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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.

) Case Number: C-12-3433-SC  
)  
)

) **FIRST AMENDED 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.)**

) **DEMAND FOR JURY TRIAL**  
)  
)

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

**SUMMARY OF ACTION**

1  
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 “LP” and  
12 “SmartSide” (the “Infringed LP Marks”) without permission in an attempt to damage Louisiana  
13 Pacific’s business and steal market share in violation of federal trademark law. Hardie’s scheme  
14 involves the purchase of certain search phrases available through Google, which results in the  
15 deliberate confusion of 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  
23 used. 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  
4 the “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  
12 paid 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 the terms “Smart Siding” and “Smartsiding”,  
16 which are confusingly similar thereto (“Confusingly Similar Terms”) and recover damages  
17 associated with such use.

18 **PARTIES**

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

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

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

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



1 purchased “keyword triggers” that included the Infringed LP Marks and Confusingly Similar  
2 Terms from Google in this district.

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

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

### 7 **FACTUAL BACKGROUND**

#### 8 **The Internet and the World Wide Web**

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

#### 19 **Louisiana Pacific and the LP Marks**

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

25 23. SmartSide® products are popular Louisiana Pacific building products. The  
26 SmartSide® line of products includes siding, trim, and fascia for use on residential and other  
27 structures.  
28

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

5           25. The Infringed LP Marks are registered on the United States Patent and  
6 Trademark Office’s principal register and are owned and currently in use by Louisiana  
7 Pacific. The registrations of the Infringed LP Marks are each valid and subsisting, have never  
8 been cancelled, and have become incontestable under the provisions of 15 U.S.C. § 1065.  
9 The Infringed LP Marks are:

- 10           • “LP,” for, among other things, non-metal building materials, registration no. 2654847, which was first used in commerce on  
11 October 2, 2000, and has a registration date of November 26, 2002;
- 12           • “SMARTSIDE,” for exterior oriented strand board siding, registration  
13 no. 2681716, which was first used in commerce in March 2001 and has  
14 a registration date of January 28, 2003; and
- 15           • “SMARTSIDE,” for building materials, namely, trim, fascia, and soffits  
16 made primarily of wood, registration no. 2887732, which was first used  
17 in commerce in March 2003 and has a registration date of September  
18 21, 2004.

19           26. The Confusingly Similar Terms used by Hardie are “Smart Siding” and  
20 “Smartsiding.”

21           27. Louisiana Pacific provides notice to the public of various of its trademarks on a  
22 website at [www.lpcorp.com/trademarks\\_and\\_copyright/](http://www.lpcorp.com/trademarks_and_copyright/). The website states: “LP, the LP logo  
23 and other names of LP, its subsidiaries, and/or LP products referenced on this site are  
24 trademarks or registered trademarks of Louisiana-Pacific Corporation.” The website then lists  
25 21 specific trademarks of Louisiana Pacific, including LP® and SmartSide®.

26           28. The Infringed LP Marks are unique and distinctive designations of the source of  
27 Louisiana Pacific’s products and services.

28           29. 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.

1 Louisiana Pacific advertises through a variety of media, including television, radio,  
2 newspapers, magazines, direct mail, and in telephone directories across the country.

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

5 31. Through Louisiana Pacific's actions, and because of widespread and favorable  
6 public acceptance and recognition, the Infringed LP Marks have become distinctive  
7 designations of the source of origin of Louisiana Pacific's products and services. The  
8 Infringed LP Marks have become uniquely associated with, and hence identify, Louisiana  
9 Pacific and its products and services. These marks are assets of incalculable value as symbols  
10 of Louisiana Pacific, its quality products and services, and its goodwill.

11 32. Accordingly, the Infringed LP Marks have developed secondary meaning.

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

### 16 **Google's Search Engine**

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

25 35. Most web users who perform searches with Google's Internet search engine  
26 believe that the results given by that search engine are determined by a "natural" or "organic"  
27 system that lists results in order of objective relevance to the search terms input into the search  
28 engine, with the most relevant websites appearing near the top of the web page. According to

1 Google, the order in which “organic search results” are listed is automatically determined by a  
2 number of factors, including Google’s patented PageRank algorithm.

3 36. By using Google’s Internet search engine, web users are identifying the  
4 subjects in which they are interested, the companies that they seek, or the products or services  
5 they wish to buy. This allows Google to sell “contextual” or “search” advertising, which  
6 allows companies to place their advertising in front of consumers who have already identified  
7 themselves as interested in particular products or services.

8 37. When a web user carries out an Internet search using Google’s search engine,  
9 Google not only provides the web user with the above-described “organic search results,” but  
10 also displays a list of similarly formatted advertisements—which Google refers to as  
11 “Sponsored Links”—above and alongside the purportedly objective “organic search results.”

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

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

20 40. When web users click on “Sponsored Links” that Hardie purchased to seek  
21 information about Louisiana Pacific’s SmartSide® products, they are deceived into believing  
22 that they will be provided information authorized by Louisiana Pacific about SmartSide®  
23 from someone sponsored by or affiliated with Louisiana Pacific. The “Sponsored Links”  
24 instead send the web users to Hardie’s own web site, resulting in consumer confusion and  
25 economic harm to Louisiana Pacific.

26 41. Examples of the results of web searches using Infringed LP Marks and  
27 Confusingly Similar Terms are attached hereto as Exhibit A.  
28

1           42.     Hardie’s intentional and unauthorized use in commerce of the Infringed LP  
2 Marks results in the unauthorized exploitation of their value and name recognition.

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

4           43.     Google’s search engine is available, among other places, through its website  
5 located at [www.google.com](http://www.google.com). Google also licenses its search engine to other popular  
6 websites.<sup>1</sup> In addition, Google invites consumers to affix a “Google Toolbar” at the top of  
7 Internet users’ Internet browsers that allows these users to conduct Google searches even  
8 when they are not currently visiting [www.google.com](http://www.google.com) or a website that features Google’s  
9 search engine.<sup>2</sup>

10           44.     Google offers a program called “AdWords” that displays advertisements to  
11 users of Google’s search engine in the form of “Sponsored Links.” Under its AdWords  
12 Program, Google offers advertisers the ability to select certain “keywords” that will trigger a  
13 “Sponsored Link” to the advertiser’s chosen website, which “Sponsored Link” Google will  
14 display above or alongside the purportedly “organic search results.”

15           45.     Advertisers pay Google each time a web user clicks on keyword-targeted  
16 “Sponsored Links” that appear on Google’s “results” page.

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

23           47.     In a substantial portion of searches, Google’s AdWords program makes two  
24 distinct uses of a given keyword on behalf of Hardie. First, the keyword triggers the  
25

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

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

1 “Sponsored Link” advertisement. Second, the keyword is often published as part of the  
2 advertisement itself. Accordingly, when the keyword in question is a trademark or service  
3 mark, Hardie can make confusing use of that mark in two different ways: (1) as a keyword  
4 trigger and (2) as a part of the advertisement itself.

#### 5 **Hardie’s Unauthorized Use of the LP Marks**

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

9 49. Nevertheless, Hardie has purchased from Google the “right” to use the  
10 Infringed LP Marks and Confusingly Similar terms as part of Hardie’s search engine-based  
11 advertising program. As a result, Hardie has utilized Adwords to direct web users who have  
12 an express interest in the Infringed LP Marks to websites that are not Louisiana Pacific’s  
13 website, and in fact direct the users to Hardie’s competitive website. Hardie’s “Sponsored  
14 Links” are expressly designed to draw consumers *away* from Louisiana Pacific’s website.

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

24 51. The “Sponsored Links” for which Hardie uses the Infringed LP Marks or  
25 Confusingly Similar Terms as keyword triggers link web users to Hardie’s website, which  
26 sells products that directly compete with Louisiana Pacific’s SmartSide® and other products.  
27 Louisiana Pacific has not sponsored these “Sponsored Links” or otherwise authorized Google  
28 to sell the right to Hardie to use the Infringed LP Marks in commerce to draw web users to its

1 website. Nevertheless, these unauthorized “Sponsored Links” appear in close and confusing  
2 proximity to the listings generated by Google’s purportedly “organic search results” system.

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

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

#### 16 **Consumer Confusion and Harm to Louisiana Pacific**

17 54. Google charges advertisers a fee every time a web user clicks on a keyword-  
18 triggered “Sponsored Link.”

19 55. Many web users who enter one of the Infringed LP Marks into Google’s search  
20 engine and who then view a “Sponsored Link” containing Hardie’s advertisement will follow  
21 the “Sponsored Link” to Hardie’s website in the belief that the website is owned by or  
22 affiliated with Louisiana Pacific.

23 56. Many web users who are presented with such “Sponsored Links” to Hardie’s  
24 website are not aware that Hardie has no affiliation with Louisiana Pacific. Hardie’s  
25 misappropriation of the Infringed LP Marks as keyword triggers and its use of the  
26 Confusingly Similar Terms in the “Sponsored Link” text are therefore likely to cause  
27 confusion in the marketplace for building products.  
28

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

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

12           59. Among other things, the following facts and circumstances support the  
13 conclusion that Hardie’s use in commerce of the Infringed LP Marks is likely to cause  
14 consumer confusion:

- 15           a. The Infringed LP Marks are exceptionally strong;
- 16           b. Hardie uses the actual Infringed LP Marks or Confusingly Similar Terms as  
17 keyword triggers and in advertisement headlines and text;
- 18           c. Hardie, which has directed Google to use on Hardie’s behalf the Infringed LP  
19 Marks or Confusingly Similar Terms, generally sells products and services  
20 similar to the products and services provided by Louisiana Pacific, and in many  
21 cases are in direct competition with Louisiana Pacific;
- 22           d. Hardie uses the exact same marketing channels or parallel marketing channels  
23 as Louisiana Pacific—namely, the World Wide Web, and in particular, the  
24 context of Internet searching;
- 25           e. Hardie’s reproduction and colorable imitation of the Infringed LP Marks, as  
26 alleged herein, is false and misleading, suggesting its own products and  
27 services are being sponsored by or are affiliated or originate with or are  
28 approved by Louisiana Pacific;

- 1 f. Purchasers are likely to exercise a minimal degree of care in the context of  
2 Internet searching generally and in purchasing goods and services online in  
3 particular;
- 4 g. A substantial segment of consumers using such marketing channels have  
5 actually been confused, misled, and deceived, or there is a likelihood of such  
6 confusion and deception as a result of Hardie's conduct;
- 7 h. Hardie began using the Infringed LP Marks or Confusingly Similar Terms  
8 after they were registered and after they became distinctive. Hardie did so  
9 with full knowledge of Louisiana Pacific's rights in the Infringed LP Marks.  
10 In fact, it is Hardie's specific intent to use the Infringed LP Marks to profit  
11 from consumers' association of the Infringed LP Marks and to economically  
12 harm Louisiana Pacific.

13 **COUNT I**

14 **(Trademark / Service Mark Infringement Under The Lanham Act –**  
15 **28 U.S.C. § 1114(1) Against All Defendants)**

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

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

20 62. Hardie has used the Infringed LP Marks in commerce in a number of ways  
21 through Google's search engine-based, keyword-triggered advertising programs, including  
22 (but not limited to) the following: (i) paying Google to use such marks or terms to trigger the  
23 display of "Sponsored Link" advertisements that link to Hardie's website, which are displayed  
24 above or alongside purportedly "organic search results;" (ii) by causing such "Sponsored  
25 Link" advertisements to appear when web users have specifically attempted to find or access  
26 Louisiana Pacific's website, with the express purpose of causing web users to visit websites  
27 other than those affiliated with Louisiana Pacific; (iii) by causing "Sponsored Link"  
28 advertisements to appear in close proximity to the Infringed LP Marks and links to legitimate

1 Louisiana Pacific-related websites; and (iv) by causing the Infringed LP Marks or  
2 Confusingly Similar Terms to appear in the text or title of advertisements which Google calls  
3 “Sponsored Links.” In short, Hardie has used the Infringed LP Marks in commerce in  
4 connection with the sale, offering for sale, distribution, or advertising of goods and services.

5 63. Hardie’s unauthorized and intentional use of the registered the Infringed LP  
6 Marks and Confusingly Similar Terms constitutes trademark infringement in violation of  
7 Section 32(1) of the Lanham Act, 15 U.S.C. §1114(1).

8 64. Hardie’s infringement of the Infringed LP Marks is willful and reflects Hardie’s  
9 intent to exploit the goodwill and strong brand recognition associated with the Infringed LP  
10 Marks.

11 65. Hardie’s infringement has damaged Louisiana Pacific in an amount to be  
12 determined at trial.

13 66. Hardie’s infringement has caused and, unless restrained by this Court, will  
14 continue to cause Louisiana Pacific irreparable injury.

15 67. Louisiana Pacific has no adequate remedy at law for Hardie’s infringement.

16 **COUNT II**

17 **(Unfair Competition Under The Lanham Act – 28 U.S.C. § 1125(a)**

18 **Against All Defendants)**

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

21 69. Hardie’s unauthorized and intentional use of the Infringed LP Marks or  
22 Confusingly Similar terms in connection with Google’s search engine-based advertising  
23 programs infringes on Louisiana Pacific’s exclusive rights in its federally registered marks  
24 and is likely to cause confusion, mistake, or deception among consumers as to the source of  
25 the products and services offered by Louisiana Pacific. Such use is also likely to cause  
26 confusion among consumers as to whether Louisiana Pacific is sponsoring, has authorized or  
27 is somehow affiliated with Google’s sale to Hardie of the Infringed LP Marks or Confusingly  
28 Similar Terms, or with the products or services offered through the “Sponsored Links” that

1 Google intentionally posts above or alongside purportedly objective “organic search results”  
2 from Internet searches for the Infringed LP Marks.

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

7 71. Further, even after accessing the website associated with “Sponsored Links,”  
8 which is Hardie’s website, the damage to Louisiana Pacific has been done. Through initial  
9 interest confusion, Hardie is gaining customers by appropriating the goodwill that Louisiana  
10 Pacific has developed in the Infringed LP Marks.

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

14 73. Hardie has acted willfully and intentionally to cause confusion, mistake, or  
15 deception.

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

19 75. Louisiana Pacific has no adequate remedy at law.

20 **COUNT III**

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

22 **Against All Defendants)**

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

25 77. Section 17200 prohibits any “unlawful, unfair or fraudulent business act or  
26 practice” and further prohibits “unfair, deceptive, untrue or misleading advertising.”

27 78. By reason of the acts alleged herein, Hardie has engaged in unfair, unlawful and  
28 fraudulent acts in violation of Cal. Bus. & Prof. Code § 17200, *et. seq.*, including violations of

1 sections 1114(1) and 1125(a) of the Lanham Act and violations of California Business and  
2 Professions Code section 14200 *et seq.* and 17500 *et seq.*

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

5 80. Hardie's acts alleged herein, including its use of the Infringed LP Marks and  
6 Confusingly Similar Terms as AdWords for its own advertising, are likely to confuse and  
7 mislead the public.

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

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

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

15 84. Louisiana Pacific has no adequate remedy at law.

16 **COUNT IV**

17 **(False Advertising Under California Law – Cal. Bus. Prof. Code § 17500 *et seq.***

18 **Against All Defendants)**

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

21 86. Section 17500 prohibits any "untrue or misleading" advertising.

22 87. Pursuant to section 17500 "It is unlawful for any ...corporation ... with intent  
23 directly or indirectly to dispose of ... personal property ... or to induce the public to enter into  
24 any obligation relating thereto, to make or disseminate or cause to be made or disseminated  
25 before the public in this state, ..., in any newspaper or other publication, or any advertising  
26 device, ... including over the Internet, any statement, concerning ...those services,  
27 professional or otherwise, or concerning any circumstance or matter of fact connected with  
28 the proposed performance or disposition thereof, which is untrue or misleading, and which is

1 known, or which by the exercise of reasonable care should be known, to be untrue or  
2 misleading.”

3 88. For the reasons alleged in this Complaint, including Hardie’s use of the  
4 Infringed LP Marks and Confusingly Similar Terms by using them as “keyword” triggers for  
5 paid advertisements and by using them within the text or title of paid advertisements linked to  
6 the Hardie website, Hardie’s advertising is false and misleading and is likely to deceive the  
7 public.

8 89. By reason of Hardie’s acts alleged herein Hardie has been unjustly enriched.

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

12 **COUNT V**

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

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

17 92. Hardie has used reproductions and colorable imitations of the Infringed LP  
18 Marks without Louisiana Pacific’s permission in connection with the sale and advertising of its  
19 products.

20 93. Hardie’s use of the Infringed LP Marks is likely to cause confusion or mistake,  
21 or to deceive as to the course of origin of his goods or services.

22 94. For the reasons alleged herein, Hardie’s use of the Infringed LP Marks violates  
23 California Business and Professions Code section 14200 et seq.

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

27 96. Louisiana Pacific has no adequate remedy at law.  
28

**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 Confusingly Similar terms 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





