Shawn M. Raiter *(Pro Hac Vice Application Pending)*
sraiter@larsonking.com
Mark Solheim *(Pro Hac Vice Application Pending)*
msolheim@larsonking.com
Larson • King, LLP
30 E 7th Street, Ste 2800
St. Paul, MN 55101
Phone Number: 651-312-6500
Fax Number: 651-312-6618

Gordon I. Endow (SBN: 99638)
gendow@gordonrees.com
Anna Rassouli (SBN: 260911)
arassouli@gordonrees.com
Gordon & Rees LLP
275 Battery Street, Ste 2000
San Francisco, CA 94111
Phone number: 415-986-5900
Fax Number: 415-986-8054
Attorneys for Plaintiff
Louisiana Pacific Corporation

ORIGINAL FILED
JUN 29 2012
RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-filing

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Louisiana Pacific Corporation, Plaintiff, vs. James Hardie Building Products, Inc, and Does 1-5, inclusive, Defendants.	Case Number: CV 12 3433 B **COMPLAINT FOR:** **1. Trademark Infringement (15 U.S.C. § 1114(1))** **2. Unfair Competition (15 U.S.C. § 1125(a))** **3. Unfair Competition (Cal. Bus. Prof. Code § 17200 *et seq.*)** **4. False Advertising (Cal. Bus. Prof. Code § 17500 *et seq.*)** **5. Trademark Infringement (Cal. Bus. Prof. Code § 14200 *et seq.*)** **6. Tortious Interference With A Prospective Economic Advantage** **DEMAND FOR JURY TRIAL**

Plaintiff Louisiana Pacific Corporation ("Louisiana Pacific") brings this Complaint and states and alleges as follows:

SUMMARY OF ACTION

1. This action arises from Defendant James Hardie Building Products, Inc.'s ("Hardie") intentional and unauthorized use of the trademarks and service marks that identify Plaintiff Louisiana Pacific and certain of its products and services to consumers and Internet users (the "LP Marks"). A fundamental purpose of trademark law is to protect consumers from being confused about the source or affiliation of the products or services they wish to buy. To assist consumers in making informed purchasing decisions, trademark law encourages companies to develop brand names to differentiate their products and services within the marketplace. This is accomplished by legally limiting a brand's commercial use to the brand's owner. This legal protection fully applies in the context of the Internet.

2. Hardie has intentionally and unfairly used certain of the LP Marks (the "Infringed LP Marks") without permission in an attempt to damage Louisiana Pacific's business and steal market share in violation of federal trademark law. Hardie's scheme involves the purchase of certain search phrases available through Google, which results in the deliberate confusion of consumers who search in good faith for Louisiana Pacific and its products.

3. Google operates one of the world's most utilized Internet "search engines." A search engine is a computer program that allows computer users to search the World Wide Web for websites containing particular content. Google's search engine is available not only on its own website (www.google.com), but also through other popular websites that use its search engine.

4. To use Google's search engine, a World Wide Web user ("web user") need only type in a few words and hit the "enter" key (or click on the "Google Search" button) to receive a list of hyperlinks ("links") to web pages that Google identifies as relevant to the search terms used. Web users may then visit these web pages by clicking on the links that Google provides. Consumers believe that the search results Google provides are the product of an objective formula or algorithm that produces "natural" or "organic" results, i.e., web listings the display and placement of which are not influenced by payments to Google from the website owners.

5. Google does not only provide Internet users with such "organic search results." On information and belief, Plaintiff alleges that without authorization or approval from

Louisiana Pacific, James Hardie paid Google to use the Infringed LP Marks and words, phrases, or terms confusingly similar to those marks, as "keyword" triggers that cause paid advertisements, which Google calls "Sponsored Links," to be displayed above or alongside the "organic search results."

6. In many cases, the text and titles of these "Sponsored Links" include Infringed LP Marks or terms confusingly similar to those marks. When consumers enter one of the Infringed LP Marks into Google's search engine to search or navigate the World Wide Web, instead of being directed to Louisiana Pacific's website, Google's "Sponsored Links" instead misdirect consumers to Hardie's website, which touts its rival home-siding product.

7. Hardie has misled consumers and misappropriated the LP Marks by using them as "keyword" triggers for paid advertisements and by using them within the text or title of paid advertisements linked to the Hardie web site. Hardie's misleading scheme has confused consumers and damaged Louisiana Pacific's business.

8. Louisiana Pacific seeks to permanently stop Hardie's intentional and unauthorized use of the Infringed LP Marks and recover damages associated with such use.

PARTIES

9. Plaintiff Louisiana Pacific is a publicly-held corporation with its principal place of business in Nashville, Tennessee.

10. Louisiana Pacific manufactures and sells many building products throughout the United States, including in this district. Louisiana Pacific is a leading manufacturer of siding products, including SmartSide® siding, trim and related products.

11. Defendant Hardie is a Nevada corporation with its principal place of business in Mission Viejo, California.

12. Hardie manufactures building materials and sells siding and other products that compete with Louisiana Pacific's SmartSide® products throughout the United States, including in this district.

13. Louisiana Pacific is ignorant of the true names and capacities of Defendants Does 1 through 5, inclusive, and therefore sues these Doe Defendants by such fictitious names.

Louisiana Pacific will amend this Complaint to allege their true names and capacities when ascertained. Louisiana Pacific is informed and believes and thereupon alleges that each Defendant designated as a Doe is responsible in some manner for the acts and omissions alleged herein and is liable therefore. Louisiana Pacific is informed and believes, and thereon alleges, that at all times herein Defendants, and each of them, were the agents, servants, and employees of each of the remaining Defendants and acted within the scope and course of such agency and employment.

JURISDICTION AND VENUE

14. This Court has jurisdiction over the parties and the cause of actions asserted herein pursuant to 28 U.S.C. § 1331.

15. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because defendant may be found or transacts affairs in this district and a substantial part of the events or omissions giving rise to the claims occurred in this judicial district.

16. A substantial part of the events giving rise to the causes of action asserted herein occurred in this district because consumers are likely to be confused by Hardie's scheme, which initiated and emanates from this district. On information and belief, Plaintiff alleges that Hardie intentionally and without authorization purchased "keyword triggers" that included the Infringed LP Marks from Google in this district.

17. Google is a Delaware corporation with its principal place of business in Mountain View, California, which is located in this district. Google maintains offices and operations in this district.

INTRADISTRICT ASSIGNMENT

18. A substantial part of the events giving rise to the causes of action asserted herein occurred in this district because consumers are likely to be confused by Hardie's scheme, which initiated and emanates from this district. Hardie intentionally and without authorization purchased "keyword triggers" that included the LP Marks from Google in this district.

19. Google's principal place of business is located in Santa Clara County and Google maintains offices and operations in this district.

20. Assignment of this action to the San Jose Division of this Court is therefore proper.

FACTUAL BACKGROUND

The Internet and the World Wide Web

21. The Internet is a global network of millions of interconnected computers. The World Wide Web is a portion of the Internet especially well-suited to displaying images and sound as well as text. Much of the information on the World Wide Web is stored in the form of web pages, which can be accessed through a computer connected to the Internet (available through commercial Internet service providers or "ISPs"), and viewed using a computer program called a "browser," such as Microsoft Internet Explorer. "Websites" are locations on the World Wide Web containing a collection of web pages. A web page is identified by its own unique Uniform which ordinarily incorporates the website's "domain name" (e.g., "www.lpcorp.com"). Because URLs and domain names are not case-sensitive, URLs and domain names that contain capital letters are functionally the same as those that do not.

Louisiana Pacific and the LP Marks

22. Louisiana Pacific is a leader in high-quality building products. Louisiana Pacific's products are available throughout the United States for use by builders and homeowners in newly constructed buildings, repair and remodeling projects, and manufactured homes. Louisiana Pacific's website, www.lpcorp.com, provides consumers with easy access to information about its building products.

23. SmartSide® products are p opular Louisiana Pacific building products. The SmartSide® line of products includes siding, trim, and fascia for use on residential and other structures.

24. To preserve and enhance its trademark rights, Louisiana Pacific has obtained federal trademark registration for many of its LP Marks, some of which have been in continuous use for more than five years and may therefore be considered "incontestable" pursuant to 15 U.S.C. §§1065 and 1115(b).

25. The Infringed LP Marks are registered on the United States Patent and

Trademark Office's principal register and are owned and currently in use by Louisiana Pacific. They include but are not necessarily limited to the following, the registrations of which are each valid and subsisting, have never been cancelled, and have become incontestable under the provisions of 15 U.S.C. § 1065:

- "LP," for, among other things, non-metal building materials, registration no. 2654847, which was first used in commerce on October 2, 2000, and has a registration date of November 26, 2002;
- "SMARTSIDE," for exterior oriented strand board siding, registration no. 2681716, which was first used in commerce in March 2001 and has a registration date of January 28, 2003; and
- "SMARTSIDE," for building materials, namely, trim, fascia, and soffits made primarily of wood, registration no. 2887732, which was first used in commerce in March 2003 and has a registration date of September 21, 2004.

26. Louisiana Pacific provides notice to the public of various of its trademarks on a website at www.lpcorp.com/trademarks_and_copyright/. The website states: "LP, the LP logo and other names of LP, its subsidiaries, and/or LP products referenced on this site are trademarks or registered trademarks of Louisiana-Pacific Corporation." The website then lists 21 specific trademarks of Louisiana Pacific, including LP® and SmartSide®.

27. The LP Marks are unique and distinctive designations of the source of Louisiana Pacific's products and services.

28. Louisiana Pacific has invested substantial amounts in worldwide advertising and marketing in order to build the fame, reputation, and goodwill of the Infringed LP Marks. Louisiana Pacific advertises through a variety of media, including television, radio, newspapers, magazines, direct mail, and in telephone directories across the country.

29. Louisiana Pacific also promotes its products and services on the Internet, via its own website and through advertising on the websites of third parties.

30. Through Louisiana Pacific's actions, and because of widespread and favorable public acceptance and recognition, the LP Marks have become distinctive designations of the source of origin of Louisiana Pacific's products and services. The LP Marks have become uniquely associated with, and hence identify, Louisiana Pacific and its products and services.

These marks are assets of incalculable value as symbols of Louisiana Pacific, its quality products and services, and its goodwill.

31. Accordingly, the LP Marks have developed secondary meaning.

32. Louisiana Pacific conducts a substantial amount of its business over the Internet and has made a sizeable investments in the development of its online business. It is beneficial for Louisiana Pacific when consumers visit www.lpcorp.com because it allows Louisiana Pacific to assist customers and provide them with important information about its products.

Google's Search Engine

33. Web users who are searching for a specific company product, service or information, but who do not know the exact domain name or website address at which it may be found, may use an internet "search engine" to locate it. Many web users prefer to navigate the Internet by typing phrases and even URLs into search engines rather than type a URL into an Internet browser's address bar. A search engine, such as Google's, purportedly checks the terms entered into it against its databases and applies a formula or algorithm to produce a search results page that lists the websites that may relate to the customer's search terms and their corresponding links.

34. Most web users who perform searches with Google's Internet search engine believe that the results given by that search engine are determined by a "natural" or "organic" system that lists results in order of objective relevance to the search terms input into the search engine, with the most relevant websites appearing near the top of the web page. According to Google, the order in which "organic search results" are listed is automatically determined by a number of factors, including Google's patented PageRank algorithm.

35. By using Google's Internet search engine, web users are identifying the subjects in which they are interested, the companies that they seek, or the products or services they wish to buy. This allows Google to sell "contextual" or "search" advertising, which allows companies to place their advertising in front of consumers who have already identified themselves as interested in particular products or services.

36. When a web user carries out an Internet search using Google's search engine,

Google not only provides the web user with the above-described "organic search results," but also displays a list of similarly formatted advertisements—which Google refers to as "Sponsored Links"—above and alongside the purportedly objective "organic search results."

37. On information and belief, the relevance of these "Sponsored Links" is determined not by an objective measure, but rather is substantially influenced by the amount of money Google stands to obtain from the "sponsors" of these links.

38. On information and belief, Hardie has purchased search terms to appear as "Sponsored Links" from Google that use the LP Marks. Hardie has also purchased search terms that are intended to be confusingly similar to the Infringed LP Marks and Louisiana Pacific's product names. Hardie made these purchases intentionally and uses the Infringed LP Marks as alleged herein, all without authorization from Louisiana Pacific.

39. When web users click on "Sponsored Links" that Hardie purchased to seek information about Louisiana Pacific's SmartSide® products, they are deceived into believing that they will be provided information authorized by Louisiana Pacific about SmartSide® from someone sponsored by or affiliated with Louisiana Pacific. The "Sponsored Links" instead send the web users to Hardie's own web site, resulting in consumer confusion and economic harm to Louisiana Pacific.

40. Examples of the results of web searches using Infringed LP Marks and terms similar to Louisiana Pacific product names are attached hereto as Exhibit A.

41. Hardie's intentional and unauthorized use in commerce of the Infringed LP Marks results in the unauthorized exploitation of their value and name recognition.

Hardie's Use of Google's Search Engine-Based Keyword Advertising Program

42. Google's search engine is available, among other places, through its website located at www.google.com. Google also licenses its search engine to other popular websites.[1] In addition, Google invites consumers to affix a "Google Toolbar" at the top of Internet users' Internet browsers that allows these users to conduct Google searches even when they are not

[1] See http://support.google.com/adwords/bin/answer.py?hl=en&answer=2404190&from=57174&rd=1 (visited June 25, 2012).

currently visiting www.google.com or a website that features Google's search engine.[2]

43. Google offers a program called "AdWords" that displays advertisements to users of Google's search engine in the form of "Sponsored Links." Under its AdWords Program, Google offers advertisers the ability to select certain "keywords" that will trigger a "Sponsored Link" to the advertiser's chosen website, which "Sponsored Link" Google will display above or alongside the purportedly "organic search results."

44. Advertisers pay Google each time a web user clicks on keyword-targeted "Sponsored Links" that appear on Google's "results" page.

45. These targeted "Sponsored Link" results are not meaningfully or conspicuously identified to consumers as paid third-party advertisements. The "Sponsored Link" advertisements appear in a color, typeface, and font size that are not appreciably different than the "organic search results" that Google generates. Even the designation of these keyword-triggered "results" as "Sponsored Links" is confusing to many consumers, because consumers are not informed who has done the "sponsoring."

46. In a substantial portion of searches, Google's AdWords program makes two distinct uses of a given keyword on behalf of Hardie. First, the keyword triggers the "Sponsored Link" advertisement. Second, the keyword is often published as part of the advertisement itself. Accordingly, when the keyword in question is a trademark or service mark, Hardie can make confusing use of that mark in two different ways: (1) as a keyword trigger and (2) as a part of the advertisement itself.

Hardie's Unauthorized Use of the LP Marks

47. Louisiana Pacific has not directly or indirectly given Hardie any permission, authority, or license to use or sell the right to use any LP Marks for the promotion of the goods and services of Hardie or any other third party.

48. Nevertheless, Hardie has purchased from Google the "right" to use the Infringed LP Marks or terms confusingly similar thereto as part of Hardie's search engine-based

---

[2] See http://www.google.com/intl/en/toolbar/ie/features.html#brand=GGNI& (visited June 25, 2012).

advertising program. As a result, Hardie has utilized Adwords to direct web users who have an express interest in the Infringed LP Marks to websites that are not Louisiana Pacific's website, and in fact direct the users to Hardie's competitive website. Hardie's "Sponsored Links" are expressly designed to draw consumers *away* from Louisiana Pacific's website.

49. As a part of the process of triggering "Sponsored Links," Google offers its advertisers, such as Hardie, the ability to purchase as keyword triggers the trademarks and service marks of others, as well as words, phrases, and terms confusingly similar to those trademarks and service marks. Thus, a consumer searching for the SmartSide® product using Google's search engine is shown a "Sponsored Link" unrelated to Louisiana Pacific and SmartSide® that was displayed because Hardie purchased the LP Mark or a term confusingly similar thereto as a keyword trigger. A significant number of consumers believe falsely that it was Louisiana Pacific who "sponsored" the links that appears above or alongside the "organic search results."

50. The "Sponsored Links" for which Hardie uses the Infringed LP Marks or terms confusingly similar thereto as keyword triggers link web users to Hardie's website, which sells products that directly compete with Louisiana Pacific's SmartSide® and other products. Louisiana Pacific has not sponsored these "Sponsored Links" or otherwise authorized Google to sell the right to Hardie to use the LP Marks in commerce to draw web users to its website. Nevertheless, these unauthorized "Sponsored Links" appear in close and confusing proximity to the listings generated by Google's purportedly "organic search results" system.

51. Hardie's use of the Infringed LP Marks as keyword triggers in Google's advertising program allows Hardie to benefit financially from and freely enjoy the goodwill and reputation of Louisiana Pacific without incurring the substantial expense that Louisiana Pacific has incurred in building up its popularity, name recognition, and brand loyalty. Through these practices, Hardie intentionally traffics in the infringement of the Infringed LP Marks, falsely represents or confusingly suggests to consumers a connection to Louisiana Pacific that does not exist, and unfairly competes with Louisiana Pacific. These practices cause consumer confusion, erode the distinctiveness of the Infringed LP Marks, and damage

Louisiana Pacific's business.

52. In sum, Hardie via Google's technology uses in commerce the registered trademarks of Louisiana Pacific with full knowledge and intention that consumers are likely to be confused and lured away from the websites that they intended to visit, and with the goal of financially benefiting itself to the detriment of Louisiana Pacific.

Consumer Confusion and Harm to Louisiana Pacific

53. Google charges advertisers a fee every time a web user clicks on a keyword-triggered "Sponsored Link."

54. Many web users who enter one of the Infringed LP Marks into Google's search engine and who then view a "Sponsored Link" containing Hardie's advertisement will follow the "Sponsored Link" to Hardie's website in the belief that the website is owned by or affiliated with Louisiana Pacific.

55. Many web users who are presented with such "Sponsored Links" to Hardie's website are not aware that Hardie has no affiliation with Louisiana Pacific. Hardie's misappropriation of the Infringed LP Marks as keyword triggers and its use of terms confusingly similar to the Infringed LP Marks in the "Sponsored Link" text are therefore likely to cause confusion in the marketplace for building products.

56. Even if web users realize that a given website is not affiliated with Louisiana Pacific, once they reach it, the damage to Louisiana Pacific has already been done. Many such consumers are likely either to stay at Hardie's website or to discontinue their search for Louisiana Pacific's website. Web users may view the products and services offered on Hardie's website and may decide not to purchase Louisiana Pacific's products and services in the future.

57. Hardie's actions have created the circumstances in which Louisiana Pacific will be forced to pay to use advertising to reduce the likelihood that consumers will be confused by Hardie's practices. This need to reduce the extent of consumer confusion caused by Hardie's actions has cost and, unless enjoined, will continue to economically harm Louisiana Pacific.

58. Among other things, the following facts and circumstances support the

conclusion that Hardie's use in commerce of the Infringed LP Marks is likely to cause consumer confusion:

a. The Infringed LP Marks are exceptionally strong;

b. Hardie uses the actual Infringed LP Marks or terms confusingly similar thereto as keyword triggers and in advertisement headlines and text;

c. Hardie, which has directed Google to use on Hardie's behalf the Infringed LP Marks or terms confusingly similar thereto, generally sells products and services similar to the products and services provided by Louisiana Pacific, and in many cases are in direct competition with Louisiana Pacific;

d. Hardie uses the exact same marketing channels or parallel marketing channels as Louisiana Pacific—namely, the World Wide Web, and in particular, the context of Internet searching;

e. Hardie's reproduction and colorable imitation of the Infringed LP Marks, as alleged herein, is false and misleading, suggesting its own products and services are being sponsored by or are affiliated or originate with or are approved by Louisiana Pacific;

f. Purchasers are likely to exercise a minimal degree of care in the context of Internet searching generally and in purchasing goods and services online in particular;

g. A substantial segment of consumers using such marketing channels have actually been confused, misled, and deceived, or there is a likelihood of such confusion and deception as a result of Hardie's conduct;

h. Hardie began using the Infringed LP Marks or terms very similar to the marks after they were registered and after they became distinctive. Hardie did so with full knowledge of Louisiana Pacific's rights in the Infringed LP Marks. In fact, it is Hardie's specific intent to use the Infringed LP Marks to profit from consumers' association of the Infringed LP Marks and to economically harm Louisiana Pacific.

COUNT I

(Trademark / Service Mark Infringement Under The Lanham Act – 28 U.S.C. § 1114(1) Against All Defendants)

59. Louisiana Pacific repeats and realleges the allegations of the foregoing paragraphs as if fully set forth herein.

60. Louisiana Pacific owns valid, federally registered trademarks and service marks entitled to protection under the Lanham Act.

61. Hardie has used the Infringed LP Marks in commerce in a number of ways through Google's search engine-based, keyword-triggered advertising programs, including (but not limited to) the following: (i) paying Google to use such marks or terms to trigger the display of "Sponsored Link" advertisements that link to Hardie's website, which are displayed above or alongside purportedly "organic search results;" (ii) by causing such "Sponsored Link" advertisements to appear when web users have specifically attempted to find or access Louisiana Pacific's website, with the express purpose of causing web users to visit websites other than those affiliated with Louisiana Pacific; (iii) by causing "Sponsored Link" advertisements to appear in close proximity to the Infringed LP Marks and links to legitimate Louisiana Pacific-related websites; and (iv) by causing LP Marks or terms confusingly similar to LP Marks to appear in the text or title of advertisements which Google calls "Sponsored Links." In short, Hardie has used the Infringed LP Marks in commerce in connection with the sale, offering for sale, distribution, or advertising of goods and services.

62. Hardie's unauthorized and intentional use of the registered the Infringed LP Marks and terms confusingly similar thereto constitutes trademark infringement in violation of Section 32(1) of the Lanham Act, 15 U.S.C. §1114(1).

63. Hardie's infringement of the Infringed LP Marks is willful and reflects Hardie's intent to exploit the goodwill and strong brand recognition associated with the Infringed LP Marks.

64. Hardie's infringement has damaged Louisiana Pacific in an amount to be determined at trial.

65. Hardie's infringement has caused and, unless restrained by this Court, will continue to cause Louisiana Pacific irreparable injury.

66. Louisiana Pacific has no adequate remedy at law for Hardie's infringement.

COUNT II

(Unfair Competition Under The Lanham Act – 28 U.S.C. § 1125(a) Against All Defendants)

67. Louisiana Pacific repeats and realleges the allegations of the foregoing paragraphs as if fully set forth herein.

68. Hardie's unauthorized and intentional use of the Infringed LP Marks or terms confusingly similar thereto in connection with Google's search engine-based advertising programs infringes on Louisiana Pacific's exclusive rights in its federally registered marks and is likely to cause confusion, mistake, or deception among consumers as to the source of the products and services offered by Louisiana Pacific. Such use is also likely to cause confusion among consumers as to whether Louisiana Pacific is sponsoring, has authorized or is somehow affiliated with Google's sale to Hardie of the Infringed LP Marks or terms confusingly similar thereto, or with the products or services offered through the "Sponsored Links" that Google intentionally posts above or alongside purportedly objective "organic search results" from Internet searches for the Infringed LP Marks.

69. Even after accessing the website associated with "Sponsored Links," consumers are likely to be confused into believing that the website and the information it contains is associated with, sponsored by, operated by, or otherwise formally affiliated with or supported by Louisiana Pacific when that is not the case.

70. Further, even after accessing the website associated with "Sponsored Links," which is Hardie's website, the damage to Louisiana Pacific has been done. Through initial interest confusion, Hardie is gaining customers by appropriating the goodwill that Louisiana Pacific has developed in the Infringed LP Marks.

71. The confusion, mistake or deception referred to herein arises out of Hardie's aforementioned actions, which constitute false designation of origin and unfair competition in violation of section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

72. Hardie has acted willfully and intentionally to cause confusion, mistake, or deception.

73. By reason of Hardie's actions alleged herein, Louisiana Pacific has suffered, is suffering, and will continue to suffer irreparable damage. Unless the Court restrains Hardie from continuing its wrongful acts, the damage to Louisiana Pacific will increase.

74. Louisiana Pacific has no adequate remedy at law.

COUNT III

(Unfair Competition Under California Law – Cal. Bus. and Prof. Code § 17200 *et seq.*

Against All Defendants)

75. Louisiana Pacific repeats and realleges the allegations of the foregoing paragraphs as if fully set forth herein.

76. Section 17200 prohibits any "unlawful, unfair or fraudulent business act or practice" and further prohibits "unfair, deceptive, untrue or misleading advertising."

77. By reason of the acts alleged herein, Hardie has engaged in unfair, unlawful and fraudulent acts in violation of Cal. Bus. & Prof. Code § 17200, *et. seq.*, including violations of sections 1114(1) and 1125(a) of the Lanham Act and violations of California Business and Professions Code section 14200 *et seq.* and 17500 *et seq.*

78. Hardie undertook the unlawful, unfair or fraudulent acts set forth in this Complaint willfully and with the intention of causing confusion, mistake, or deception.

79. Hardie's acts alleged herein, including its use of the LP Marks as AdWords for its own advertising, are likely to confuse and mislead the public.

80. The unlawful, unfair and fraudulent acts of Hardie present a continuing threat to members of the public in that Hardie continues to engage in the conduct set forth in this Complaint.

81. By reason of Hardie's acts alleged herein Hardie has been unjustly enriched.

82. By reason of Hardie's acts alleged herein, Louisiana Pacific has suffered, is suffering, and will continue to suffer irreparable damage. Unless the Court restrains Hardie from continuing its wrongful acts, the damage to Louisiana Pacific will be increased.

83. Louisiana Pacific has no adequate remedy at law.

COUNT IV

(False Advertising Under California Law – Cal. Bus. Prof. Code § 17500 *et seq.* Against All Defendants)

84. Louisiana Pacific repeats and realleges the allegations of the foregoing paragraphs as if fully set forth herein.

85. Section 17500 prohibits any "untrue or misleading" advertising.

86. Pursuant to section17500 "It is unlawful for any ...corporation ... with intent directly or indirectly to dispose of ... personal property ... or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, ..., in any newspaper or other publication, or any advertising device, ... including over the Internet, any statement, concerning ...those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading."

87. For the reasons alleged in this Complaint, including Hardie's use of the LP Marks by using them as "keyword" triggers for paid advertisements and by using them within the text or title of paid advertisements linked to the Hardie website, Hardie's advertising is false and misleading and is likely to deceive the public.

88. By reason of Hardie's acts alleged herein Hardie has been unjustly enriched.

89. By reason of Hardie's acts alleged herein, Louisiana Pacific has suffered, is suffering, and will continue to suffer irreparable damages. Unless the Court restrains Hardie from continuing its wrongful acts, the damage to Louisiana Pacific will increase.

COUNT V

(Trademark Infringement Under California Law – Cal. Bus. and Prof. Code § 14200 *et seq.* Against All Defendants)

90. Louisiana Pacific repeats and realleges the allegations of the foregoing

paragraphs as if fully set forth herein.

91. Hardie has used reproductions and colorable imitations of the LP Marks without Louisiana Pacific's permission in connection with the sale and advertising of its products.

92. Hardie's use of the LP Marks is likely to cause confusion or mistake, or to deceive as to the course of origin of his goods or services.

93. For the reasons alleged herein, Hardie's use of the LP Marks violates California Business and Professions Code section 14200 *et seq*.

94. By reason of Hardie's acts alleged herein, Louisiana Pacific has suffered, is suffering, and will continue to suffer irreparable damage. Unless the Court restrains Hardie from continuing its wrongful acts, the damage to Louisiana Pacific will increase.

95. Louisiana Pacific has no adequate remedy at law.

COUNT VI

(Tortious Interference With a Prospective Economic Advantage Under California Law Against All Defendants)

96. Louisiana Pacific repeats and realleges the allegations of the foregoing as if fully set forth herein.

97. By reasons of Hardie's acts alleged herein, Hardie has wrongfully and intentionally interfered with Louisiana Pacific's prospective economic advantage.

98. Louisiana Pacific has an economic relationship with consumers who visit its website to purchase goods and services and there exists a corresponding probability that those consumers will confer a future economic benefit to Louisiana Pacific.

99. Hardie knew of the relationship between Louisiana Pacific and consumers who visit its website to purchase goods and services.

100. Hardie acted intentionally to disrupt the relationship through its unauthorized and intentional use of the LP Marks or terms confusingly similar thereto in connection with Google's search engine-based advertising programs.

101. Hardie's actions constitute a violation of Section 32(1) of the Lanham Act, 15 U.S.C. §1114(1), and violation of the section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

102. Hardie's actions actually disrupted Louisiana Pacific's relationship with the consumers.

103. Hardie's acts alleged herein have proximately caused economic harm to Louisiana, which has suffered, is suffering, and will continue to suffer irreparable damage.

PRAYER FOR RELIEF

WHEREFORE, Louisiana Pacific prays for relief against Hardie as follows:

1. Preliminarily and permanently enjoining Hardie and its officers, directors, partners, agents, subcontractors, servants, employees, representatives, franchisees, licensees, subsidiaries, parents, and related companies or entities, and all others acting in concert or participation with it from:

- infringing, or causing any other entity to infringe the Infringed LP Marks;
- unfairly competing with Louisiana Pacific in any manner whatsoever; and
- making any use of the Infringed LP Marks and/or terms confusingly similar thereto unless specifically authorized by Louisiana Pacific.

2. Directing an accounting to determine all gains, profits, savings and advantages obtained by Hardie as a result of its wrongful actions;

3. Awarding restitution to Louisiana Pacific of all gains, profits, savings and advantages obtained by Hardie as a result of its wrongful actions;

4. Awarding Louisiana Pacific all damages caused by Hardie's wrongful actions;

5. Awarding Louisiana Pacific treble the amount of its damages, together with the costs of this suit, including reasonable attorneys' fees and expenses and prejudgment

///

///

///

///

///

///

interest, pursuant to 15 U.S.C. § 1117 and all other applicable provisions and principles of federal and California law;

6. Awarding Louisiana Pacific an amount sufficient to conduct a corrective advertising campaign to dispel the effects of Hardie's wrongful conduct and confusing and misleading advertising;

7. Directing Hardie to post on its website corrective advertising in a manner and form to be established by the Court;

8. Directing Hardie to file with this Court and serve on Louisiana Pacific within thirty (30) days after the service of the injunction, a report in writing, under oath, that describes in detail the manner and form in which Hardie has complied with the orders of this Court;

9. Awarding Louisiana Pacific punitive and/or exemplary damages in an amount sufficient to deter future similar conduct by Hardie and others; and

10. Granting Louisiana Pacific such other and further relief as the Court may deem just.

Dated: June 25, 2012

KARSON • KING, LLP

By: _____
Shawn M. Raiter
(Pro Hac Vice Application Pending)
Mark A. Solheim
(Pro Hac Vice Application Pending)
Attorneys for Plaintiff
LOUISIANA PACIFIC CORPORATION

Dated: June 29, 2012

GORDON & REES LLP

By: _____
Gordon I. Endow
Anna Rassouli
Attorneys for Plaintiff
LOUISIANA PACIFIC CORPORATION

JURY DEMAND

Plaintiff Louisiana Pacific hereby demands trial by jury on all claims and issues permitted by law.

Dated: June 29, 2012

LARSON • KING, LLP

By: _____
Shawn M. Raiter
(Pro Hac Vice Application Pending)
Mark A. Solheim
(Pro Hac Vice Application Pending)
Attorneys for Plaintiff
LOUISIANA PACIFIC CORPORATION

Dated: June 29, 2012

GORDON & REES LLP

By: _____
Gordon I. Endow
Anna Rassouli
Attorneys for Plaintiff
LOUISIANA PACIFIC CORPORATION

//12933227v.1