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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

**SPECS GmbH, and
SPECS SURFACE AND
NANO ANALYSIS, INC.,**

Plaintiffs,

CASE NO.: 8:12-cv-429-T-30 EAJ

v.

**SPECS SCIENTIFIC
INSTRUMENTS, INC.,
a Florida corporation;
SPECS TECHNOLOGIES
CORPORATION, a Florida
corporation; and DIETRICH
von DIEMAR, an Individual,**

Defendants.

_____ /

COMPLAINT AND DEMAND FOR JURY TRIAL
(Injunctive Relief Sought)

Plaintiffs, SPECS GmbH and SPECS Surface and Nano Analysis, Inc. ("SPECS Surface") (collectively, referred to as "SPECS"), sue Defendants, SPECS Scientific Instruments, Inc. ("Fake SPECS Sci"), SPECS Technologies Corporation ("Fake SPECS Tech") (collectively, the "Fake SPECS"), and Dietrich von Diemar ("Diemar") (all defendants are collectively referred to as "Defendants"), and allege the following:

JURISDICTION AND VENUE

1. This is an action for trademark infringement and unfair competition under the Trademark Act of 1946, as amended by The Lanham Act, 15 U.S.C. §§ 1051 *et seq.*,

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seeking preliminary and permanent injunctive relief, other equitable relief, damages, profits, costs, interest, expert fees, and attorneys' fees.

2. This Court possess subject matter jurisdiction over this action pursuant to 15 U.S.C. § 1121, and 28 U.S.C. §§ 1331 and 1338(a).

3. Venue is proper in this Court and in this division under 28 U.S.C. §§1391(b).

THE PARTIES

4. Plaintiff SPECS GmbH is a German corporation with its principal place of business in Berlin, Germany.

5. Plaintiff SPECS Surface is a Florida corporation with its principal place of business in Clearwater, Florida. SPECS Surface is a wholly-owned subsidiary of SPECS GmbH.

6. Defendant Fake SPECS Sci is a Florida corporation with its principal place of business in Sarasota, Florida. Fake SPECS Sci is *not* a related entity to either SPECS GmbH or SPECS Surface but is, upon information and belief, an affiliate of or related entity to Defendant, Fake SPECS Technologies.

7. Defendant Fake SPECS Tech is a Florida corporation with its principal place of business in Sarasota, Florida. Fake SPECS Tech is *not* a related entity to either Plaintiff SPECS GmbH or SPECS Surface but is, upon information and belief, an affiliate of or related entity to Defendant Fake SPECS Sci.

8. Defendant Diemar is an individual who conducts business and, upon information and belief, resides within the Middle District of Florida. Diemar is also an officer and director of the Fake SPECS.

9. According to the Florida Department of State, Division of Corporations' corporate detail records at www.sunbiz.org, von Diemar is the only officer and director of the Fake SPECS, and upon information and belief, Diemar directs, controls, participates in or is the moving force behind the actions of the Fake SPECS.

GENERAL ALLEGATIONS

10. SPECS GmbH was founded in 1983, and engages in the design and production of instruments for nanotechnology, material science, and surface science. Almost all of the equipment that SPECS GmbH manufactures is tailor-made for the end user and designed to address its customers' specific needs and technical requirements. Few of SPECS GmbH's products are mass produced.

11. SPECS GmbH has a worldwide network of cooperation partners and a sales and support network that provide goods and services under the SPECS brand name with a license from SPECS GmbH.

12. On October 26, 1990, SPECS GmbH was issued a trademark registration in Germany on "SPECS" for its components and systems for surface analysis (the "SPECS Mark"). A copy of German Registration No. 116661 is attached hereto as Exhibit A.

13. SPECS GmbH also owns an International Registration for the SPECS Mark (Reg. No. 960812) that was issued on January 23, 2008 for China and Japan, and

later registered in Norway, Russian Federation, Singapore, Republic of Korea, Switzerland, Turkey and Ukraine. Plaintiff also filed a European Community application for the SPECS Mark on August 27, 2007. A copy of International Registration No. 960812 is attached hereto as Exhibit B.

14. Through the sale and promotion of products and services bearing the SPECS Mark by SPECS GmbH, and control over the nature and quality of such products and services, the SPECS Mark has become associated worldwide, including within the United States, with the goods and services offered by SPECS GmbH.

15. Since at least 1990, SPECS GmbH has developed substantial goodwill in the SPECS Mark through advertising, industry recognition, sales, and a history of providing high quality equipment.

16. In 1994, SPECS GmbH incorporated SPECS USA Corporation (“SPECS USA”) in Florida to serve as its sales and service center in North America and Latin America.

17. From 1994 through 1996, Diemar was employed by SPECS GmbH in Berlin, Germany as a sales manager, and, from 1996 through 2000, Diemar was employed by SPECS USA in Florida as a sales manager.

18. Although SPECS USA was closed in 2001, SPECS GmbH continued to conduct business and distribute products bearing the SPECS Mark in the United States. SPECS GmbH later opened a second U.S. subsidiary, Plaintiff SPECS Surface, which is still active and operational.

19. Since at least 1994, SPECS GmbH has continuously marketed, promoted, offered for sale, and sold its goods and provided services using the SPECS Mark and brand name in the United States.

20. SPECS Surface is authorized and otherwise permitted by SPECS GmbH to use the SPECS Mark in commerce.

21. In 2001, SPECS GmbH and Fake SPECS Sci entered into a distribution agreement wherein Fake SPECS Sci served as a distributor of SPECS GmbH's products in North, Central, and South America. SPECS GmbH gave Fake SPECS Sci a limited right to use the SPECS Mark to market and sell Plaintiff's products during the term of the distribution agreement.

22. Fake SPECS Sci was prohibited by the distribution agreement from registering the brands, trade names and other marks of SPECS GmbH for Fake SPECS Sci's own use. Fake SPECS Sci was permitted to use the domain names "specs.com" and "specsusa.com" on behalf of SPECS GmbH, only.

23. SPECS GmbH terminated the distribution agreement with Fake SPECS Sci, effective December 31, 2005.

24. After December 31, 2005, Fake SPECS Sci did not have any license, permission, or other right by which it could lawfully use the SPECS Mark and name, and did not have the right to continue using the "specs.com" and "specsusa.com" domain names. Despite these facts, when the registration for the domain names "specs.com" and "specsusa.com" lapsed, Fake SPECS Sci registered those names for its own use and benefit without authorization from SPECS GmbH.

25. Since 2006, SPECS GmbH and Fake SPECS Sci have been involved in several court proceedings in Germany (the “German Litigation”) and in an administrative proceeding before the World Intellectual Property Organization Arbitration and Mediation Center (the “WIPO Proceeding”).

26. In the German Litigation, the German Court enjoined Fake SPECS Sci from advertising and representing that it offers SPECS GmbH’s products for sale, and ordered Fake SPECS Sci to cease using the SPECS Mark and name in commerce (the “German Injunctions”).

27. Fake SPECS Sci has continuously failed to comply with, and is in violation of, the German Injunctions by continuing to use the SPECS Mark and name in commerce.

28. The German courts have repeatedly fined Fake SPECS Sci for its serial violations of the German Injunctions.

29. In the WIPO Proceeding, SPECS GmbH filed a complaint against Fake SPECS Sci for its unauthorized use of the “specs.com” and “specsusa.com” domain names.

30. The WIPO panel determined that Fake SPECS Sci did not have any rights or legitimate interest in using the SPECS Mark in a domain name and ordered the domain names “specs.com” and “specsusa.com” be transferred to SPECS GmbH (the “WIPO Decision”).

31. Despite the German Injunctions and the WIPO Decision, Fake SPECS Sci and its affiliate, Fake SPECS Tech, have continued using the SPECS Mark in commerce without any authorization from SPECS GmbH.

32. The Fake SPECS have used the SPECS Mark in their corporate names without a license, authorization, or other permission from SPECS.

33. Although the Fake SPECS were forced to stop using the “specs.com” and “specsusa.com” domain names after the WIPO physically moved the internet address from Fake SPECS’ control, they are still using the SPECS Mark in a domain name they use for a website that markets, promotes, distributes, and sells goods in commerce.

34. The Fake SPECS are using the domain name “specs-scientific.net” in commerce. According to the “WHOIS” domain registration information from Network Solutions, the registrant for the “specs-scientific.net” is “SPECS” at 3318 Plantation Drive, Sarasota, Florida 34231 (the “Plantation Drive Address”) and the administrative contact is Diemar. A copy of the WHOIS domain registration is attached hereto as Exhibit C.

35. The records of the Florida Department of State, Division of Corporations, list the Plantation Drive Address as the principal place of business for the Fake SPECS.

36. SPECS GmbH has not authorized any of the Defendants to use the SPECS Mark with the “specs-scientific.net” domain name, or in any domain name.

37. On the www.specs-scientific.net website, Defendants advertise, market, and promote equipment using the SPECS Mark without a license, authorization, or permission from SPECS.

38. By using the SPECS name and photographs of SPECS equipment from SPECS GmbH's old website, SPECS Sci falsely represents on its website, www.specs-scientific.net that the products it sells and promotes are those of SPECS GmbH.

39. It is virtually impossible for Defendants to distribute or sell equipment actually manufactured by SPECS GmbH because the overwhelming majority of such equipment is designed and made according to the customer's technical requirements and, therefore, requires substantial contact and communication between SPECS GmbH and the end-user. The Fake SPECS cannot simply call SPECS GmbH or any of its authorized distributors, order standard equipment, and then sell authentic SPECS GmbH goods directly to a consumer.

40. The www.specs-scientific.net website is therefore a classic bait-n-switch tactic that Defendants use to lure in customers looking to purchase equipment manufactured by SPECS GmbH and then, once the customer is interested in ordering the equipment, sell the customer equipment made by one of SPECS GmbH's competitors.

41. On December 12, 2011, SPECS' counsel demanded that Defendants cease and desist from using the SPECS Mark and name, or any derivative thereof, and specifically, cease and desist from using any domain name or website using "SPECS".

42. Despite SPECS' demands and the German Injunctions, Defendants have refused to stop using the SPECS Mark and name in commerce.

43. SPECS retained the undersigned counsel and agreed to pay them a reasonable fee for their services.

44. All conditions precedent to this action that have been performed, have occurred, or have been waived.

COUNT I – TRADEMARK INFRINGEMENTS
UNDER SECTION 43(a), LANHAM ACT AND SECTION 1115(a)

45. SPECS realleges and incorporate by reference the allegations contained within paragraphs 1 through 44 above.

46. Defendants have used the SPECS Mark in connection in association with the sale, offering for sale, distribution and/or advertising of their inferior quality goods and services, without the approval or consent of SPECS.

47. The SPECS name used by Defendants is identical to the SPECS Mark owned by SPECS.

48. Defendants' use of the SPECS Mark and name is likely to cause confusion, or cause mistake, or to deceive, falsely leading customers to believe that Defendants' goods and services emanate or originate from SPECS and/or that SPECS approved, sponsored, or otherwise associated themselves with Defendants' goods and services.

49. Consumers have been confused by Defendants' use of the SPECS Mark. For example, consumers addressed correspondence to Federal Express believing they were in communicating with SPECS GmbH.

50. Upon information and belief, Defendants' conduct has been willful and intended to exploit the substantial goodwill and reputation associated with the SPECS Mark.

51. SPECS cannot control the quality of the goods and services provided by Defendants. Because of the likelihood of confusion as to the source of Defendants' goods and services, SPECS' valuable goodwill in the SPECS Mark is at the mercy of Defendants.

52. Defendants' above-described acts have caused, and unless such acts are restrained by this Court, will continue to cause great and irreparable injury to SPECS.

53. SPECS lacks an adequate remedy at law.

54. SPECS' case is exceptional.

55. As a result of Defendants' actions, SPECS suffered, and will continue to suffer, money damages in an amount to be proven at trial.

WHEREFORE, SPECS respectfully requests this Court to enter judgment in favor of SPECS and against Defendants:

a) Decreeing that Defendants, their agents, licensees, representatives, employees, attorneys, successors and assigns, and all those in active concert or participation with any of them who receive notice of such judgment directly or otherwise, be permanently enjoined from infringing the SPECS Mark, and from using, or aiding, assisting or abetting any other party from using SPECS Mark, or any derivative thereof, or the name "SPECS", or any derivative thereof, in any fashion, including but not limited to using "SPECS" in any domain name or website, without the prior written consent of SPECS;

b) Directing such other relief as the Court may deem appropriate to prevent the relevant public from deriving the erroneous impression that any goods or services

provided by or promoted by Defendants, are authorized by, or related in any way to, SPECS;

c) Awarding SPECS:

(i) All of the Defendants' profits, gains and advantages derived from using the SPECS Mark, pursuant to 15 U.S.C. §1117;

(ii) All damages sustained by SPECS by reason of Defendants' acts of trademark infringement;

(iii) Trebling of SPECS damages pursuant to 15 U.S.C. §1117; and

(iv) Interest, including prejudgment interest, on the foregoing sums;

d) Awarding SPECS' their attorneys' fees and costs, including expert fees, incurred by reason of Defendants' infringement; and

e) Directing such other relief as the Court may deem appropriate.

COUNT II – UNFAIR COMPETITION
UNDER SECTION 44(h), LANHAM ACT, 15 U.S.C. § 1126

56. SPECS GmbH realleges and incorporates by reference the allegations contained within paragraphs 1 through 44 above.

57. Section 44 of the Lanham Act provides protection against unfair competition in the United States to persons who own a trademark registered in a country that is a signatory to the Paris Convention for the Protection of Industrial Property of March 20, 1883, 21 U.S.T. 15, as amended on September 28, 1979 (the "Paris Convention").

58. Germany is a signatory to the Paris Convention.

59. The above-described acts of Defendants constitute unfair competition in violation of the Lanham Act.

60. Defendants' conduct has created confusion with SPECS GmbH's products for consumers, has involved misrepresentations with regards to whether Defendants were selling SPECS GmbH's products and/or an authorized distributor of SPECS GmbH's products, and will discredit the reputation of SPECS GmbH and the value of its products.

61. Defendants' conduct will likely continue to create confusion between SPECS GmbH's products and Defendants' goods unless Defendants' acts are restrained by this Court.

62. SPECS GmbH has been damaged by, and suffered irreparable injury by, Defendants' actions.

63. Upon information and belief, Defendants' actions have been willful and intended to exploit the substantial goodwill and reputation of SPECS GmbH.

64. SPECS GmbH has no adequate remedy at law.

65. SPECS GmbH's case is exceptional.

WHEREFORE, Plaintiff SPECS GmbH respectfully request this Court to enter judgment in favor of SPECS GmbH and against Defendants

a) Decreeing that Defendants, their agents, licensees, representatives, employees, attorneys, successors and assigns, and all those in active concert or participation with any of them who receive notice of such judgment directly or otherwise, be permanently enjoined from engaging in acts of unfair competition with SPECS GmbH, infringing the SPECS Mark and any derivative thereof, and from using, or aiding,

assisting or abetting any other party from using SPECS Mark and any derivative thereof, or the name "SPECS" and any derivative thereof, in any fashion, including using "SPECS" in any domain name or website and using photographs of equipment manufactured by SPECS GmbH in any advertising, marketing, or promotional medium or vehicle including on a website, without the prior written consent of SPECS GmbH;

b) Directing such other relief as the Court may deem appropriate to prevent the relevant public from deriving the erroneous impression that any goods or services provided by or promoted by Defendants, are authorized by, or related in any way to, SPECS GmbH;

c) Awarding SPECS GmbH:

(i) All of the Defendants' profits, gains and advantages derived from using the SPECS Mark, pursuant to 15 U.S.C. §1117;

(ii) All damages sustained by SPECS GmbH by reason of Defendants' acts of unfair competition;

(iii) Trebling of SPECS GmbH's damages be trebled pursuant to 15 U.S.C. §1117; and

(iii) Interest, including prejudgment interest, on the foregoing sums;

d) Awarding SPECS GmbH its attorneys' fees and costs, including expert fees, incurred by reason of Defendants' infringement; and

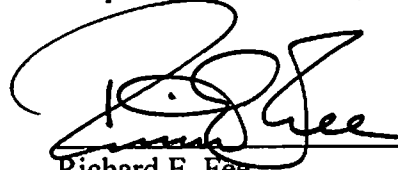
e) Directing such other relief as the Court may deem appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues triable of right by jury.

Dated: February 24, 2012.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard E. Fee", is written over a horizontal line.

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