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12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 Louisiana Pacific Corporation,  
15 Plaintiff,

16 vs.

17 James Hardie Building Products, Inc, and  
Does 1-5, inclusive,  
18 Defendants.  
19

**CV** Case Number **12 3433**

**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**

26  
27 Plaintiff Louisiana Pacific Corporation ("Louisiana Pacific") brings this Complaint and  
28 states and alleges as follows:

1 **SUMMARY OF ACTION**

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

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

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

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

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

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

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

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

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

16 **PARTIES**

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

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

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

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

27 13. Louisiana Pacific is ignorant of the true names and capacities of Defendants Does  
28 1 through 5, inclusive, and therefore sues these Doe Defendants by such fictitious names.

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

8 **JURISDICTION AND VENUE**

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

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

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

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

22 **INTRADISTRICT ASSIGNMENT**

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

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



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

- 5 • "LP," for, among other things, non-metal building materials, registration  
6 no. 2654847, which was first used in commerce on October 2, 2000, and  
7 has a registration date of November 26, 2002;
- 8 • "SMARTSIDE," for exterior oriented strand board siding, registration  
9 no. 2681716, which was first used in commerce in March 2001 and has a  
10 registration date of January 28, 2003; and
- 11 • "SMARTSIDE," for building materials, namely, trim, fascia, and soffits  
12 made primarily of wood, registration no. 2887732, which was first used  
13 in commerce in March 2003 and has a registration date of September 21,  
14 2004.

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

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

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

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

28 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.

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

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

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

8 **Google's Search Engine**

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

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

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

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



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

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

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

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

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

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

### 22 **Hardie’s Use of Google’s Search Engine-Based Keyword Advertising Program**

23 42. Google’s search engine is available, among other places, through its website  
24 located at [www.google.com](http://www.google.com). Google also licenses its search engine to other popular websites.<sup>1</sup>  
25 In addition, Google invites consumers to affix a “Google Toolbar” at the top of Internet users’  
26 Internet browsers that allows these users to conduct Google searches even when they are not

27 <sup>1</sup> See

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



1 currently visiting [www.google.com](http://www.google.com) or a website that features Google's search engine.<sup>2</sup>

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

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

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

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

#### 21 **Hardie's Unauthorized Use of the LP Marks**

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

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

27 \_\_\_\_\_  
28 <sup>2</sup> See <http://www.google.com/intl/en/toolbar/ie/features.html#brand=GGNI&> (visited June 25, 2012).

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

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

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

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

1 Louisiana Pacific's business.

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

6 **Consumer Confusion and Harm to Louisiana Pacific**

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

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

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

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

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

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

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

- 3 a. The Infringed LP Marks are exceptionally strong;
- 4 b. Hardie uses the actual Infringed LP Marks or terms confusingly similar thereto  
5 as keyword triggers and in advertisement headlines and text;
- 6 c. Hardie, which has directed Google to use on Hardie's behalf the Infringed LP  
7 Marks or terms confusingly similar thereto, generally sells products and services  
8 similar to the products and services provided by Louisiana Pacific, and in many  
9 cases are in direct competition with Louisiana Pacific;
- 10 d. Hardie uses the exact same marketing channels or parallel marketing channels  
11 as Louisiana Pacific—namely, the World Wide Web, and in particular, the  
12 context of Internet searching;
- 13 e. Hardie's reproduction and colorable imitation of the Infringed LP Marks, as  
14 alleged herein, is false and misleading, suggesting its own products and services  
15 are being sponsored by or are affiliated or originate with or are approved by  
16 Louisiana Pacific;
- 17 f. Purchasers are likely to exercise a minimal degree of care in the context of  
18 Internet searching generally and in purchasing goods and services online in  
19 particular;
- 20 g. A substantial segment of consumers using such marketing channels have  
21 actually been confused, misled, and deceived, or there is a likelihood of such  
22 confusion and deception as a result of Hardie's conduct;
- 23 h. Hardie began using the Infringed LP Marks or terms very similar to the marks  
24 after they were registered and after they became distinctive. Hardie did so with  
25 full knowledge of Louisiana Pacific's rights in the Infringed LP Marks. In  
26 fact, it is Hardie's specific intent to use the Infringed LP Marks to profit from  
27 consumers' association of the Infringed LP Marks and to economically harm  
28 Louisiana Pacific.

**COUNT I**

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

1  
2  
3  
4 59. Louisiana Pacific repeats and realleges the allegations of the foregoing paragraphs  
5 as if fully set forth herein.

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

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

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

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

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

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

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

4 **COUNT II**

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

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

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

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

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

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

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

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

6           74. Louisiana Pacific has no adequate remedy at law.

7   **COUNT III**

8           **(Unfair Competition Under California Law – Cal. Bus. and Prof. Code § 17200 et seq.**  
9   **Against All Defendants)**

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

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

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

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

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

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

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

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



1 83. Louisiana Pacific has no adequate remedy at law.

2 **COUNT IV**

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

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

7 85. Section 17500 prohibits any “untrue or misleading” advertising.

8 86. Pursuant to section 17500 “It is unlawful for any ... corporation ... with intent  
9 directly or indirectly to dispose of ... personal property ... or to induce the public to enter into  
10 any obligation relating thereto, to make or disseminate or cause to be made or disseminated  
11 before the public in this state, ..., in any newspaper or other publication, or any advertising  
12 device, ... including over the Internet, any statement, concerning ... those services,  
13 professional or otherwise, or concerning any circumstance or matter of fact connected with the  
14 proposed performance or disposition thereof, which is untrue or misleading, and which is  
15 known, or which by the exercise of reasonable care should be known, to be untrue or  
16 misleading.”

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

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

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

25 **COUNT V**

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

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

1 paragraphs as if fully set forth herein.

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

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

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

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

11 95. Louisiana Pacific has no adequate remedy at law.

12 **COUNT VI**

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

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

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

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

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

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

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

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

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

5 **PRAYER FOR RELIEF**

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

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

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

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

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

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

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

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

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

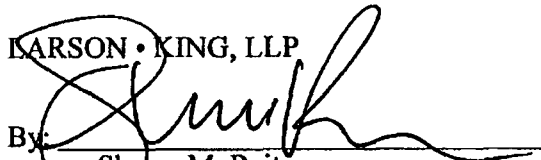
6 7. Directing Hardie to post on its website corrective advertising in a manner and  
7 form to be established by the Court;

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


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

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

16 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

21 Dated: June 29, 2012

GORDON & REES LLP  
By:   
Gordon I. Endow  
Anna Rassouli  
Attorneys for Plaintiff  
LOUISIANA PACIFIC CORPORATION

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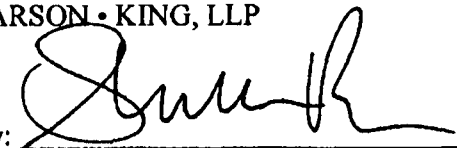
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**JURY DEMAND**

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

Dated: *June 29*, 2012

LARSON • KING, LLP

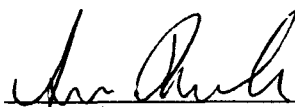
By: 

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  
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LOUISIANA PACIFIC CORPORATION