



IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

DEXAS INTERNATIONAL, LTD.,	§	
	§	Civil Action No.
Plaintiff,	§	
	§	1:18-cv-3284
v.	§	
	§	JURY DEMANDED
MENARD, INC.,	§	
	§	
Defendant.	§	

**ORIGINAL COMPLAINT WITH REQUEST FOR PERMANENT INJUNCTIVE
RELIEF AND DAMAGES AND JURY DEMAND**

Plaintiff, Dexas International, Ltd., for its complaint against Defendant Menard, Inc., would respectfully show the Court as follows:

I. PARTIES

1. Plaintiff Dexas International, Ltd. (“Dexas”) is a Texas limited partnership with its principal place of business at 585 South Royal Lane, Suite 200, Coppell, TX 75019.
2. Defendant Menard, Inc. is a Wisconsin corporation with its principal place of business at 5101 Menard Drive, Eau Claire, WI 54703.

II. JURISDICTION AND VENUE

3. This is an action for copyright infringement arising under the Copyright Laws of the United States, 17 U.S.C. §§ 101, et seq., with subject matter jurisdiction based on 28 U.S.C. §1338(a).
4. The Court has personal jurisdiction over Defendant, and venue is proper in this

District, in that Defendant has sufficient contacts in the State of Indiana and this District to satisfy Due Process. In addition, Defendant is a foreign for-profit corporation registered with the Indiana Secretary of State to do business in Indiana. Venue is proper in the Southern District of Indiana under 28 U.S.C. §§1400(a) with §§1391(b), (c) and (d).

III. COPYRIGHT INFRINGEMENT

5. In 2013, a Dexas employee created within the scope of his employment an original visual art work entitled “Dexas Cutting Board Photo.” The work is a photograph of a patented Dexas cutting board in typical use. In 2014, the photograph was published in the product insert label used by Dexas with its cutting board. A copy of the photograph is attached hereto as Pleading Exhibit A.

6. On April 4, 2018, Dexas applied for registration of the copyright to the photograph, by delivering electronically the deposit, application and fee required for registration to the United States Copyright Office. Dexas received Registration No. VA 2-118-094 from the United States Copyright Office. A copy of the registration is attached hereto as Pleading Exhibit B.

7. The “Dexas Cutting Board Photo” contains copyrightable subject matter under the laws of the United States, and Dexas owns all rights in the work and the copyright therein as a work for hire.

8. Dexas has complied with the laws of the United States as they relate to copyright, 17 U.S.C. §§ 101, et seq., and has secured the exclusive rights and privileges in and to the copyright of the photograph.

9. All publication, distribution and sale of the copyrighted work by or under the authorization of Dexas has been in conformity with the Copyright Laws of the United States, which no longer require a copyright notice to avoid loss of copyright.

10. In 2017, and possibly earlier, Defendant began selling a “household trends” “Collapsible Colander Cutting Board Set” with the label insert of Exhibit C, which includes an unauthorized copy of, or derivative work based upon, the copyrighted Dexas Cutting Board Photo. On information and belief, the “household trends” “Collapsible Colander Cutting Board Set” with the infringing label insert is manufactured or imported by Defendant and sold retail to consumers. Thus, Defendant has manufactured, imported, published, sold and/or distributed the unauthorized copies of, or derivative works based upon, the Dexas Cutting Board Photo, causing those copies or derivative works to be sold to consumers in this state and elsewhere.

11. The copyrighted and infringing photos are shown top and bottom for comparison on the following page.

[Intentionally left blank]



Dexas's Copyrighted Photo



Defendant's Infringing Label Insert (trimmed for emphasis)

12. Defendant's copyright infringement has caused Dexas damages and irreparable harm. Defendant will continue its infringement unless it is permanently enjoined.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays for judgment as follows:

1. That Defendant, its agents, servants and employees and all those in privity, concert or participation with any of them, be enjoined from manufacturing, copying, duplicating, purchasing, making, using, selling, trading, renting, exchanging, lending, distributing, transporting, or dealing in any other way with any product, in violation of Dexas's copyright in the Dexas Cutting Board Photo work;

2. That Defendant be required to account for and pay over to Dexas all profits which it has derived from the infringement of Dexas's copyright;

3. That Defendant be ordered to deliver up for destruction all products, labels, signs, prints, packages, dies, wrappers, receptacles and advertisements in its possession or under its control, including or referring to Dexas's copyright in the "Dexas Cutting Board Photo" work, or any simulation, reproduction, counterfeit, copy or colorable imitation thereof, and all plates, molds, matrices and other means of making the same;

4. That Defendant be required to pay Dexas its costs incurred herein, as well as reasonable attorneys' fees, as provided by the Copyright Laws;

5. That Defendant be required to pay Dexas pre-judgment interest on the amount awarded and post-judgment interest until paid, all at the lawful rate; and

6. That Dexas have such other and further relief as to this Court seems just and proper.

JURY DEMAND: Plaintiff demands a trial by jury on all issues triable to a jury.

DATED: October 25, 2018.

Respectfully submitted,

/s/ Deborah Pollack-Milgate
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