



Provided by:  
[Overhauser Law Offices  
LLC  
www.iniplaw.org  
www.overhauser.com](http://www.iniplaw.org)

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA**

NIBCO INC.,  
an Indiana corporation,

Plaintiff,

v.

LEGEND VALVE & FITTING, INC.,  
a Michigan corporation,

Defendant.

Civil Action No. \_\_\_\_\_

**COMPLAINT AND  
DEMAND FOR JURY TRIAL**

**COMPLAINT**

Plaintiff, NIBCO INC. (“Plaintiff” or “NIBCO”), for its complaint against Defendant, Legend Valve & Fitting, Inc. (“Defendant” or “Legend”), states as follows:

**NATURE OF THE CASE**

1. This is an action for trademark infringement and unfair competition in violation of the Lanham Act, 15 U.S.C. § 1051, et seq., and Indiana common law against Legend for its infringing use of the HYPERPURE mark in derogation of NIBCO’s registered trademarks HYDRAPURE®. NIBCO hereby seeks (1) injunctive relief; (2) all damages arising from Legend’s past and present infringement; and (3) an award of NIBCO’s attorney fees and costs for having to bring this suit to enforce its trademark rights.

**THE PARTIES**

2. Plaintiff NIBCO is an Indiana corporation with its principal place of business at 1516 Middlebury Street, Elkhart, Indiana 46515.

3. Upon information and belief, Defendant Legend is a Michigan corporation with its principal place of business at 300 N. Opdyke Road, Auburn Hills, Michigan 48326.

Defendant markets and/or sells HYPERPURE flexible plumbing pipes, including those that are the subject of the allegations herein, in the state of Indiana.

### **JURISDICTION AND VENUE**

4. This is an action for trademark infringement and unfair competition in violation of Sections 32 and 43 of the Lanham Act, 15 U.S.C. §§ 1114(1) and 1125(a), and trademark infringement and unfair competition in violation of Indiana common law.

5. This Court has original subject matter jurisdiction under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a), and has supplemental jurisdiction under 28 U.S.C. § 1367(a). Venue is proper in the District pursuant to 28 U.S.C. § 1391(b).

6. Upon information and belief, Legend is subject to the jurisdiction of this Court because it does business in the state of Indiana and has transacted business relating to the subject matter of the claims asserted here in the state of Indiana and within this District.

### **FACTS APPLICABLE TO ALL COUNTS**

#### **PLAINTIFF AND ITS TRADEMARKS**

7. NIBCO is a well-respected, worldwide provider of valves, fittings, and flow control products for commercial, industrial, residential, and irrigation markets.

8. On or about August 1, 2012, NIBCO began using the HYDRAPURE<sup>®</sup> trademark on pipe fittings. NIBCO has offered pipe fittings and related parts and continues to offer and sell pipe fittings and related parts under the HYDRAPURE<sup>®</sup> trademark to distinguish its pipe fittings and related parts and from those of others.

9. On February 16, 2013, NIBCO obtained a federal registration for its HYDRAPURE<sup>®</sup> trademark for “metal pipe fittings, namely, tubing, fluid conduits, couplings, elbows, T’s, Y’s, connectors, adapters, caps, joints, unions, and valves” (collectively, “pipe

fittings”). NIBCO is the owner of this Registration, Registration No. 4,296,125, attached hereto as Exhibit A.

10. On April 2, 2013, NIBCO obtained a federal registration for its HYDRAPURE<sup>®</sup> design trademark for “metal pipe fittings, namely, tubing, fluid conduits, couplings, elbows, T’s, Y’s, connectors, adapters, caps, joints, unions, and valves” (collectively, “pipe fittings”). NIBCO is the owner of this Registration, Registration No. 4,314,186, attached hereto as Exhibit B (collectively, the “HYDRAPURE<sup>®</sup> trademarks”).

11. The HYDRAPURE<sup>®</sup> trademarks are well-recognized by the consuming public and are relied upon as identifying NIBCO as the sole source of pipe fittings. As a result, NIBCO’s HYDRAPURE<sup>®</sup> trademarks have acquired substantial goodwill and are valuable commercial assets.

12. NIBCO’s HYDRAPURE<sup>®</sup> trademarks qualify for the broadest scope of protection from infringement and unauthorized use available under federal and state law.

#### **DEFENDANT AND ITS INFRINGING TRADEMARK**

13. Upon information and belief, Legend, in common with the public, is well aware of the vast and valuable goodwill and reputation represented and symbolized by NIBCO’s HYDRAPURE<sup>®</sup> trademarks.

14. Upon information and belief, Legend, having knowledge of NIBCO’s HYDRAPURE<sup>®</sup> trademarks, offers for sale, and sells in interstate commerce, including in this District, flexible plumbing pipes bearing the HYPERPURE trademark. See Exhibit C attached hereto.

15. Legend’s HYPERPURE mark is sufficiently similar to NIBCO’s HYDRAPURE<sup>®</sup> trademarks and creates the identical commercial impression when used on related goods. Indeed,

Legend's HYPERPURE mark uses the thicker and bold font for the first five letters of the mark, just as NIBCO does.

**HyperPure**      

Thus, Legend uses in commerce a reproduction, counterfeit, copy, or colorable imitation of NIBCO's registered HYDRAPURE<sup>®</sup> trademarks. Upon information and belief, Legend deliberately chose and continues to use the HYPERPURE mark to call to mind and associate its products with NIBCO's HYDRAPURE<sup>®</sup> trademarks, and to appropriate and benefit from the reputation and goodwill of NIBCO's HYDRAPURE<sup>®</sup> trademarks.

16. Legend uses the HYPERPURE mark on flexible plumbing pipes that are sufficiently similar to the goods on which NIBCO uses its HYDRAPURE<sup>®</sup> trademarks. Legend targets the same consumers (including, without limitation, distributors, retailers, and end users) as NIBCO, and distributes its products through the same channels of trade.

17. Upon information and belief, Legend is, was, and continues to be well aware of the valuable goodwill and reputation represented by NIBCO's HYDRAPURE<sup>®</sup> trademarks.

18. Legend's HYPERPURE products are being sold, and are likely to continue being sold, throughout the United States in the same geographic markets as NIBCO's HYDRAPURE<sup>®</sup> products. Upon information and belief, Legend derives and will continue to derive substantial revenue from sales of the HYPERPURE products in interstate commerce.

19. Legend's activities are likely to cause confusion or mistake or to deceive consumers, including, without limitation, retailers and end users, into believing that its HYPERPURE plumbing pipes and related parts are manufactured by NIBCO or are sponsored, licensed, or authorized by, or affiliated, connected, or otherwise associated with NIBCO or its

products. This confusion is likely to cause, has caused, and will continue to cause NIBCO's HYDRAPURE<sup>®</sup> trademarks to lose their ability to serve as unique identifiers of NIBCO's pipe fittings.

20. Legend's actions as aforementioned are intentional, willful, and in bad faith, and were committed with full knowledge of NIBCO's prior ownership of the HYDRAPURE<sup>®</sup> trademarks and NIBCO's exclusive right to use and control the use of such marks.

21. Legend has acted and continues to act intentionally, willfully, and in bad faith with the intent to capitalize upon NIBCO's intellectual property rights and goodwill.

22. Legend's use of HYPERPURE to identify its flexible plumbing pipes has significantly injured NIBCO's interests and will continue to do so unless immediately enjoined. Specifically, Legend (a) has traded upon and threatens to trade upon the significant and valuable goodwill established by NIBCO; (b) has, is, and will continue to cause confusion among the public as to the source of and affiliation with Legend's HYPERPURE plumbing pipes with respect to NIBCO's HYDRAPURE<sup>®</sup> pipe fittings; and (c) has damaged and threatens to further damage the significant and valuable goodwill established by NIBCO.

23. NIBCO has no adequate remedy at law.

**COUNT I  
FEDERAL TRADEMARK INFRINGEMENT**

24. NIBCO repeats the allegations of Paragraphs 1 through 23 of this Complaint.

25. Legend's aforementioned use in commerce of the HYPERPURE mark has caused, is causing, and will continue to cause consumer confusion as to the source, identity, and origin of the goods in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114. Such use is unauthorized.

26. As a direct and proximate result of Legend's actions, NIBCO has suffered and will continue to suffer great damage to its business, goodwill, reputation, profits, and the strength of its trademarks. The injury to NIBCO is and continues to be ongoing and irreparable. An award of monetary damages alone cannot fully compensate NIBCO for its injuries.

27. The foregoing acts of infringement have been and continue to be deliberate, willful, and wanton, making this an exceptional case within the meaning of 15 U.S.C. § 1117.

**COUNT II**  
**FEDERAL UNFAIR COMPETITION / FALSE DESIGNATION OF ORIGIN**

28. NIBCO repeats the allegations of Paragraphs 1 through 27 of this Complaint.

29. Legend's products bearing the HYPERPURE mark are being sold, advertised, and distributed in United States commerce.

30. The activities of Legend constitute the use of words, terms, and names and combinations thereof that have previously, are currently, and will continue to cause confusion or to cause mistake or to deceive as to the affiliation, connection, or association of Legend with NIBCO, or as to the origin, sponsorship, or approval of Legend's goods, services, or commercial activities by NIBCO.

31. Legend had actual knowledge of NIBCO's ownership of the registered HYDRAPURE<sup>®</sup> trademarks, and Legend committed the foregoing acts with full knowledge that they were infringing upon NIBCO's rights.

32. Legend's activities as set forth above constitute violations of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

33. As a proximate result of Legend's actions, NIBCO has suffered and will continue to suffer great damage to its business, goodwill, reputation, profits, and the strength of its

trademarks. The injury to NIBCO is and continues to be ongoing and irreparable. An award of monetary damages alone cannot fully compensate NIBCO for its injuries.

34. The foregoing acts of infringement have been and continue to be deliberate, willful, and wanton, making this an exceptional case within the meaning of 15 U.S.C. § 1117.

**COUNT III  
COMMON LAW TRADEMARK INFRINGEMENT**

35. NIBCO repeats the allegations of Paragraphs 1 through 34 of this Complaint.

36. The acts of Legend constitute trademark infringement in violation of Indiana common law.

37. The acts of Legend have caused and are continuing to cause great and irreparable harm to NIBCO and, unless permanently enjoined by this Court, such irreparable harm will continue.

**COUNT IV  
COMMON LAW UNFAIR COMPETITION**

38. NIBCO repeats the allegations of Paragraphs 1 through 37 of this Complaint.

39. The acts of Legend constitute unfair competition in violation of Indiana common law.

40. The acts of Legend have caused and are continuing to cause great and irreparable harm to NIBCO and, unless permanently enjoined by this Court, such irreparable harm will continue.

**COUNT V  
FEDERAL TRADEMARK DILUTION**

41. NIBCO repeats the allegations of Paragraphs 1-40 of this Complaint.

42. As a result of NIBCO's long, wide-spread, and continuous use and promotion of the HYDRAPURE<sup>®</sup> trademarks and the subsequent recognition of the HYDRAPURE<sup>®</sup>

trademarks by the trade and consumers of NIBCO's pipe fittings, the HYDRAPURE<sup>®</sup> trademarks are distinctive and famous under 15 U.S.C. § 1125(c).

43. Legend's use of the HYPERPURE mark occurred after NIBCO's HYDRAPURE<sup>®</sup> trademarks. The use of the HYPERPURE mark by Legend is likely to cause and will cause the dilution of the distinctive quality of NIBCO's HYDRAPURE<sup>®</sup> trademarks.

44. Legend's use of the HYPERPURE mark has caused and is likely to cause dilution by blurring. Legend willfully intended to trade on the recognition of NIBCO's HYDRAPURE<sup>®</sup> trademark in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

45. The acts of Legend have caused and are continuing to cause great and irreparable harm to NIBCO and, unless permanently enjoined by this Court, such irreparable harm will continue.

46. NIBCO is also seeking monetary damages in an amount not yet determined.

#### **PRAYER FOR RELIEF**

WHEREFORE, NIBCO respectfully requests judgment against Legend as follows:

A. Preliminarily and permanently enjoining and restraining Legend and its respective officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with Legend from using the HYPERPURE mark, or any mark that is confusingly or deceptively similar to NIBCO's HYDRAPURE<sup>®</sup> trademarks, either alone or in conjunction with other words or symbols, as party of any trademark, service mark, logo, trade name, corporate name, assumed name, domain name, or in relation to any goods sold or distributed by Legend, or in any other manner.

B. Directing such other relief as the Court may deem appropriate to prevent the trade and public from forming any erroneous impression that any product sold or otherwise distributed



or promoted by Legend is authorized by NIBCO or related in any way to NIBCO's pipe fittings and related products.

C. Directing Legend, pursuant to 15 U.S.C. § 1118, to destroy all literature, signs, labels, prints, packages, wrappers, containers, advertising materials, Internet content, stationary, software, and any other items in their possession or control which contain the infringing designation HYPERPURE, or any term confusingly or deceptively similar to NIBCO's HYDRAPURE<sup>®</sup> trademarks, either alone or in combination with other words or symbols and to destroy all plates, molds, matrices, masters, and other mean of making any of those infringing items.

D. Directing Legend to file with the Court and to serve upon NIBCO within thirty (30) days after service of an injunction in this action, a written report by Legend, under oath, setting forth in detail the manner in which Legend has complied with the injunction.

E. Awarding NIBCO all damages permitted by 15 U.S.C. § 1117, including trebled damages.

F. Awarding NIBCO all profits, gains, benefits, and advantages derived by Legend from its unjust enrichment and other conduct as alleged herein.

G. Awarding NIBCO its damages by reason of Legend's acts of common law trademark infringement, unfair competition, unjust enrichment, and federal dilution in an amount to be established at trial.

H. Awarding NIBCO exemplary and/or punitive damages by reason of Legend's willful, intentional, and malicious acts described herein, in an amount to be established at trial.

I. Awarding NIBCO reasonable attorney fees pursuant to 15 U.S.C. § 1117(a), and the costs of this action.

J. Awarding NIBCO such further relief as this Court deems just and proper.

**JURY TRIAL**

NIBCO demands a trial by jury on all issues so triable.

Respectfully submitted,

Dated: May 6, 2016

s/Matthew J. Gipson

Matthew J. Gipson (P60169)  
mgipson@priceheneveld.com  
PRICE HENEVELD LLP  
695 Kenmoor, S.E. | P.O. Box 2567  
Grand Rapids, Michigan 49501  
T 616.949.9610 | F 616.957.8196  
*Attorneys for Plaintiff NIBCO Inc.*