

ESTTA Tracking number: **ESTTA51267**

Filing date: **11/01/2005**

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

<b>Proceeding</b>	92044876
<b>Party</b>	Defendant Wazana Brothers International, Inc. Wazana Brothers International, Inc. 9111 Mason Avenue Chatsworth, CA 91311
<b>Correspondence Address</b>	Wazana Brothers International, Inc. Moldo Davidson Fraioli Seror & Sestanovich LLP 1925 Century Park East 16th Fl Los Angeles, CA 90067
<b>Submission</b>	Exhibit In Support Of Respondent's Motion To Suspend;Wazana Brother's Complaint
<b>Filer's Name</b>	Stacy West
<b>Filer's e-mail</b>	swest@mdfslaw.com
<b>Signature</b>	/swest/
<b>Date</b>	11/01/2005
<b>Attachments</b>	exhibit.pdf ( 9 pages )

DARREN S. ENENSTEIN, SBN 195894  
NED M. GELHAAR, SBN 163185  
JESSICA BARFIELD-MCCARREN, SBN 212217  
REIN EVANS & SESTANOVICH LLP  
1925 CENTURY PARK EAST, 16<sup>TH</sup> FLOOR  
LOS ANGELES, CALIFORNIA 90067  
Tel: 310\ 551-3100  
Fax: 310\ 551-0238  
Denenstein@resllp.com  
NGelhaar@resllp.com  
JBarfield-McCarren@resllp.com

Attorneys for Plaintiff  
Wazana Brothers International, Inc.  
d/b/a Micro Solutions Enterprises

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION

WAZANA BROTHERS  
INTERNATIONAL, INC., d/b/a MICRO  
SOLUTIONS ENTERPRISES, a  
California Corporation,

Plaintiff,

v.

PRINTING TECHNOLOGY, INC., a  
California Corporation; and Does 1-10,  
inclusive,

Defendants.

CASE NO.:

COMPLAINT FOR:

- (1) TRADEMARK INFRINGEMENT
- (2) FALSE DESIGNATION OF ORIGIN
- (3) UNFAIR COMPETITION

DEMAND FOR JURY TRIAL

Plaintiff Wazana Brothers International, Inc. d/b/a Micro Solutions Enterprises (hereinafter "Plaintiff" or "MSE"), by and through its undersigned counsel, for its Complaint against defendant Printing Technology, Inc. (hereinafter, "Defendant" or "PTI"), pleads as follows:

1 JURISDICTION AND VENUE

2 1. MSE’s claims comprise an action for trademark infringement arising  
3 under the Lanham Act, 15 U.S.C. §1114; false designation of origin under the Lanham  
4 Act, 15 U.S.C. § 1125(a); and unfair competition under the laws of the State of  
5 California, arising from PTI’s unauthorized use of MSE’s registered trademark  
6 “CHOOSE QUALITY.”

7 2. This Court has subject matter jurisdiction over this action under 28  
8 U.S.C. §§ 1331, 1338(a), 1338(b) and 1367.

9 3. Venue is proper in the Central District of California under 28 U.S.C. §  
10 1391(b).

11 THE PARTIES

12 4. Plaintiff MSE is a corporation organized under the laws of the State of  
13 California. Its principal place of business is located at 9111 Mason Avenue,  
14 Chatsworth, California.

15 5. MSE is informed and believes and based thereon alleges that Defendant  
16 PTI is, and at all times mentioned in this complaint was, a corporation organized  
17 under the laws of California, with its principal place of business located at 9144  
18 Deering Avenue, Chatsworth, California.

19 FACTUAL BACKGROUND

20 6. MSE registered “CHOOSE QUALITY” (hereinafter “the Mark”) as its  
21 trademark and service mark in the United States Patent and Trademark Office on  
22 September 1, 2002, under United States Trademark and Service Mark Registration  
23 No. 2859961 for toner cartridges, photocopy paper and related goods and services, as  
24 set forth on the Certificate of Registration, a true and correct copy of which is attached  
25 hereto as Exhibit 1.

26 7. MSE adopted and used the Mark to identify its goods and services sold in  
27 commerce beginning no later than September 1, 2002.



1 deceive.

2 14. MSE is informed and believes and on that basis alleges that PTI has used,  
3 and is using, such a reproduction, copy, and/or a colorable imitation of MSE's  
4 registered mark without securing authorization from MSE.

5 15. PTI's continuing use of such a reproduction, copy, and/or a colorable  
6 imitation of the Mark without authorization from MSE is the direct and proximate  
7 cause of injury to MSE.

8 16. PTI's actions described herein constitute trademark infringement in  
9 violation of the Lanham Act, 15 U.S.C. § 1114.

10 17. MSE is informed and believes and on that basis alleges that PTI's acts of  
11 infringement and continuing use of a reproduction, copy, and/or a colorable imitation  
12 of the Mark without authorization from MSE have been and continue to be deliberate,  
13 willful and wanton, making this an exceptional case within the meaning of 15 U.S.C.  
14 § 1117.

15 18. PTI's continuing use of the Mark or a colorable imitation thereof has and  
16 will continue to cause MSE irreparable harm which cannot be fully compensated in  
17 damages. As a result, MSE is entitled to a preliminary and/or permanent injunction  
18 against PTI, as well as all other remedies available under the Lanham Act, including,  
19 but not limited to, compensatory damages; treble damages; disgorgement of profits;  
20 and costs and attorney's fees.

21 **COUNT 2**

22 **False Designation of Origin - 15 U.S.C. § 1125(a)**

23  
24 19. MSE incorporates here each and every allegation set forth above.

25 20. MSE is informed and believes and on that basis alleges that PTI has used,  
26 and continues to use, the Mark in connection with the sale of goods and/or services so  
27 as to cause confusion, or to cause mistake, or to deceive as to the affiliation, or the  
28

1 association of PTI with MSE, and/or to cause confusion, or to cause mistake, or to  
2 deceive, regarding the origin, sponsorship, or approval of the commercial activities of  
3 PTI by MSE.

4 21. Because of PTI's wrongful use of the Mark, consumers are deceptively  
5 led to believe that PTI's goods and services originate with or are sponsored or  
6 otherwise approved by MSE, in violation of 15 U.S.C. § 1125(a), or alternatively, will  
7 cause consumers to believe that the Mark is generic, thus destroying the goodwill and  
8 value MSE has built with the Mark.

9 22. PTI's continuing use of the Mark in connection with the sale of goods  
10 and/or services so as to cause confusion, or to cause mistake, or to deceive as to the  
11 affiliation, or the association of PTI with MSE, and/or to cause confusion, or to cause  
12 mistake, or to deceive, regarding the origin, sponsorship, or approval of the  
13 commercial activities of PTI by MSE, is the direct and proximate cause of injury to  
14 MSE.

15 23. The acts of PTI described herein constitute false designation of origin in  
16 connection with products and services distributed in interstate commerce, in violation  
17 of 15 U.S.C. § 1125(a). MSE is informed and believes and on that basis alleges that  
18 PTI's acts of infringement and continuing use of a reproduction, copy, and/or a  
19 colorable imitation of the Mark without authorization from MSE have been and  
20 continue to be deliberate, willful and wanton, making this an exceptional case within  
21 the meaning of 15 U.S.C. § 1117.

22 24. PTI's continuing use of the Mark or a colorable imitation thereof has and  
23 will continue to cause MSE irreparable harm which cannot be fully compensated in  
24 damages. As a result, MSE is entitled to a preliminary and/or permanent injunction  
25 against PTI, as well as all other remedies available under the Lanham Act, including,  
26 but not limited to, compensatory damages; treble damages; disgorgement of profits;  
27 and costs and attorney's fees.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

COUNT 3

Common Law and Statutory Unfair Competition

25. MSE incorporates here each and every allegation set forth above.

26. By its acts alleged herein, PTI has engaged in trademark infringement, trade name infringement, palming off, and unfair competition under the common and statutory law of the State of California, including but not limited to California Business and Professions Code § 14330, *et seq.* § 14402, *et seq.* § 17200, *et seq.*, and § 17500, *et seq.*

27. MSE is informed and believes and on that basis alleges that PTI has intentionally deceived the public by misrepresenting that its goods and services are in some way sponsored or authorized by MSE, and that such conduct was undertaken with fraud, oppression, and/or malice, entitling MSE to recover punitive damages.

28. PTI's continuing use of the Mark or a colorable imitation thereof has and will continue to cause MSE irreparable harm which cannot be fully compensated in damages. As a result, MSE is entitled to a preliminary and/or permanent injunction against PTI, as well as all other remedies available under California's common and statutory law of unfair competition.

WHEREFORE, MSE prays for judgment against Defendant as follows:

A. Under 15 U.S.C. § 1116(a), for an order requiring PTI to show cause, if they have any, why they should not be enjoined as set forth below, during the pendency of this action;

B. Under 15 U.S.C. § 1116(a), for a preliminary injunction and a permanent injunction, enjoining Defendant and its agents, servants, and employees, and all persons acting under, in concert with, or for it, from:

- 1) Using a reproduction, copy, and/or a colorable imitation of the Mark;
- 2) Using the Mark in connection with the sale of goods and/or services so as to cause confusion, or to cause mistake, or to deceive as to the affiliation or

1 association of Defendant with MSE, and/or to cause confusion, or to cause mistake, or  
2 to deceive, regarding the origin, sponsorship, or approval of the commercial activities  
3 of Defendant by MSE;

4 C. Under 15 U.S.C. § 1116(a), for an order directing Defendant to file with  
5 this Court and serve on MSE within 30 days after service of an injunction, a report in  
6 writing under oath, setting forth in detail the manner and form in which Defendant has  
7 complied with the injunction;

8 D. Under 15 U.S.C. § 1118, for an order requiring Defendant to deliver up  
9 and destroy all products bearing the infringing use of the Mark;

10 E. Under 15 U.S.C. § 1117(a), for an award of monies comprising all of  
11 Defendant's profits derived from its infringement of MSE's trade and service mark,  
12 subject to subparagraph G, *infra*;

13 F. Under 15 U.S.C. § 1117(a), for all of MSE's damages, subject to  
14 subparagraph G, *infra*;

15 G. Under 15 U.S.C. § 1117(b), for three times the amount of Defendant's  
16 profits or MSE's damages, which ever is greater;

17 H. Under 15 U.S.C. §§ 1117(a) and (b), for an award of MSE's reasonable  
18 attorney fees expended in this action;

19 I. Under 15 U.S.C. § 1117(a), for costs of suit incurred herein;

20 J. For damages, disgorgement, and injunctive relief under California's  
21 common and statutory law of unfair competition;

22 K. For exemplary damages for Defendant's willful and intentional acts; and  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

L. For such other and further relief as the Court may deem proper.

DATED this \_\_\_\_ day of August, 2005.

REIN EVANS & SESTANOVICH LLP

By: \_\_\_\_\_  
NED M. GELHAAR  
Attorneys for Plaintiff Wazana Brothers  
International, Inc. d/b/a Micro Solutions Enterprises

1 DEMAND FOR JURY TRIAL

2  
3 Plaintiff Wazana Brothers International, Inc. d/b/a Micro Solutions Enterprises  
4 demands trial by jury.

5  
6 DATED this \_\_\_\_ day of August, 2005.

7 REIN EVANS & SESTANOVICH LLP

8  
9 By: \_\_\_\_\_  
10 NED M. GELHAAR  
11 Attorneys for Plaintiff Wazana Brothers  
12 International, Inc. d/b/a Micro Solutions Enterprises  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28