products that are similar to

surfacing systems and products offered by CPC is likely to cause confusion, mistake and to deceive the public.

73. Defendants offer for sale and sell its surfacing systems with full prior knowledge of CPC's trademarks. Defendants willfully promote and sell its surfacing systems in such a manner so as to inevitably suggest an association with, or sponsorship or approval by CPC, and so as to likely cause confusion or mistake among potential customers, all to Defendant's gain and CPC's harm, in an amount thus far not determined.

74. The aforesaid conduct of Defendants constitutes infringement of CPC's common law rights in the PLEXIPAVE, PLEXICUSHION, PLEXITRAC, PLEXICHROME, PLEXIFLOR, PLEXICOURT and PLEXIPATCH trademarks, and constitutes improper and unfair competition with CPC. This conduct has harmed and will continue to irreparably harm CPC's goodwill and reputation, unless enjoined and restrained by this Court. CPC has no adequate remedy at law.

**COUNT IV**  
**(Violation of M.G.L. c. 93A, § 11)**

75. CPC restates and incorporates by reference the allegations contained in paragraphs 1 through 74 above as if fully stated herein.

76. Plaintiff CPC is a Massachusetts entity engaging in the conduct of trade and commerce in the Commonwealth of Massachusetts.

77. Defendants' wrongful acts and omissions as set forth herein constitute unfair methods of competition and unfair or deceptive acts or practices.

78. Defendants' wrongful acts occurred during the conduct of trade or commerce primarily and substantially in the Commonwealth of Massachusetts.

79. Plaintiff CPC has suffered damages as a result of Defendants' unfair and deceptive acts and practices.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff CPC requests judgment against Defendants Plexicoat, Brodsky and Low and as follows:

1. That the Court rules that Plaintiff's trademarks have been infringed as a direct and proximate result of the Defendants' acts as set forth herein.

2. That Defendants and its respective agents, servants, employees, officers, directors, successors, licensees and assigns, and all those in active concert or participation with them, be permanently enjoined from:

(a) continuing use of the PLEXICOAT, PLEXIDECK, PLEXICRETE and PLEXIPATCH marks on or in relation to surfacing systems and products related to surfacing systems;

(b) engaging in any conduct which will cause or is likely to cause confusion, mistake or misunderstanding as to the source, affiliation, connection, or association of Defendants or Defendants surfacing systems and surfacing system products, promotions, sales or advertisements for surfacing systems and surfacing system products with CPC or CPC's surfacing systems and surfacing system products, promotions, sales or advertisements; and

(c) otherwise infringing upon CPC's trademark rights or unfairly competing with CPC in any manner whatsoever.

3. That Plaintiff be awarded Defendants' profits and Plaintiff's actual damages arising from Defendants use of the infringing PLEXICOAT, PLEXIDECK, PLEXICRETE and PLEXIPATCH marks for surfacing systems and surfacing system products.

4. That Plaintiff be awarded treble damages in view of the intentional and willful nature of Defendants' infringement pursuant to 15 U.S.C. § 1117 and/or as the result of Defendants' violation of M.G.L. c. 93A § 11.

5. That Plaintiff be awarded reasonable attorney's fees and taxable costs in view of the intentional and willful nature of Defendants' infringement under 15 U.S.C. § 1117 and/or as the result of Defendants' violation of M.G.L. c. 93A § 11.

6. That Defendant be ordered to deliver for destruction all documents and things bearing the PLEXICOAT, PLEXIDECK, PLEXICRETE and PLEXIPATCH marks for surfacing systems and surfacing system products pursuant to 15 U.S.C. § 1118.

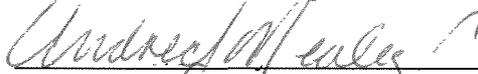
7. That Defendants transfer to CPC the domain name www.plexicoat.com.

8. That the Court award CPC such other relief as this Court deems just and proper.

**PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES SO TRIABLE**

Respectfully submitted,

California Products Corporation,



Andrea J. Mealey (BBO # 212120)

Mark A. Bross (BBO # 669831)

Hinckley Allen & Snyder LLP

28 State Street

Boston, Massachusetts 02119

Phone: (617) 345-9000

Fax: (617) 345-9020

amealey@hinckleyallen.com

Dated: July 17, 2013

**VERIFICATION**

I, Arthur Tucker, hereby certify, under the penalties of perjury: (a) that I have read the foregoing Verified Complaint; and (b) that the allegations contained in the Verified Amended Complaint are true and accurate based upon my personal knowledge, except such allegations as are made upon information and belief, which allegations I believe to be true.

July 17, 2013

