

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION



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GEMA USA, INC.,

*Plaintiff,*

v.

FIRST IN FINISHING INC.,

*Defendant.*

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Case No.: 1:22-cv-2053

**COMPLAINT**

Plaintiff, Gema USA, Inc. (“Gema”), for its Complaint against Defendant, First in Finishing Inc., states and alleges as follows:

**NATURE OF ACTION**

1. Gema brings this action against Defendant seeking an injunction, damages, and other equitable relief for Defendant’s willful infringement of United States Design Patent Nos. D667,080 (“’080 Patent”), D657,015 (“’015 Patent”), D670,356 (“’356 Patent”), and D670,786 (“’786 Patent”) (collectively, the “Asserted Patents”) and for Defendant’s acts of willful trademark infringement, false advertising, and unfair competition. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.* and under the Lanham Act, 15 U.S.C. § 1051 *et seq.*

2. As a direct and proximate result of Defendant’s willful infringement of Gema’s patents and trademarks, Gema has suffered irreparable harm and will continue to suffer irreparable harm unless and until Defendant is enjoined from further infringement by this Court.

### **PARTIES**

3. Plaintiff Gema USA, Inc. has its principal place of business located at 4141 West 54th Street, Indianapolis, IN 46254. Gema, along with an affiliate company, Gema Switzerland GmbH (“Gema Switzerland”), is a worldwide leader in the design and manufacture of electrostatic powder coating products, including manual and automatic powder guns, powder coating control units, and powder feed systems. Gema sells a variety of powder guns and spray equipment in this district and throughout the United States.

4. Upon information and belief, Defendant First in Finishing Inc. is an Indiana Corporation with its principal place of business located at 141 E. South Street, Mooresville, Indiana 46113.

5. Upon information and belief, Defendant sells its products at issue in this case throughout the United States, including in this judicial district.

6. Upon further information and belief, Defendant sells and offers to sell products at issue in this case through a fully interactive website maintained at <https://www.firstinfinishing.net> to customers in this judicial district and throughout the United States.

7. Upon further information and belief, Defendant is the operator of the website <https://www.firstinfinishing.net>.

### **JURISDICTION AND VENUE**

8. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.* and the Lanham Act, 15 U.S.C. § 1051, *et seq.* Accordingly, this Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a), and 15 U.S.C. § 1121.

9. This Court has personal jurisdiction over Defendant because, among other reasons, Defendant regularly conducts business in this judicial district, has purposefully directed infringing acts to this district, has its principal place of business in this district, is incorporated in this district and/or has otherwise availed itself of the privileges and protections of the laws of the State of Indiana, such that this Court's assertion of jurisdiction over Defendant does not offend traditional notions of fair play and due process.

10. Among other things, Defendant has advertised, offered to sell, and sold products that infringe the Asserted Patents within the Northern District of Indiana. On information and belief, Defendant maintains a website at <https://www.firstinfinishing.net>, on which Defendant has advertised, offered to sell, and sold infringing products.

11. Venue is proper in this district under the provisions of 28 U.S.C. §§ 1391(b) and (c), and 1400(b) because, among other reasons, Defendant's infringing acts that give rise to the claims have occurred in this judicial district and have been directed to citizens of this judicial district. Venue in this district is also proper because Defendant is incorporated in this district and maintains principal offices in this district.

### **GEMA AND ITS INTELLECTUAL PROPERTY**

12. Gema, along with its affiliate company, Gema Switzerland, is an internationally recognized leader in the design and manufacture of electrostatic powder coating products, including manual and automatic powder guns, powder coating control units, and powder feed systems, and sells high quality powder spray equipment products under numerous patents and federally registered trademarks, including the Asserted Patents.

13. On September 11, 2012, the USPTO duly issued the '080 Patent, which is entitled "Powder Spray Gun."

14. Gema Switzerland is the owner of the entire right, title, and interest in and to the '080 Patent. Gema is the exclusive licensee of the '080 patent with the exclusive right to sublicense, transfer and enforce the '080 patent. A true and correct copy of the '080 Patent is attached as Exhibit A.

15. On April 3, 2012, the USPTO duly issued the '015 Patent, which is entitled "Powder Spray Gun."

16. Gema Switzerland is the owner of the entire right, title, and interest in and to the '015 Patent. Gema is the exclusive licensee of the '015 patent with the exclusive right to sublicense, transfer and enforce the '015 patent. A true and correct copy of the '015 Patent is attached as Exhibit B.

17. On November 6, 2012, the USPTO duly issued the '356 Patent, which is entitled "Powder Spray Coating Cart."

18. Gema Switzerland is the owner of the entire right, title, and interest in and to the '356 Patent. Gema is the exclusive licensee of the '356 patent with the exclusive right to sublicense, transfer and enforce the '356 patent. A true and correct copy of the '356 Patent is attached as Exhibit C.

19. On November 13, 2012, the USPTO duly issued the '786 Patent, which is entitled "Control Unit for Powder Spray Applications."

20. Gema Switzerland is the owner of the entire right, title, and interest in and to the '786 Patent. Gema is the exclusive licensee of the '786 patent with the exclusive right to sublicense, transfer and enforce the '786 patent. A true and correct copy of the '786 Patent is attached as Exhibit D.

21. Since at least as early as 2002, and long before the acts of Defendant alleged herein, Gema has continuously and prominently used the federally registered GEMA trademark and other trademarks in connection with powder coating equipment and similar goods to denote the source of its high-quality products and services.

22. Gema Switzerland is the owner, and Gema is the exclusive licensee with the exclusive right to sublicense, transfer and enforce, numerous federally registered trademarks on the USPTO's Principal Register covering Gema's powder coating products, including at least the following ("the Gema Trademarks"), which have been in continuous use in interstate commerce by Gema since at least as early as each respective trademark's registration date:

Mark	Registration No.	Registration Date	Goods/Services
OPTISELECT	5204968	5/16/2017	IC 008: Manually operated powder coating guns and accessories therefore, namely, tips, nozzles and hoses, all for electrostatic spray coating.
OPTIGUN	2884776	9/14/2004	IC 007: Automatic spray coating devices, namely, spray guns for spraying [coating liquid or] coating powder onto an article to be coated. IC 008: Manual spray coating devices, namely, spray guns for spraying coating liquid or coating powder onto an article to be coated.
OPTIFLEX	3419946	4/29/2008	IC 007: Automatic electrostatic coating sprayers. IC 008: Manually operated electrostatic coating sprayers. IC 009: Electrical and electronic control units, control circuits, and controllers, each for automatically operating electrostatic spray coating devices, spray coating apparatus, and spray coating installations.
OPTISTAR	5718924	4/9/2019	IC 007: Automatic power operated powder coating spray guns attached to gun controllers, and parts therefor, namely, tips and nozzles, electric pumps for use with automatic power

			<p>operated powder coating spray guns and automatic electrostatic paint sprayers for electrostatic spray coating.</p> <p>IC 008: Manually operated powder coating spray guns and parts therefor, namely, tips and nozzles, all for electrostatic spray coating.</p>
GEMA	4665146	1/6/2015	<p>IC 006: Paint spray coating booths of metal</p> <p>IC 007: Automatic apparatus and devices for electrostatic powder coating by spraying; painting machines; filters for paint machines and paint sprayers; pneumatic conveyors, blowing machines, air suction machines, lifting apparatus for the transport of machines, pump diaphragms; exhaust units in the nature of air, dust, and paint particle suction machines, dust-exhausting installations in the nature of powered blowers; anti-vibration pads for paint machines and paint sprayers; cyclone separators; powder coating spray guns; parts of the aforesaid goods which are included in this class.</p> <p>IC 008: Hand-operated spraying devices and apparatus for electrostatic application for spray painting; hand-operated spray guns for paint, compressed air or powder; hand-operated sprayers; parts of the aforesaid goods which are included in this class.</p> <p>IC 009: Remote control apparatus for paint spraying guns.</p> <p>IC 019: Paint spray coating booths, not of metal</p>

23. The current status and information maintained by the USPTO for each of these registered trademarks are attached hereto as Exhibit E through Exhibit I.

24. The Gema Trademarks are valid and subsisting in full force and effect, most of which have become incontestable in accordance with 15 U.S.C. §§ 1065 and 1115(b), and constitute conclusive evidence of Gema's exclusive right to use the marks throughout the United States with respect to, *inter alia*, powder coating equipment.

**DEFENDANT AND ITS UNLAWFUL ACTIVITIES**

25. Upon information and belief, Defendant is in the business of selling knock-off Gema products, and has sought to willfully infringe upon Gema's intellectual property rights through its sale of competing and infringing powder spray coating products.

26. Upon information and belief, Defendant has registered, maintained, and is responsible for the domain name and corresponding web page at <https://www.firstinfinishing.net>. The website is used to advertise, offer for sale, sell, and distribute infringing products.

27. Defendant's website has expressly targeted foreseeable purchasers of Gema's products in the State of Indiana and elsewhere.

28. Defendant's website uses the Gema Trademarks to advertise and describe Defendant's products without Gema's authorization.

29. Defendant's website includes a statement on the home page under the heading "Who is First In Finishing and What Can We Provide" as follows: "Provide Powder Coating Equipment Sales on New Gema™ Powder Coating Equipment." *See* <https://www.firstinfinishing.net/>. Defendant is not an authorized Gema distributor and upon information and belief, Defendant does not sell "new" Gema products but rather sells knock-offs using the Gema Trademarks without authorization.

## *Who is First In Finishing and What Can We Provide?*

- Provide Powder Coating Equipment Sales on New Gema™ Powder Coating Equipment
  - Provide Rebuilt/Refurbished Gema™ Powder Coating Equipment.
  - Provide Powder Coating Spare Parts Sales
  - Provide Equipment Repairs on all Gema™ Powder Coating Equipment.
- Provide In-Plant Service's diagnostics, troubleshooting and debugging powder coating equipment.
- Provide In-Plant Training including equipment operation, function, application, maintenance and service
- Work with customers to determine their requirements for powder coating equipment to best fit their production needs while maintaining budget.
- Anything that Gema™ has manufactured since the 70's we are familiar with and have worked on regarding repairs, service or training.
- To provide an alternate source for powder coating equipment and spare parts that allows customers to save money.

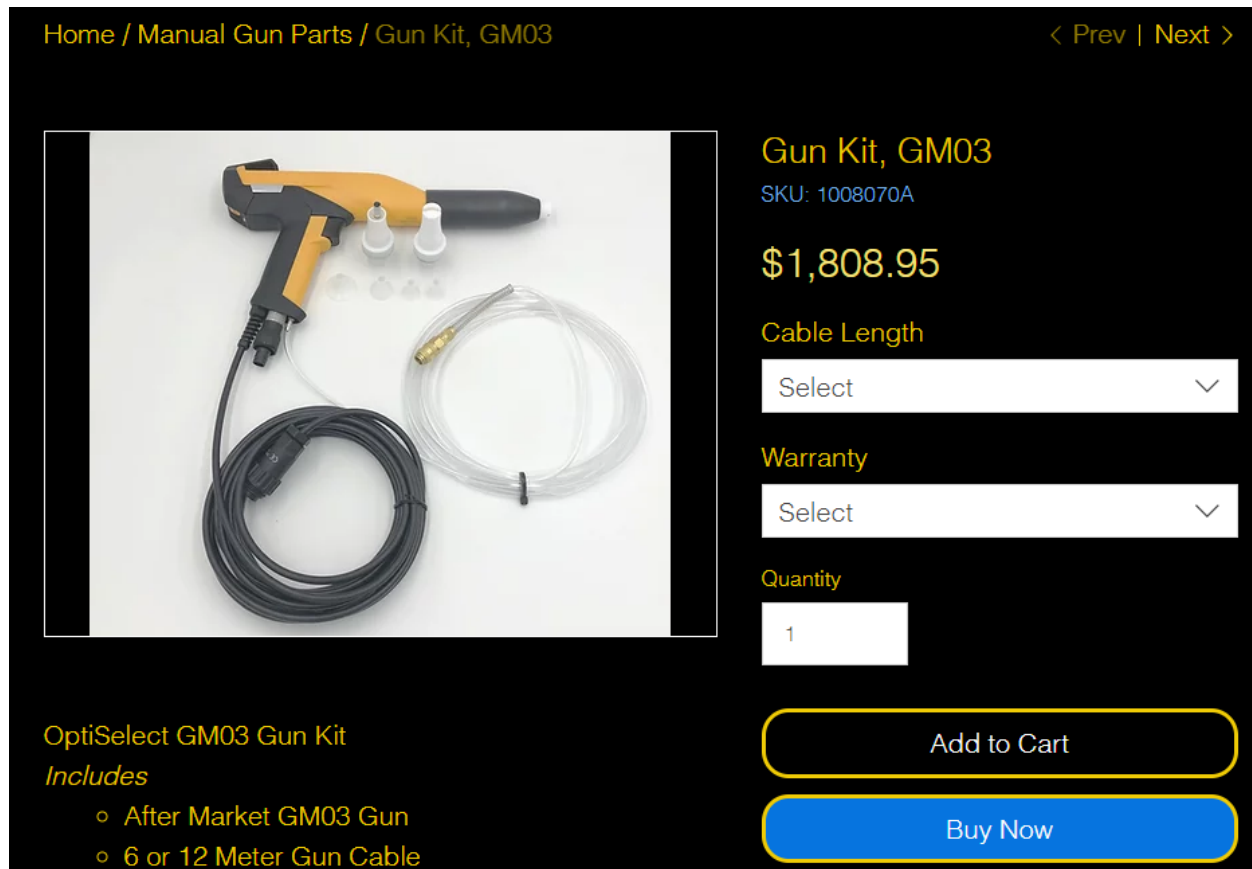
30. Defendant's website includes a "Manual Gun Parts" webpage for manual guns, including the OptiSelect GM02 Gun Kit, having part number 1002100A, that infringes the '080 Patent. *See* <https://www.firstinfinishing.net/product-page/gun-kit-gm02-with-remote-control>.



31. On information and belief, the gun offered for sale on this webpage is not a product manufactured and sold by Gema.



32. Defendant's website includes a "Manual Gun Parts" webpage for manual guns, including the OptiSelect GM03 Gun Kit, having part number 1008070A, that infringes the '080 Patent and the '015 Patent. *See* <https://www.firstinfinishing.net/product-page/gun-kit-gm03>.



33. On information and belief, the gun offered for sale on this webpage is not a product manufactured and sold by Gema.

34. At least until December 4, 2021 Defendant's website included a "Spare Parts" webpage for manual guns, including the Gema™ OptiSelect® GM03 Gun (Aftermarket) that sells a nozzle, having part number 1010160A or 1007931A, that infringes the '356 patent. A true and correct copy of Defendant's webpage retrieved from the Wayback Machine is attached as Exhibit J.

Products > Spare Parts > Manual Guns > Gema™ OptiSelect® GM03 Gun (Aftermarket) > 1010160A or 1007931A - Nozzle Assy, FS, 15mm, NF20/21, Standard, GM03/4, GA03



## 1010160A or 1007931A - Nozzle Assy, FS, 15mm, NF20/21, Standard, GM03/4, GA03

\$60.45

SKU: 1007931 or 1010160

35. On information and belief, the nozzle offered for sale on this webpage is not a product manufactured and sold by Gema.

36. Defendant's website includes a "Powder Pumps" webpage for manual gun parts, including the pump body, having part numbers 1006530A and 1007780A, for use with the OptiFlow® IG06 Powder Pumps that infringes the '786 Patent. *See* <https://www.firstinfinishing.net/product-page/pump-body-with-o-rings>.

Home / Powder Pumps / Pump Body, IG06, 1006530A < Prev | Next >



**Pump Body, IG06, 1006530A**  
SKU: 1006530A

**\$157.25**

Quantity

1

Add to Cart

Buy Now


Powder Pump Body, with O-Rings, Works with OptiFlow® IG06 Powder Pumps

37. On information and belief, the pump body offered for sale on this webpage is not a product manufactured and sold by Gema.

38. Defendant's website includes a "Manual Gun Parts" webpage that prominently features Gema's trademarks next to images and descriptions of Defendant's products, including the federally registered OPTISELECT trademark, Registration No. 520468.


39. The "Manual Gun Parts" webpage includes a link to a detailed product webpage, available at <https://www.firstinfinishing.net/product-page/gun-kit-gm02-with-remote-control>, for the "OptiSelect GM02 Gun Kit." This webpage does not indicate whether the gun offered for sale is a genuine Gema product, or otherwise:


Home / Manual Gun Parts / Gun Kit, GM02 (With Remote Control) < Prev | Next >



**Gun Kit, GM02 (With Remote Control)**  
SKU: 1002100A

**\$1,620.00**

**Warranty**  
Select 

**Quantity**  
1 

**Add to Cart**

**Buy Now**

**OptiSelect GM02 Gun Kit**  
*Includes*

- After Market GM02 Gun with Remote Control
- 6 Meter Gun Cable
- Rinising Tube Assembly
- 2 Flat Spray Nozzle Assemblies
- 1 Round Jet Nozzle Assembly
- 4 Round Jet Deflectors (Various Sizes)
- 1 Year Warranty included. Can Extend Warranty upto 3 years (Does not include Wear items/spare parts)

40. On information and belief, the OptiSelect Gun offered for sale on this webpage is not a product manufactured and sold by Gema.

41. The “Manual Gun Parts” webpage includes a link to a detailed product webpage, available at <https://www.firstinfinishing.net/product-page/gun-kit-gm03>, for the “OptiSelect GM03 Gun Kit.” This webpage does not indicate whether the gun offered for sale is a genuine Gema product, or otherwise:

Home / Manual Gun Parts / Gun Kit, GM03 < Prev | Next >



**Gun Kit, GM03**  
SKU: 1008070A

**\$1,808.95**

Cable Length  
Select ▼

Warranty  
Select ▼

Quantity  
1

**OptiSelect GM03 Gun Kit**  
*Includes*

- After Market GM03 Gun
- 6 or 12 Meter Gun Cable
- Rinising Tube Assembly

**Add to Cart**

**Buy Now**

42. On information and belief, the OptiSelect Gun offered for sale on this webpage is not a product manufactured and sold by Gema.

43. At least until December 4, 2021, the “New Manual Guns” webpage, previously available at [https://www.firstinfinishing.net/store/c51/New\\_Manual\\_Guns.html](https://www.firstinfinishing.net/store/c51/New_Manual_Guns.html), advertised an “OptiSelect Gun Kit, GM02.” A true and correct copy of Defendant’s webpage retrieved from the Wayback Machine is attached as Exhibit K.

All New Manual Guns Listed are Aftermarket Guns for Gema™ Equipment

## New Manual Guns



1002100A - OptiSelect Gun Kit, GM02,  
Negative, 6m, with Remote Control  
\$1,620.00

44. On information and belief, the OptiSelect Gun offered for sale on this webpage is not a product manufactured and sold by Gema.

45. The use of the registered OPTISELECT trademark is likely to cause consumer confusion or mistake as to the source of the gun offered for sale on Defendant's website.

46. At least until December 4, 2021, Defendant's website included an "Automatic Powder Guns" webpage that included links to both "refurbished" and "new" automatic gun product pages which prominently feature Gema's trademarks next to images and descriptions of Defendant's products, including the federally registered OPTIGUN trademark, Registration No. 2884776.

47. At least until December 4, 2021, the "New Automatic Guns" webpage, previously available at [https://www.firstinfinishing.net/store/c52/New\\_Automatic\\_Guns.html](https://www.firstinfinishing.net/store/c52/New_Automatic_Guns.html), advertised an "OptiGun Gun Kit, GA02, Negative, 12m." A true and correct copy of Defendant's webpage retrieved from the Wayback Machine is attached as Exhibit L.

All New Automatic Guns Listed are Aftermarket Guns for Gema™ Equipment

## New Automatic Guns



121500A or 361690A - Gun Kit, PG2-A, Negative, 6m, Refurbished  
\$1,203.95



393568A - OptiGun Gun Kit, GA02, Negative, 12m  
\$1,620.00



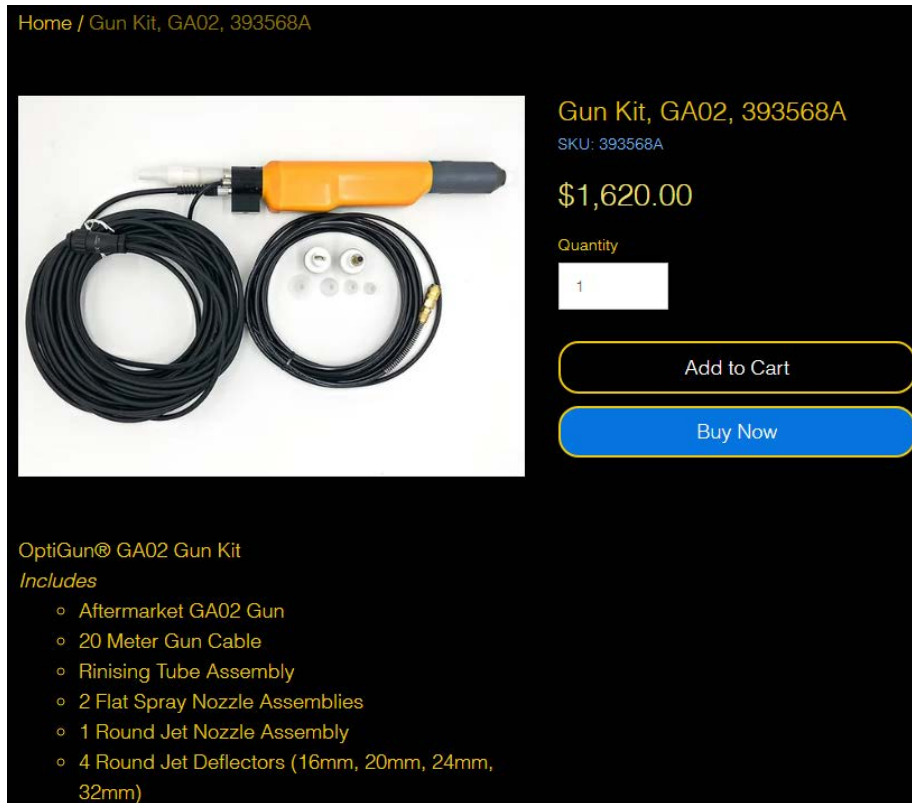
GA02-AX1250 Aftermarket  
\$1,295.00

48. On information and belief, the “new” OptiGun gun kits offered for sale on this webpage are not products manufactured and sold by Gema.

49. Defendant’s website includes an “Automatic Gun Parts” webpage that prominently features Gema’s trademarks next to images and descriptions of Defendant’s products, including the federally registered OPTIGUN trademark, Registration No. 2884776.

50. The “Automatic Gun Parts” webpage includes a link to a detailed product webpage, available at <https://www.firstinfinishing.net/product-page/gun-kit-ga02> , for the “OptiGun® GA02 Gun Kit” gun kit. This webpage does not indicate whether the gun offered for sale is a genuine Gema product, or otherwise:





51. On information and belief, the OptiGun gun kit offered for sale on this webpage is not a product manufactured and sold by Gema.

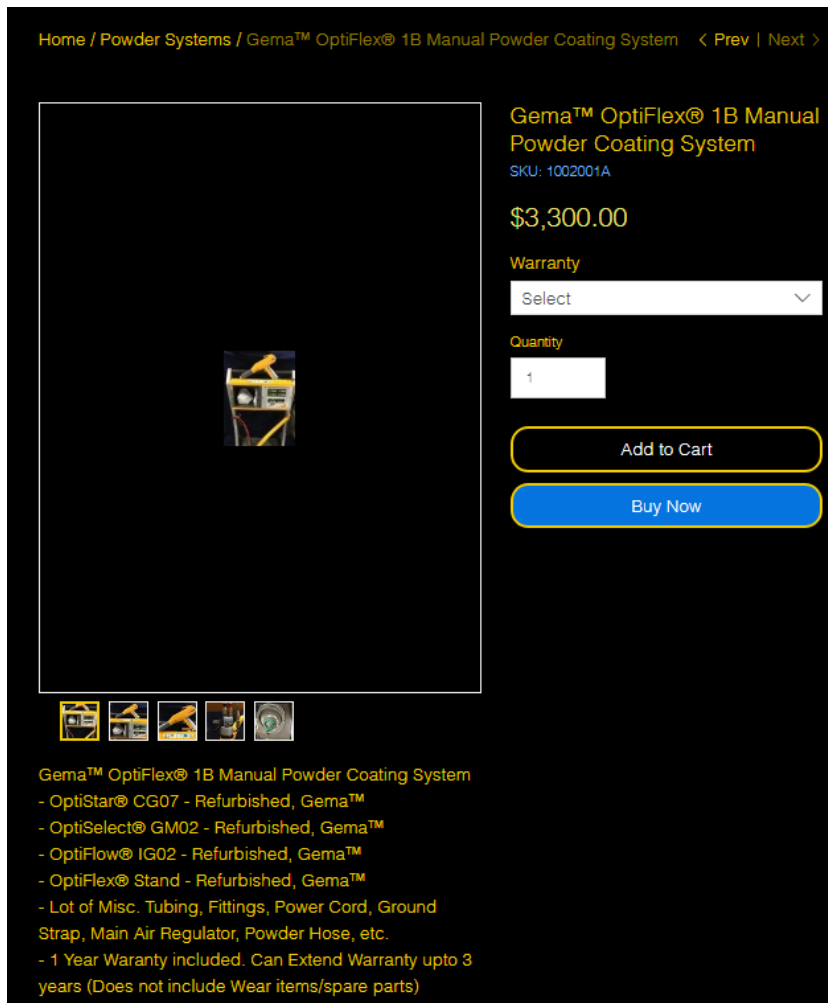
52. The use of the registered OPTIGUN trademark is likely to cause consumer confusion or mistake as to the source of the gun kit offered for sale on Defendant's website.

53. Defendant's website includes a "Powder Systems" webpage that includes links to powder coating systems, available at <https://www.firstinfinishing.net/powdersystems>, which prominently features Gema's trademarks next to images and descriptions of Defendant's products, including the federally registered OPTIFLEX trademark, Registration No. 3419946, and the GEMA trademark, Registration No. 4665146.

54. The "Powder Systems" webpage includes a link to a detailed product webpage for the "Gema<sup>TM</sup> OptiFlex<sup>®</sup> 1B Manual Powder Coating System," available at <https://www.firstinfinishing.net/product-page/gema-optiflex-1b-manual-powder-coating-system>.



This webpage does not indicate whether the system offered for sale is a genuine Gema product, or otherwise:



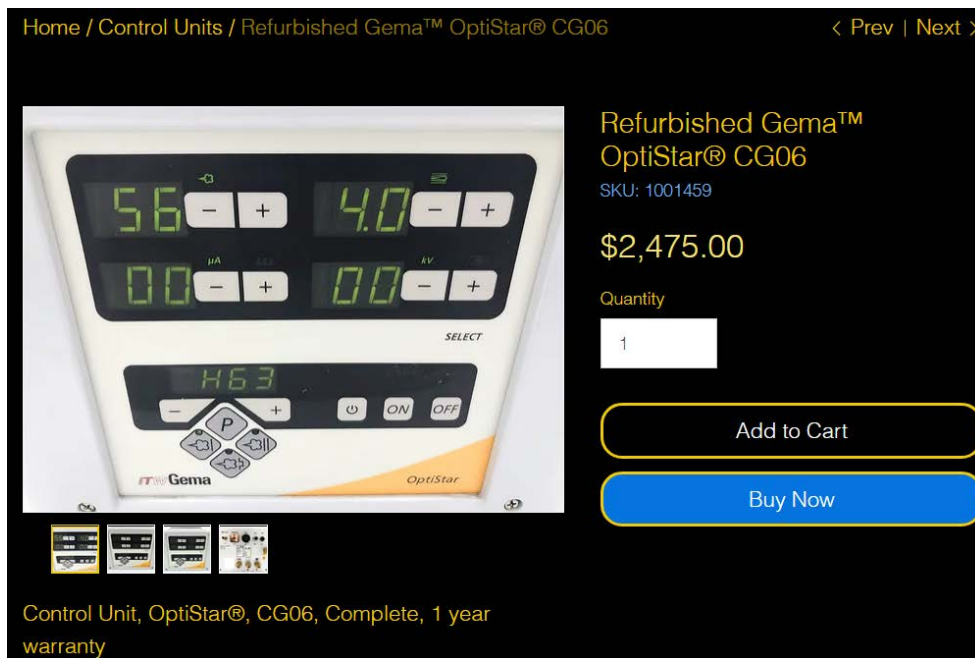
55. On information and belief, the “Gema™ OptiFlex®” manual powder system product offered on this webpage is not a product manufactured and sold by Gema.

56. The use of the registered GEMA and OPTIFLEX trademarks is likely to cause consumer confusion or mistake as to source of the manual powder system product offered for sale on Defendant’s website.

57. Defendant’s webpage includes a “Control Units” webpage that advertises various “Refurbished Gema™” control unit products, available at

<https://www.firstinfinishing.net/controlunits>, which prominently features Gema's trademarks next to images and descriptions of Defendant's products, including the federally registered OPTISTAR trademark, Registration No. 3389812.

58. The "Control Units" webpage includes a link to a detailed product webpage for the "Refurbished Gema™ OptiStar® CG06," available at <https://www.firstinfinishing.net/product-page/refurbished-gema-optistar-cg06>. This webpage does not indicate whether the control unit offered for sale is a genuine Gema product, or otherwise:



59. On information and belief, the "Gema™ OptiStar®" control unit offered on this webpage is not a product manufactured and sold by Gema.

60. The use of the registered GEMA and OPTISTAR trademarks is likely to cause consumer confusion or mistake as to source of the control unit products offered for sale on Defendant's website.

61. Defendant's actions complained of herein have been deliberate, willful, malicious and in bad faith, with the intent to mislead consumers and inflict injury on Gema. This is an exceptional case under 35 U.S.C. § 285.

62. Upon information and belief, Defendant is undertaking all of the above-referenced acts of infringement in the State of Indiana and, more particularly, in this judicial district.

**FIRST CLAIM FOR RELIEF**  
**(Direct Infringement of the '080 Patent, in Violation of 35 U.S.C. § 271(a)-(c))**

63. Gema restates and realleges each of the allegations set forth above.

64. Defendant has been and is now directly infringing the '080 Patent in violation of 35 U.S.C. § 271(a)-(c), in this judicial district and elsewhere, by importing, selling and/or offering for sale, or actively inducing or contributing to the importation of, selling and/or offering for sale of, products, including, without limitation, the gun having part number 1002100A, each of which infringes upon the '080 Patent.

65. Upon information and belief, Defendant has willfully, deliberately, intentionally, inequitably, and in bad faith infringed the '080 Patent without reasonable basis to believe it had the right to do so, and engaged in other conduct injurious to Gema as evidenced by the totality of the circumstances.

66. Upon information and belief, Defendant will continue to engage in the acts complained of herein unless restrained and enjoined, all to Gema's irreparable damage. While Gema is entitled to recover damages for Defendant's infringement of the '080 Patent, such damages alone are insufficient to compensate Gema for the irreparable harm caused by Defendant's infringement.

67. By reason of the acts of Defendant alleged herein, Gema has suffered damage in an amount to be proved at trial.

**SECOND CLAIM FOR RELIEF**

**(Direct Infringement of the '015 Patent, in Violation of 35 U.S.C. § 271(a)-(c))**

68. Gema restates and realleges each of the allegations set forth above.

69. Defendant has been and is now directly infringing the '015 Patent in violation of 35 U.S.C. § 271(a)-(c), in this judicial district and elsewhere, by importing, selling and/or offering for sale, or actively inducing or contributing to the importation of, selling and/or offering for sale of, products, including, without limitation, the gun having part number 1008070A, each of which infringes upon the '015 Patent.

70. Upon information and belief, Defendant has willfully, deliberately, intentionally, inequitably, and in bad faith infringed the '015 Patent without reasonable basis to believe they had the right to do so, and engaged in other conduct injurious to Gema as evidenced by the totality of the circumstances.

71. Upon information and belief, Defendant will continue to engage in the acts complained of herein unless restrained and enjoined, all to Gema's irreparable damage. While Gema is entitled to recover damages for Defendant's infringement of the '015 Patent, such damages alone are insufficient to compensate Gema for the irreparable harm caused by Defendant's infringement.

72. By reason of the acts of Defendant alleged herein, Gema has suffered damage in an amount to be proved at trial.

**THIRD CLAIM FOR RELIEF**

**(Direct Infringement of the '356 Patent, in Violation of 35 U.S.C. § 271(a)-(c))**

73. Gema restates and realleges each of the allegations set forth above.

74. Defendant has been and is now directly infringing the '356 Patent in violation of 35 U.S.C. § 271(a)-(c), in this judicial district and elsewhere, by importing, selling and/or offering for sale, or actively inducing or contributing to the importation of, selling and/or offering for sale of, products, including, without limitation, the nozzle having part numbers 1010160A or 1007931A, each of which infringes upon the '356 Patent.

75. Upon information and belief, Defendant has willfully, deliberately, intentionally, inequitably, and in bad faith infringed the '356 Patent without reasonable basis to believe they had the right to do so, and engaged in other conduct injurious to Gema as evidenced by the totality of the circumstances.

76. Upon information and belief, Defendant will continue to engage in the acts complained of herein unless restrained and enjoined, all to Gema's irreparable damage. While Gema is entitled to recover damages for Defendant's infringement of the '356 Patent, such damages alone are insufficient to compensate Gema for the irreparable harm caused by Defendant's infringement.

77. By reason of the acts of Defendant alleged herein, Gema has suffered damage in an amount to be proved at trial.

**FOURTH CLAIM FOR RELIEF**  
**(Direct Infringement of the '786 Patent, in Violation of 35 U.S.C. § 271(a)-(c))**

78. Gema restates and realleges each of the allegations set forth above.

79. Defendant has been and is now directly infringing the '786 Patent in violation of 35 U.S.C. § 271(a)-(c), in this judicial district and elsewhere, by importing, selling and/or offering for sale, or actively inducing or contributing to the importation of, selling and/or offering for sale of, products, including, without limitation, the pump having part numbers 1006530A and 1007780A," each of which infringes upon the '786 Patent.

80. Upon information and belief, Defendant has willfully, deliberately, intentionally, inequitably, and in bad faith infringed the '786 Patent without reasonable basis to believe they had the right to do so, and engaged in other conduct injurious to Gema as evidenced by the totality of the circumstances.

81. Upon information and belief, Defendant will continue to engage in the acts complained of herein unless restrained and enjoined, all to Gema's irreparable damage. While Gema is entitled to recover damages for Defendant's infringement of the '786 Patent, such damages alone are insufficient to compensate Gema for the irreparable harm caused by Defendant's infringement.

82. By reason of the acts of Defendant alleged herein, Gema has suffered damage in an amount to be proved at trial.

**FIFTH CLAIM FOR RELIEF**  
**(Trademark Infringement, 15 U.S.C. §§ 1114 and 1125(a))**

83. Gema restates and realleges each of the allegations set forth above.

84. Gema is the exclusive licensee of the Gema Trademarks registered with the USPTO, which appear on the Principal Register as set forth in Exhibits E through I.

85. Since at least as early as 2002, Gema has used the Gema Trademarks in the United States in connection with the marketing and sale of a wide variety of powder coating equipment.

86. During this time, the Gema Trademarks have acquired substantial goodwill and a secondary meaning in the mind of the consuming public as identifying goods manufactured and sold by Gema.

87. The Gema Trademarks are exclusively licensed by Gema and are valid and subsisting in full force and effect.

88. Defendant willfully and knowingly used and continues to infringe upon the Gema Trademarks in interstate commerce for purposes of selling powder coating equipment bearing the Gema Trademarks in the United States, without Gema's consent.

89. Defendant is not authorized by Gema to use the Gema Trademarks in any manner.

90. Defendant's unauthorized use of the Gema Trademarks on its website and its sale of powder coating equipment using trademarks confusingly similar or identical to the registered trademarks exclusively licensed to Gema to identify Defendant's goods constitutes use in commerce that has caused or is likely to cause confusion, mistake, or deception of the public as to the source or origin of Defendant's goods.

91. These acts constitute federal trademark infringement of the Gema Trademarks in violation of 15 U.S.C. §§ 1114 and 1125(a).

92. Defendant's acts of trademark infringement were committed with the intent to cause confusion and mistake, and to deceive, and to trade on the goodwill of Gema.

93. As a result of Defendant's acts of trademark infringement in violation of 15 U.S.C. §§ 1114 and 1125(a), Gema has suffered damages, including lost profits in an amount to be proven at trial, severe and irreparable harm to its trade reputation and goodwill, and has no adequate remedy at law.

94. Gema is entitled to recover its damages caused by Defendant's infringement of the Gema Trademarks and disgorge Defendant's profits from its willfully infringing sales and unjust enrichment.

95. Gema is entitled to injunctive relief under 15 U.S.C. § 1116 because it has no adequate remedy at law for Defendant's infringement and, unless Defendant is permanently enjoined, Gema will suffer irreparable harm.

96. Gema is entitled to enhanced damages and attorney's fees under 15 U.S.C. § 1117(a) because Defendant has willfully, intentionally, maliciously, and in bad faith infringed on the Gema Trademarks.

**SIXTH CLAIM FOR RELIEF**  
**(Trademark Counterfeiting Under 15 U.S.C. §§ 1114 and 1116)**

97. Gema restates and realleges each of the allegations set forth above.

98. Defendant's unauthorized use of the Gema Trademarks on Defendant's products that are not genuine Gema products constitutes use of counterfeit marks identical with, or substantially indistinguishable from the genuine Gema Trademarks that are registered on the Principal Register of the USPTO for use in connection with Gema's products.

99. Defendant's acts have caused and/or are likely to cause confusion, mistake, or deception as to source, origin, sponsorship, or approval of those goods offered for sale or sold by Gema.

100. Defendant's acts constitute use in commerce of reproductions, copies, or colorable imitations of the Gema Trademarks in connection with the advertising, offering for sale, and sale of goods or services, and constitute trademark counterfeiting of the Gema Trademarks in violation of 15 U.S.C. §§ 1114(1) and 1116(d).

101. As a result of Defendant's actions, Defendant has been unjustly enriched and Gema has suffered damages, severe and irreparable harm to its trade reputation and goodwill, and has no adequate remedy at law.

**SEVENTH CLAIM FOR RELIEF**  
**(Unfair Competition and False Designation of Origin, 15 U.S.C. § 1125(a))**

102. Gema restates and realleges each of the allegations set forth above.



103. Defendant has willfully and knowingly used, and continue to use, the Gema Trademarks in interstate commerce for the purposes of selling Defendant's products without Gema's consent.

104. The products Defendant advertises and sells bearing the Gema Trademarks are not authorized for sale by Gema.

105. The products Defendant advertises and sells bearing the Gema Trademarks do not abide by, and interfere with, Gema's quality controls and/or requirements, as those products are materially different from Gema's genuine products.

106. Defendant's unauthorized use of the Gema Trademarks in view of the manner in which the trademarks are used and displayed together on Defendant's website with Defendant's products, is likely to cause confusion, cause mistake, and/or deceive consumers because it suggests that the products Defendant offers originate with Gema and/or are of the same quality as the products originating from Gema.

107. Defendant's unauthorized use of the Gema Trademarks is likely to cause confusion or mistake, and/or to deceive customers as to the origin of Defendant's goods because it suggests affiliation, connection or association of Defendant with Gema.

108. Defendant's unauthorized advertisement and sale of products bearing the Gema Trademarks are in violation of 15 U.S.C. § 1125(a) in that Defendant has used in connection with its products a false designation of origin, a false or misleading description and representation of fact which is likely to cause confusion, and to cause mistake, and to deceive as to the affiliation, connection or association of Defendant's products with Gema and as to origin, sponsorship, and approval of Defendant's products.

109. Defendant's unauthorized advertisement and sale of products bearing the Gema Trademarks were committed with the intent to cause confusion, mistake and to deceive the public.

110. As a proximate result of Defendant's actions, Gema has suffered and will continue to suffer, damages to its business, goodwill, reputation, and profits in an amount to be proven at trial.

111. Gema is entitled to recover its damages caused by Defendant's unfair competition, and to disgorge Defendant's profits from its willful acts of unfair competition.

112. Gema is entitled to injunctive relief under 15 U.S.C. § 1116 because it has no adequate remedy at law for Defendant's unfair competition and, unless Defendant is permanently enjoined, Gema will suffer irreparable harm.

113. Gema is entitled to enhanced damages and attorney's fees under 15 U.S.C. § 1117(a) because Defendant's acts of unfair competition were made willfully, intentionally, maliciously, and in bad faith.

**EIGHTH CLAIM FOR RELIEF**  
**(False Advertising Under 15 U.S.C. §§ 1125(a))**

114. Gema restates and realleges each of the allegations set forth above.

115. Defendant's website contains false and misleading information regarding the products of Gema and the products offered by Defendant which are disseminated to the relevant purchasing public. For example, Defendant's website states that it is selling "new" Gema powder coating equipment. These "new" products are not manufactured or distributed by Gema, nor authorized for sale by Gema. Thus, Defendant advertises on its website in a manner that falsely suggests that certain of its products are genuine Gema products.

116. Defendant has used, and continues to use, the Gema Trademarks without authorization to falsely advertise the products they sell, including falsely advertising that the products they sell are associated or affiliated with Gema and/or are made and sold under the Gema Trademarks.

117. Defendant's use of the Gema Trademarks in connection with the unauthorized advertising, promotion, and sale of products bearing the Gema Trademarks misrepresents the nature, characteristics, qualities, and origin of Defendant's products in violation of 15 U.S.C. § 1125(a)(1)(B) because it suggests that the products are those of Gema or are sold under a license from Gema.

118. Defendant's unauthorized use of the Gema Trademarks in connection with the unauthorized advertising, promotion, and sale of products bearing the Gema Trademarks is likely to cause and/or has caused confusion or mistake, or to deceive consumers because it suggests that Defendant is sponsored, authorized, or otherwise connected with Gema.

119. Defendant's unauthorized and deceptive use of the Gema Trademarks is material and likely to influence customers to purchase the products they sell, as consumers are likely to believe that products Defendant advertises using the Gema Trademarks are Gema products.

120. As a proximate result of Defendant's actions, Defendant has been unjustly enriched, and Gema has suffered, and will continue to suffer, damage to its business, goodwill, reputation, and profits in an amount to be proven at trial.

121. On information and belief such false and misleading information was intentionally and willfully included in Defendant's website for the purpose of damaging Gema.

122. Gema is entitled to recover its damages caused by Defendant's false advertising and disgorge Defendant's profits from its willful false advertising and unjust enrichment.

123. Gema is entitled to injunctive relief under 15 U.S.C. § 1116 because it has no remedy at law for Defendant's false advertising, and unless Defendant is permanently enjoined, Gema will suffer irreparable harm.

124. Gema is entitled to enhanced damages and attorneys' fees under 15 U.S.C. § 1117(a) because Defendant's false advertising was made willfully, intentionally, maliciously, and in bad faith.

### **JURY DEMAND**

125. A jury trial is demanded on all issues so triable, pursuant to Rule 38 of the Federal Rules of Civil Procedure.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Gema respectfully requests that the Court award the following relief:

- a. A judgment in favor of Gema that Defendant has infringed each of the Asserted Patents;
- b. A judgment in favor of Gema that Defendant has infringed the Gema Trademarks;
- c. Issuing temporary, preliminary, and permanent injunctions barring Defendant and all other actors acting in concert with it from infringing or inducing others to infringe each of the Asserted Patents and the Gema Trademarks, and/or engaging in any other act likely to confuse, mislead or deceive others into believing that Defendant, or its products, are connected with or sponsored, licensed, or approved by Gema, and/or engaging in any other act constituting unfair competition with Gema, or constituting an infringement or misappropriation of Gema's exclusive rights;
- d. A judgment that Defendant has willfully infringed the Asserted Patents;
- e. A judgment that Defendant has willfully infringed the Gema Trademarks;

f. A judgment and order requiring that Defendant shall account for and pay Gema the damages to which Gema is entitled as a consequence of Defendant's infringement of each of the Asserted Patents and the Gema Trademarks, such damages to be trebled because of the willful and deliberate character of the infringement;

g. A judgment and order requiring that Defendant shall additionally account for and pay Gema the damages and or disgorge profits for the period of infringement of each of the Asserted Patents and the Gema Trademarks following the period of damages established by Gema at trial;

h. A judgment and order that Gema is further entitled to pre-judgment and post-judgment interest;

i. A judgment and order finding that this case is exceptional and that Gema is entitled to its reasonable attorney fees, costs, and expenses that it incurs prosecuting this action under 35 U.S.C. § 285 and 15 U.S.C. § 1117; and

j. Any and all other award or relief that the Court deems just and equitable.

**[SIGNATURES APPEAR ON NEXT PAGE]**

Respectfully submitted,

/s/ Michael R. Limrick

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\* Motion Requesting *Pro Hac Vice* Admission to be  
filed