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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.

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

3 **FACTUAL BACKGROUND**

4 **The Internet and the World Wide Web**

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

15 **Louisiana Pacific and the LP Marks**

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

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

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

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

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 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. Google also licenses its search engine to other popular websites.¹
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 ¹ 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 or a website that features Google's search engine.²

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 ² 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 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;

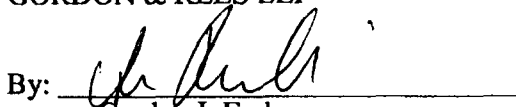
12 9. Awarding Louisiana Pacific punitive and/or exemplary damages in an amount
13 sufficient to deter future similar conduct by Hardie and others; and

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
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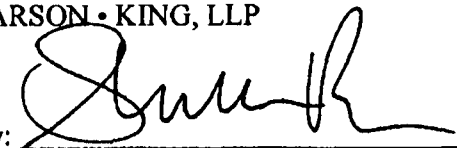
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JURY DEMAND

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

Dated: *June 29*, 2012

LARSON • KING, LLP

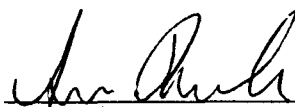
By: 

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