

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**



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VALCRUM, LLC,
a Texas Limited Liability Corporation,

Plaintiff,

v.

DEXTER AXLE COMPANY, LLC,
a Delaware Limited Liability Corporation,

Defendant.

CASE NO.: 3:24-cv-190

COMPLAINT

Plaintiff, Valcrum, LLC (“Valcrum” or “Plaintiff”), by and through its undersigned attorneys, for its Complaint against Defendant, Dexter Axle Company, LLC (“Dexter” or “Defendant”), alleges as follows:

I. THE PARTIES

1. Valcrum is a Texas corporation with its principal place of business located at 12320 Barker Cypress Road, Suite 600-105, Cypress, Texas 77429. Valcrum develops products for the trailer and axle markets.
2. Dexter is a Delaware corporation with its corporate headquarters and principal place of business located at 2900 Industrial Parkway East, Elkhart, Indiana, 46516.
3. Dexter manufactures and distributes axles and trailer accessories nationwide, including in this judicial district.

4. At all times relevant hereto Dexter was and is doing business in the State of Indiana sufficient to give rise to personal jurisdiction and venue in this forum.

II. JURISDICTION & VENUE

5. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 (federal question jurisdiction); and 28 U.S.C. § 1338(a) and (b) because this action arises under the Lanham Act (15 U.S.C. §§ 1051 - 1127); and 28 U.S.C. § 1367 (supplemental jurisdiction).
6. This Court has jurisdiction over this action under 28 U.S.C. § 1332 because (1) the amount in controversy exceeds \$75,000, exclusive of interest and costs, and (2) Each party is a citizen of a different state: Dexter's principal place of business is in Indiana; Valcrum's principal place of business is Texas.
7. This Court has personal jurisdiction over Defendant because Defendant conducted business within the State of Indiana and has committed the acts of trademark infringement and unfair competition, in this judicial district by the advertising, promotion and sale of trailer hubcaps which are confusingly similar, identical to and/or substantially indistinguishable from hubcaps bearing Valcrum's trademark.
8. This Court has personal jurisdiction over Defendant because it transacts business within the State of Indiana and in this judicial district; contracts to supply the infringing trailer hubcaps in Indiana; and resides and/or is domiciled in this judicial district. Defendant has established minimum contacts with the forum such that the exercise of personal jurisdiction over them would not offend traditional notions of fair play and substantial justice.

9. The Mutual Nondisclosure Agreement at issue specifically states that it is governed by the laws of the State of Indiana with regard to its “validity, construction, interpretation, performance, and enforcement.” The Mutual Nondisclosure Agreement between the parties states that the parties “...agree to submit to the exclusive jurisdiction of either the Courts of the State of Indiana or United States Federal District Courts within Indiana and agree to accept service of process...in accordance with Indiana or Federal rules of civil procedure.” Dexter should reasonably anticipate litigation would commence in the Northern District of Indiana by virtue of its agreement and has availed itself of that jurisdiction.
10. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

III. FACTS COMMON TO ALL CLAIMS FOR RELIEF

11. The issue at hand is related to hubcaps for medium-duty trailer axles. Medium-duty means that the axle is rated for 8,000 – 16,000 pounds. Hubcaps attach to the exterior (road-facing) portion of the axles, serving as a seal for the axles. These axles require either oil or grease to reduce friction and wear on the moving components within the axles. Valcrum’s customers are trailer axle retailers, distributors, and manufacturers throughout the United States. The founders and owners of Valcrum built this customer base through extensive personal efforts and significant investment of resources over the course of more than 5 years.
12. Valcrum is very well-known in the industry for providing innovative solutions to the needs of the trailer axle market, especially when it comes to their hubcaps. Valcrum started in 2018 out of a recognition that the offerings for trailer hubcaps

were insufficient to meet the needs of consumers. In light of the needs of freight forwarders and trailer repair customers for a more reliable, durable threaded hubcap, Valcrum developed the aluminum Universal Threaded Hubcap, a magnetic vent plug, and the Universal Lock Collar. All of these products improved upon on the existing options available to consumers by decreasing the loss of hubcaps, increasing the life of bearings, and reducing the need for maintenance and down-time.

13. Valcrum designed and developed a superior solution to the traditional options for hubcap designs by making them of metal rather than plastic and solving several other existing problems facing the average consumer, adding safety and longevity.
14. Valcrum made their design and appearance distinctive and recognizable by including a signature red hex bezel having a hexagonal outer perimeter and an inner diameter (“Valcrum’s Hubcaps” or “Valcrum Hubcaps”). This red hex bezel contrasts with the color of the rest of the hubcap, which is either gray or black. Prior to Valcrum’s Hucaps, the traditional hubcap design was normally made of a clear or opaque plastic, all being very similar in appearance to one another and made of one color rather than having contrasting colors. The red bezel is not a necessary result of a manufacturing process or due to a choice of materials. Valcrum specifically chose the color red for this hex bezel to identify the Valcrum Hubcaps as distinct from all others.
15. Beginning as early as late 2018, Valcrum began developing trademark and trade dress rights in this distinctive red hex design as applied to hubcaps. Valcrum developed these rights through the ubiquitous presence of the design in the trailer,

axle, and recreational vehicle industries achieved through Valcrum's extensive promotion of its brand. Valcrum has exclusively and continuously used these rights across the U.S.

16. The Valcrum Hubcaps, with their distinctive design, were prominently displayed at the 2019 North American Trailer Dealers Association ("NATDA") tradeshow. That display augmented an already significant presence in the marketplace. At that show, Valcrum's Hubcaps won the 2019 NATDA New Product of the Year. That high honor further elevated the stature of the product with its distinctive appearance and made a nationwide audience of industry professionals even more aware that Valcrum was the only source for its distinctive hubcap design, including Valcrum's signature red hex bezel design. (*See* Attached Exhibit A – Picture of Valcrum's NATDA Award).
17. Dexter was present at the 2019 NATDA tradeshow when Valcrum won the 2019 NATDA New Product of the Year for its hubcaps with the red hex bezel that are the subject of this suit.
18. By January 1, 2020, the distinctive Valcrum Hubcaps were standard equipment on all Lippert medium duty axles. Shortly thereafter, Valcrum's Hubcaps became standard equipment with numerous other OEM manufacturers. Some of those trailer manufacturers using the distinctive Valcrum's Hubcaps as standard equipment to this date are: Southland, Lamar, Maxx-D, Diamond C, Ranch King, Sure-Trac, Iron Bull, Felling, Midsota, PJ, Big Tex, HSI Duratek, and Elite Trailer. Through Lippert alone, more than 750 thousand (750,000) Valcrum Hubcaps have been sold since Valcrum Hubcaps first hit the market. Now,

Valcrum has no less than 131 distributors, and Valcrum Hubcaps can be found throughout the United States and Canada.

19. In addition to a robust aftermarket presence throughout the U.S. and Canada, while replacing the traditional single piece plastic hubcaps that routinely fail and being sold through numerous distributors throughout the country, Valcrum's Hubcaps having the red bezel are also a registered brand on amazon.com®. Valcrum has continued to be able to capitalize on its recognition as a source for high-quality and distinctive products.
20. In addition to its inherent distinctiveness, Valcrum has expended significant financial resources strengthening the association of its distinctive red hex bezel with Valcrum and Valcrum's goods, in particular the Valcrum Hubcaps. For several years, Valcrum has spent approximately \$7,000 each month in strengthening this association in the minds of the relevant consuming public in every state through search engine optimization (SEO) and a managed online presence.
21. Valcrum's trademark and trade dress are inherently distinctive and the resources that Valcrum has devoted to advertising, marketing, promotion, and sales have made the mark even more distinctive and attractive to customers. The bezel on the hubcap could be a variety of shapes without providing a practical advantage. The hubcaps do not need contrasting colors for any functional purpose. The contrasting colors are not essential to the operation of the hubcap.

22. As can be seen from the graphic below, Valcrum’s hubcaps are easily distinguished from other competitors, such as STEMCO, because of the red hex.

This is how it has been for 5 years, as Dexter well knows.

23. Everyone knows that the red hex indicates a quality hubcap, which is why Dexter made their new Fortress hubcap look so much like Valcrum’s hubcaps. The similarity of Dexter’s Fortress hubcap is shown next to Valcrum’s Hubcap below.

Another manufacturer’s hubcap is shown below to illustrate how similar Fortress is to Valcrum’s Hubcap.



Valcrum hubcap



Dexter “Fortress” hubcap



DuraCap hubcap

24. As can be seen from the DuraCap example above, the bezel can be circular, or a variety of other shapes. The function of the bezel simply secures the sight glass component to the rest of the hubcap. Similarly, the bezel can be any color. The bezel being red does not serve any function and is purely for identifying the hubcap as a Valcrum hubcap.

25. Valcrum has also expended significant effort and financial resources to ensure that the quality of the products associated with their valuable mark meets an exacting standard. These efforts at quality control have further contributed to the value of the red hex bezel mark and trade dress associated with Valcrum Hubcaps.

Valcrum's pervasive use of the red hex bezel design has created the association of the red hex bezel with Valcrum and Valcrum products in the minds of consumers, manufacturers, and distributors throughout the nation. A substantial portion of the consuming public identifies Valcrum's trademark and trade dress, i.e. the distinctive red hex bezel, with a particular source for high quality hubcaps.

26. Valcrum's ubiquitous and successful commercial use of the signature red hex bezel in association with their hubcap designs has earned them significant common law trademark rights. The use of Valcrum's trademark and trade dress, associated with the Valcrum Hubcaps, is so widespread that they are readily recognizable by the general consuming public and are properly considered famous. In light of the recognition of the red hex bezel and goodwill associated with it as a mark, Valcrum has filed for a federal trademark. The application for this trademark is pending, and Valcrum believes that it will be placed on the Principal Register.

27. In late 2020, Dexter needed Valcrum because *not* having Valcrum Hubcaps as original equipment on their axles meant that Dexter was losing sales. Dexter had a nationwide distribution network which showed the ostensible possibility for Valcrum's further expansion with the ultimate goal of saturation of the hubcap market. Dexter and Valcrum began working towards the development of a business relationship (or so Valcrum believed).

28. On November 2, 2020, as a condition of the business relationship between Dexter and Valcrum, Dexter and Valcrum executed a Mutual Nondisclosure Agreement ("NDA"). In this NDA, which was for a 3-year term from November 2020

through November 2023, Valcrum and Dexter agreed to disclose valuable confidential information to each other for the purposes of the agreement – “evaluating or advancing their *mutual* business relationship.” (emphasis added).
See Attached Exhibit B – NDA.

29. The NDA was written to facilitate Valcrum revealing its confidential information.

The NDA explicitly stated that the following information was confidential information:

- a. Business plans
- b. Financial information
- c. Pricing
- d. Customer, vendor and other business information.

30. The NDA further made clear that common sense should prevail and further stated that confidential information is information “that should reasonably have been understood by the Recipient [Dexter] to be proprietary and confidential to the Discloser [Valcrum] because of the legends or other markings, the circumstances of disclosure or the nature of the information itself.”

31. As part of the NDA, Dexter agreed “...not to alter, modify, disassemble, **reverse engineer**, or decompile the Confidential Information, except as specifically authorized in writing by [Valcrum].” (emphasis added)

32. The NDA was necessary because Valcrum was revealing the details of its entire book of established business to Dexter.

33. Dexter thought that Valcrum Hubcaps were such an important distinction and advantage to sell its own axles that Dexter demanded and got an exclusive supply

agreement with Valcrum, that was finalized with Adam Dexter's signature on February 4, 2021 ("Supply Agreement"). In exchange for Valcrum revealing its entire book of business, Dexter promised to expand that book of business even further by using its nationwide distribution channels.

34. Under the Supply Agreement, Valcrum was required to "send all inquiries and leads to the appropriate Dexter business unit in order for Dexter to effectively manage the sale and shipment of product to the customers with the respected Market Segment." This meant that all of Valcrum's existing customers would be sent to Dexter along with any new customers. Then, Dexter would send purchase orders to Valcrum for Valcrum Hubcaps and forward the products to customers so Dexter would act as the sole distributor of Valcrum Hubcaps. (*See Attached Exhibit C – Supply Agreement*).
35. Before the Supply Agreement, Valcrum sold its products directly to its customers at a Direct Price. After the arrangement under the Supply Agreement, the customers were still to be charged the Direct Price from Dexter. Because Dexter was responsible for distribution of Valcrum products under the Supply Agreement, Valcrum had to sell below the Direct Price to Dexter so that Dexter could profit from its distribution by selling Valcrum Hubcaps to customers at the Direct price.
36. Valcrum dutifully provided its previously existing customers and new customers to Dexter in accordance with the Supply Agreement. Valcrum performed all conditions precedent to the performance of Dexter's promissory obligations under the NDA and Supply Agreement, and at all times Valcrum acted in good faith

toward the formation, execution, and performance of the agreements Valcrum made with Dexter.

37. Advancing the “mutual business relationship” in a profitable manner to Valcrum required an increase in volume for Valcrum above what it was doing on its own.

In the event sales volume did not increase above what Valcrum sold before the Supply Agreement, Valcrum would not be materially better under the Supply Agreement in comparison with its own business efforts prior to the Supply Agreement.

38. Based on Dexter’s assertions, Valcrum was hopeful that the Supply Agreement would yield a mutually beneficial relationship. Therefore, Valcrum was committed to the relationship with Dexter according to the Supply Agreement.

39. Beginning as early as February 13, 2021, Valcrum started experiencing problems with their business relationship with Dexter.

40. Valcrum lost potential customers because of their exclusive Supply Agreement with Dexter.

41. Through the course of dealing between the parties under the NDA and the exclusive Supply Agreement, Dexter induced Valcrum to provide Confidential Information in the form of drawings and 3D models for the Valcrum Hubcaps. The Confidential Information provided by Valcrum included a “step” file which would enable Dexter to manufacture an exact copy of Valcrum’s Hubcaps.

42. The Confidential Information disclosed by Valcrum also included Valcrum’s list of customers, which Valcrum provided to Dexter to further the purposes of the Supply Agreement and is subject to the NDA. Valcrum provided this information

to Dexter because the purpose of the Supply Agreement was for Dexter and Valcrum to “...collaborate to grow sales and work collectively to strategize and grow Dexter axles and Valcrum product sales.” (See Attached Exhibit C - Supply Agreement, Section 2 – Exclusivity).

43. On or about September 10, 2021, Dexter followed Lippert’s lead and announced that it too would make Valcrum’s Hubcaps standard equipment on the axles offered for sale by Dexter.
44. Dexter proceeded to sell Valcrum Hubcaps in conjunction with its axles from 2021 until 2023. Dexter issued a press release regarding Valcrum Hubcaps being used on its axles and advertised Valcrum Hubcaps as a compatible aftermarket modification to Dexter’s axles. Dexter promoted and advertised Valcrum Hubcaps for sale on Dexter’s own website.
45. On June 8, 2022, Valcrum gave Dexter its required notice to cancel the Supply Agreement. Valcrum canceled the Supply Agreement because Dexter was not selling and distributing the Valcrum Hubcaps as expansively as Valcrum anticipated when they agreed to the Supply Agreement. Valcrum had been experiencing significant problems with their suppliers, including Dexter telling potential customers that they knew nothing about Valcrum Hubcaps and suppliers being left unable to get Valcrum Hubcaps from Dexter. (See Attached Exhibit D). After cancellation of the Supply Agreement, Dexter had no legitimate use for the confidential customer list which Valcrum had provided, and Dexter was still forbidden from using the Confidential Information to further their own purposes, per the terms of the NDA that was still in place.

46. “Confidential Information,” as defined in the Nondisclosure Agreement, not only includes business plans, financial, pricing, customer, vendor and other business information, but also “includes information that should reasonably have been understood by the Recipient to be proprietary and confidential to the Discloser because of legends or other markings, the circumstances of disclosure or the nature of the information itself.” (*See* Exhibit B, p. 1).
47. Under the “Restrictions of Use” section, Dexter’s duties with respect to Confidential Information are detailed. One of the duties that Dexter owes to Valcrum’s regarding the use of Confidential Information was “not to use or exploit the Confidential Information in any way except for the Purpose of this Agreement.” The Purpose of this Agreement, as previously stated, is to evaluate or advance the mutual business relationship of Valcrum and Dexter.
48. Before cancellation of the Supply Agreement, Valcrum inadvertently disclosed more Confidential Information to Dexter than necessary to effectuate the Supply Agreement including costs to manufacture Valcrum’s products including the hubcaps that were the subject of the Supply Agreement. Although it was obvious from the circumstances of the disclosure and that nature of the information itself, Valcrum immediately informed Dexter that the information was not meant to be disclosed and to destroy or return all copies of that information. Instead, Dexter used this Confidential Information to their advantage by giving preferential pricing on Valcrum products to further Dexter’s business relationships with other companies. Dexter’s receipt of this information incentivized Dexter to proceed forward with development of their own hubcap that is the subject of this suit.

49. Dexter used Valcrum's Confidential Information to further their own business at the expense of Valcrum's business. The fact that Dexter so blatantly violated the Mutual Nondisclosure Agreement reinforces the suspicion that Dexter has also violated the Agreement in other ways, including a concern that Dexter has disclosed or will disclose Valcrum's Confidential Information to third parties.
50. After cancellation of the Supply Agreement, Valcrum continued to provide Valcrum Hubcaps to Dexter, though the Supply Agreement no longer prevented Valcrum from also selling to others.
51. On December 7, 2022, Valcrum informed Dexter that Valcrum needed to raise the price that Dexter paid for their hubcaps.
52. Shortly thereafter, the supplier for castings of Valcrum Hubcaps informed Valcrum that Dexter had approached them attempting to obtain castings for hubcaps that were similar or identical to Valcrum Hubcaps. Valcrum's then supplier was in China and Dexter went to China in an attempt to source castings for hubcaps. The products for which Dexter sought castings were so similar to Valcrum's Hubcaps that the supplier felt obligated to inform Valcrum.
53. In late August 2023, it came to Valcrum's attention that Dexter had begun selling hubcaps that are indistinguishable from the Valcrum Hubcaps.
54. On or about August 26, 2023, the former "innovation specialist" of Dexter, Eric Schuh, published a self-laudatory post about the "Fortress" hubcap design, describing it as "new," when in fact, the design of the Fortress is indistinguishable from the Valcrum Hubcap design. (*See Attached Exhibit E – Schuh LinkedIn Post*).

55. Mr. Schuh's self-laudatory post about the these "new" oil caps states, "What I love about this is we solved multiple customer pain points, *around the current market leaders*, all while making this thing beautiful to look at." (emphasis added).

56. At the 2023 NATDA tradeshow, which was held several days later on August 30-31, Dexter showcased the Fortress as if it was a brand new product, even though it was a direct rip off of Valcrum's hubcaps.

57. Everyone at the NATDA tradeshow had good reason to believe that Dexter's Fortress originated from Valcrum because Valcrum Hubcaps won the 2019 New Project of the Year Award at the same tradeshow. (See Exhibit A) In fact, Valcrum had won several awards at this tradeshow in the immediately preceding years because of their popular and innovative products.

58. After seeing the Fortress at the NATDA tradeshow and in publications, multiple individuals within the industry approached the Valcrum booth at the same tradeshow, confused into thinking that the Fortress had come from Valcrum. Even after the tradeshow, Valcrum continued to receive communications indicating confusion about the source of Dexter's "new" hubcap. (See Attached Exhibit F – Secondary Meaning Text).

59. Some attendees at the 2023 NATDA tradeshow asked members of Valcrum whether Dexter had purchased Valcrum.

60. October 30, 2023, Valcrum sent a Cease-and-Desist Letter to Dexter, identifying infringement of Valcrum's intellectual property rights and urging Dexter to cease all sales of hubcaps having the distinctive red hex bezel because of the actual

confusion and risk of further damage to Valcrum's mark. (See Attached Exhibit G – Cease-and-Desist Letter).

61. Despite this letter detailing Dexter's infringement, Dexter continues to offer for sale and to sell hubcaps that are highly similar to the point of being indistinguishable from Valcrum's designs and that use Valcrum's distinctive red hex bezel ("Accused Hubcaps") in the same outlets and channels of interstate commerce in which Valcrum sells Valcrum Hubcaps. Dexter advertises the Accused Hubcaps to *the same customers or consumers* that purchase Valcrum Hubcaps. Dexter has sold its infringing Fortress hubcaps to customers that formerly bought Valcrum Hubcaps.
62. On November 3, 2023, Dexter ordered 5,000 threaded hubcap plugs from Valcrum in anticipation of significant future sales of the Accused Hubcaps. This order makes it clear that there is more than an existential threat of confusion and substantial permanent damage to Valcrum's brand. The Purchase Order shows that Dexter anticipates or is attempting to sell a significant number of Accused Hubcaps. The threaded plugs Dexter ordered fit Valcrum Hubcaps and fit the Accused Hubcaps.
63. This Purchase Order also shows that Dexter hastily built its Fortress hubcaps before working out its own supply chain to produce the same. This fact indicates a threat of permanent damage to Valcrum's brand through poor craftsmanship or quality control on the part of Dexter.
64. Dexter is using the confidential customer list obtained from Valcrum during the effective period of the exclusive Supply Agreement to sell the Accused Hubcaps

to Valcrum's customers, forming agreements that interfere with Valcrum's business relationships and ability to sell the Valcrum Hubcaps.

65. Dexter's attempts to market the Accused Hubcaps to the very same customers as Valcrum have been so successful that multiple Valcrum customers have been confused into thinking that the Accused Hubcaps represent a joint venture between Dexter and Valcrum.

66. Dexter is selling the Accused Hubcaps at the scale that Valcrum anticipated Dexter would sell Valcrum Hubcaps under the Supply Agreement, even though Dexter had never sold Valcrum Hubcaps at that scale during the effective period of the Supply Agreement.

67. On information and belief, Dexter entered into the NDA and the Supply Agreement as a means of facilitating their dutiful copy of Valcrum's trademarked product and the seamless substitution of Dexter's own product in its place.

68. Dexter used Valcrum's customer base to market its own Fortress product.

69. Dexter's willful and intentional promotion, importation, distribution, and sale of the Accused Hubcaps, which copy Valcrum's mark, has caused actual confusion in the marketplace, and is likely to continue to cause confusion, deception, and mistake on the part of the relevant consuming public regarding Valcrum's Hubcaps and Dexter's Accused Hubcaps bearing the infringing designation.

70. Dexter has willfully infringed Valcrum's red hex bezel mark and trade dress because Dexter has intentionally sought to misappropriate and trade on the valuable goodwill and reputation Valcrum has developed and established in association with the design of the Valcrum Hubcaps. Dexter intended to capitalize

on the fame of Valcrum's trade mark and trade dress by passing off Valcrum's design as their own. The overall impression of the Fortress is indistinguishable from the Valcrum Hubcap.

71. Dexter's willful infringement of Valcrum's valuable mark is likely to cause irreparable damage to Valcrum's brand because Valcrum cannot exercise any control over the manufacturing process or distribution of the Accused Hubcaps, and the Accused Hubcaps are likely to contain design defects or manufacturing defects likely to result in negative experiences consumers will associate with the Accused Hubcaps. Because the Accused Hubcaps are so confusingly similar to Valcrum's Hubcaps, these negative associations will be imputed to Valcrum Hubcaps, which constitutes irreparable damage to Valcrum's mark and brand.
72. Dexter's intentional, willful, malicious, and wanton promotion, importation, marketing, and sale of the Accused Hubcaps which bear a confusingly similar, identical and/or substantially indistinguishable designation, is causing and will continue causing irreparable harm to Valcrum's reputation and goodwill and to the value of Valcrum's mark unless Dexter's unauthorized conduct is enjoined.
73. Dexter has made and continues to make substantial profits and/or gains from the sales of Accused Hubcaps, to which they are not entitled in law or equity.
74. On information and belief, Dexter intends to continue their infringing, wrongful, malicious, reckless, and unfair acts unless restrained by this Court.
75. Dexter's acts have damaged and will continue to damage Valcrum, and Valcrum has no adequate remedy at law.

COUNT I – Breach of Contract

Mutual Nondisclosure Agreement

76. Valcrum realleges and incorporates by reference all the preceding paragraphs.
77. The NDA was executed by Dexter and Valcrum on November 2, 2020 and provides that the agreement continues until terminated, which occurred November 2, 2023 (*See Exhibit B - “Term and Termination” provision, p. 1 of 4*).
78. Dexter’s obligations with respect to the Confidential Information are to continue until three (3) years after the date of termination. Dexter’s obligations with respect to trade secret Confidential Information survive “...as long as such information qualifies as a trade secret under applicable law.” Dexter’s obligations with respect to Confidential Information continue at least until November 2, 2023.
79. Dexter’s obligations with respect to Confidential Information, among others, include:
- a. Not to “use or exploit the Confidential Information in any way except for the Purpose of this Agreement;” and
 - b. Not to “alter, modify, disassemble, reverse engineer, or decompile the Confidential Information, except as specifically authorized in writing by [Valcrum].”
80. Dexter breached this NDA after Valcrum inadvertently sent Dexter Confidential Information that was more than necessary to effectuate Purpose of the NDA (that purpose being to evaluate or advance their mutual business relationship), and Valcrum identified it as sensitive information that should not have been provided.

Dexter breached the NDA by using this inadvertently provided Confidential Information to draw Valcrum's customers to Dexter.

81. Dexter further breached the NDA when it took Confidential Information provided to it by Valcrum while the NDA was in effect and proceeded to make use of this information to make a dutiful copy of the Valcrum Hubcaps and market them as the Fortress.
82. Dexter used Valcrum's confidential list of customers as a shortcut to solicit its own business and used that confidential information in violation of the NDA to further Dexter's own business interests against the interest of Valcrum.
83. An announcement of Dexter's release of the Fortress was done on or about August 26, 2023, by Eric Schuh. This announcement came at a time when Dexter was required by explicit agreement to not exploit Confidential Information under the NDA.
84. Dexter's reproduction and copy of Valcrum's Hubcaps and rebranding them as the Fortress is misuse of Confidential Information and in violation of the NDA.
85. Dexter's marketing, advertisement, offers for sale, and sale of Fortress are causing damage to Valcrum and Valcrum's brand, in violation of the intent, purpose, and express provisions of the NDA.
86. Dexter further breached the NDA when it used Valcrum's confidential customer list to directly compete with Valcrum with a confusingly similar product. The NDA designates this customer information as Confidential Information and requires Dexter to "not to use or exploit the Confidential Information in any way except for the Purpose of this Agreement."

87. Dexter has no valid excuse or defense at law for failing to comply with its obligations under the NDA.
88. Valcrum did not provide any authorization or waiver of any provision, express or implied, that would allow Dexter to make use of the Confidential Information to produce a copy of the Valcrum Hubcaps. Neither did Valcrum provide any authorization or waiver of any provision, express or implied, that would allow Dexter to use Valcrum's confidential customer list to launch a copycat product.
89. Dexter induced Valcrum to sign the NDA and the Supply Agreement so that Dexter would have access to the Confidential Information which they then used to infringe Valcrum. Not only did Dexter obtain the Confidential Information it needed to reverse-engineer and copy the Valcrum Hubcaps; they also obtained the Confidential Information they needed to take the place of Valcrum Hubcaps in the hands of Valcrum's own customers.
90. On information and belief, Dexter never had the intention stated as the purposes of the NDA and Supply Agreement. Instead, Dexter agreed to the NDA and the Supply Agreement in order to obtain Confidential Information from Valcrum for Dexter's own purposes.
91. Valcrum has made good faith efforts to resolve this dispute arising out of the NDA, but the parties have not resolved the controversy. (*See Attached Exhibit G – Cease and Desist Letter and Additional Emails*)
92. Without relief from this Court, Valcrum has every reason to believe that it will suffer immediate harm.

93. Because the parties recognized that monetary damages would likely be insufficient to compensate for a breach of this agreement, Valcrum and Dexter’s NDA includes a provision that guarantees additional remedies in the event of a “reasonable belief of immediate harm.” These additional remedies include “immediate court ordered injunctive relief,” and “reasonable attorneys’ fees and costs from the other party.” The NDA specifies that “Such remedies shall not be deemed to be the exclusive remedies for a breach of this Agreement but shall be *in addition to all other remedies available at law or equity to either party.*” (emphasis added)

94. Dexter has willfully and egregiously breached the provisions of the Mutual Nondisclosure Agreement, and Valcrum has suffered significant damages as a result. Pursuant to the provisions of the NDA and contract law, Valcrum is entitled to consequential damages arising out of Dexter’s breach of agreement, injunctive relief, attorney fees, and costs for this action.

COUNT II – Federal Trademark & Trade Dress Infringement & Unfair Competition

Lanham Act (15 U.S.C. §1125(a))

95. Valcrum realleges and incorporates by reference all the preceding paragraphs.

96. Dexter makes, imports, distributes, uses, offers to sell and/or sells in the United States, including in this district, the Accused Hubcaps that directly infringe Valcrum’s trademark and/or trade dress in violation of §43(a) of the Lanham Act, 15 U.S.C. §1125(a) and Federal Unfair Competition laws.

97. Valcrum has actively marketed, promoted, advertised, and continuously sold its high-quality hubcaps bearing the inherently distinctive red hex bezel mark for 5 years such that the relevant purchasing public has come to identify Valcrum as the source and origin of the high-quality hubcaps offered with the Valcrum red hex bezel mark.
98. Dexter has intentionally and maliciously used an infringing, identical, and/or substantially indistinguishable red hex bezel design without authorization and continues to trade off the goodwill and reputation created and maintained by Valcrum in its trade mark and trade dress. The contemporaneous use by Dexter of a mark confusingly similar to, identical to and/or substantially indistinguishable from Valcrum's red hex bezel mark on Dexter's Accused Hubcaps has caused actual confusion and is likely to continue causing confusion and mistake in the trade, deception and defrauding of purchasers, and confusion as to the origin, sponsorship or affiliation of Dexter's goods with those of Valcrum. Valcrum's customers are likely to be confused that Valcrum sponsors or is responsible for Dexter's goods, and customers will have occasion to purchase Dexter's goods erroneously, tricked into believing that Valcrum's standards of quality and service apply to Dexter's infringing goods, thereby doing great and irreparable harm to Valcrum's reputation. Dexter's acts deceive and mislead the public into believing that Dexter's products are actually Valcrum's products or are otherwise sponsored, authorized, endorsed, supervised, and/or guaranteed by Valcrum.

99. Valcrum's mark is inherently distinctive, strong, and well known throughout the United States and has generated millions of dollars in sales over the years through its inherent and acquired distinctiveness. Dexter willfully and intentionally copied Valcrum's distinctive and valuable red hex bezel mark and trade dress to expand into the medium trailer axle hubcap market by trading on the goodwill and reputation of Valcrum's mark and trade dress. Valcrum's Hubcaps and the Accused Hubcaps are identical and/or very closely related and are used by the same customers for the same purposes in the same market.

100. Both Valcrum and Dexter use similar advertising in promoting and selling their directly competing products. In fact, at the 2023 NATDA tradeshow, samples of the Fortress and Valcrum's Hubcaps were treated as interchangeable on trailer models. Dexter acted willfully with malicious intent intending to harm Valcrum and to defraud consumers in its meticulous copying of Valcrum's red hex bezel mark and trade dress and in incorporating the confusingly similar, identical, and/or substantially indistinguishable mark and trade dress with Dexter's Accused Hubcaps. The overall impression of the Accused Hubcaps is indistinguishable from the overall impression of the Valcrum Hubcaps so that the selling of the Accused Hubcaps unfairly competes with Valcrum and infringes Valcrum's trade dress.

101. Dexter caused confusion between the two products due to the manner in which they advertised Valcrum's Hubcaps and the manner in which they advertised the Accused Hubcaps. Dexter advertised Valcrum Hubcaps on their own website as a compatible replacement part for Dexter's axles, extolling the

virtues of Valcrum Hubcaps as an original equipment upgrade. (*See Attached Exhibit H – Valcrum on Dexter’s website*).

102. Dexter, after selling Valcrum Hubcaps on Dexter’s website, began selling the Accused Hubcaps on the same website to the same customers, nowhere clarifying that the Accused Hubcaps are not sponsored by, affiliated with, or originating from the same source as the confusingly similar, and/or identical Valcrum Hubcaps.

103. This blurring of distinction between Valcrum Hubcaps and the Accused Hubcaps is yet another example of Dexter attempting to capitalize on Valcrum’s hard-earned recognition in the marketplace.

104. In violation of 15 U.S.C. §1125(a), Dexter, in connection with their infringing and red hex bezel mark and design, intentionally “used in commerce a word, term, name or device, or combination thereof, or any false designation of origin, false or misleading description of fact or false or misleading representation of fact,” which was and/or “is likely to cause confusion, or to cause mistake, or to deceive as to an affiliation, connection, or association” with Valcrum.

105. Dexter’s conduct as alleged herein constitutes unfair competition, false designation, description or representation; false advertising; and/or unfair or deceptive trade practices that are likely to cause confusion or mistake by the public in violation of 15 U.S.C. §1125(a).

106. As a direct and proximate result of the acts alleged herein, Valcrum has suffered, and will continue to suffer, damages to its business, reputation, and goodwill and monetary damages and lost profits in an amount not yet determined.

Dexter's actions have caused, and unless Dexter is enjoined by the Court, will continue to cause, irreparable harm and injury to Valcrum. The damages caused by Dexter's actions are not susceptible to any ready or precise calculation because such damages involve not only lost profits, but also lost business opportunities, loss of goodwill, and the impairment of the integrity of Valcrum's trademark and trade dress. Accordingly, monetary damages alone cannot fully compensate Valcrum for Dexter's misconduct, and Valcrum lacks an adequate remedy at law and is entitled to preliminary and permanent injunctive relief pursuant to 15 U.S.C. § 1116. This fact is further manifested in the express intent of the parties, as articulated in the NDA and previously explained herein in Count I.

107. Unless enjoined by this Court, Valcrum has every reason to believe that Dexter will continue to exploit the Confidential Information obtained under the cover of the NDA and induced by the Supply Agreement, especially Valcrum's customer and pricing information, to further enable and facilitate the infringement of Valcrum's trade mark and trade dress.

108. Unless enjoined by this Court, Valcrum has every reason to believe that Dexter will continue to make misleadingly similar reproductions of Valcrum's well-known hubcaps with the red bezel and to pass off Dexter's hubcaps as provided by, sponsored by, or associated with Valcrum, all to Valcrum's irreparable injury. This threat of ongoing and future injury to Valcrum's business identity, goodwill, and reputation requires injunctive relief to prevent Dexter's continued misleading use of Valcrum's trademark and trade dress, and to ameliorate and mitigate Valcrum's injuries.

109. Dexter's conduct has caused irreparable harm in the form of lost business and reputation, and other irreparable harm, entitling Valcrum to recover damages, Dexter's profits and injunctive relief.

110. Dexter's conduct described herein is willful, wanton, malicious, reckless, and in conscious disregard of Valcrum's rights in its trade mark and trade dress, because the facts and circumstances of Dexter's infringement are so egregious, including as they do the calculated use of formally negotiated and executed agreements to obtain Confidential Information and exploit this Confidential Information to further assist infringement of Valcrum's intellectual property, Valcrum is entitled to damages pursuant to 15 U.S.C. § 1117, including Dexter's profits, Valcrum's actual damages and costs of this action, punitive and exemplary damages, and attorney fees.

COUNT III – False Designation of Origin

Lanham Act (15 U.S.C. § 1125(a)(1)(b))

111. Valcrum realleges and incorporates by reference all the preceding paragraphs.

112. Valcrum owns rights to the red hex bezel trademark and the trade dress associated therewith in connection with trailer hubcaps sold in interstate commerce throughout the United States.

113. Dexter's use of the red hex bezel mark and trade dress as a designation in connection with the marketing, distribution and sale of hubcaps in interstate commerce is likely to cause, and has caused, public confusion and mistake as to

the source of Dexter's products, as to the affiliation, connection, and/or association of Dexter with Valcrum, and/or as to the sponsorship or approval of Dexter's hubcaps and the commercial activities of Valcrum.

114. Because Dexter's products are not Valcrum's products and Dexter is not otherwise authorized to use Valcrum's red hex bezel mark or trade dress, such willful and deliberate conduct by Dexter in promoting, advertising, and providing hubcaps with the confusingly similar red hex bezel mark constitutes a false designation of origin, a false or misleading description of fact, and/or a false or misleading representation of fact, all of which misrepresent the source, nature and characteristics, qualities, and/or origin of Dexter's products, in violation of Section 43(a)(1)(B) of the Lanham Act, as amended, 15 U.S.C. § 1125(a)(1)(B).

115. As a direct and proximate result of the acts alleged herein, Valcrum has suffered and will continue to suffer damage to its business, reputation and goodwill and monetary damages and lost profits in an amount not yet determined. Unless Dexter is enjoined by this Court Dexter's actions have caused and will continue to cause, irreparable harm and injury to Valcrum. The damages caused by Dexter's actions are not susceptible to any ready or precise calculation because such damages involve not only lost profits, but also lost business opportunities, loss of goodwill, and the impairment of the integrity of Valcrum's trade mark and trade dress. Accordingly monetary damages alone cannot fully compensate Valcrum for Dexter's misconduct, Valcrum has been irreparably harmed, and Valcrum lacks an adequate remedy at law and is entitled to preliminary and permanent injunctive relief pursuant to 15 U.S.C. § 1116.

116. As a direct and proximate result of Dexter's wrongful acts alleged herein, Valcrum has suffered actual damages, lost profits, and is entitled to its actual damages, disgorgement of Dexter's ill-gotten profits, enhanced damages, and reasonable attorney fees.

COUNT IV – Trade Mark & Trade Dress Infringement & Unfair Competition

Indiana Common Law

117. Valcrum realleges and incorporates by reference all the preceding paragraphs.

118. In violation of the common law of the State of Indiana and elsewhere, Dexter has unfairly competed with Valcrum by selling infringing hubcaps in U.S. commerce bearing the confusingly similar, identical, and/or substantially indistinguishable red hex bezel mark which infringes and unfairly competes with Valcrum and Valcrum's mark. The overall impression of the Accused Hubcaps is indistinguishable from the overall impression of the Valcrum Hubcaps and/or is so confusingly similar that the sale of the Accused Hubcaps infringes and unfairly competes with Valcrum and Valcrum's trade dress.

119. Dexter's use of the copycat red hex bezel mark constitutes a false designation of origin and a false description or representation that Dexter's products originate from, or are offered, sponsored, authorized, licensed by, or otherwise somehow connected with Valcrum, and is thereby likely to confuse consumers to the substantial detriment of Valcrum, Valcrum's trademark, and Valcrum's trade dress.

120. Dexter's conduct constitutes common law trademark infringement and unfair competition, which has damaged and will continue to damage Valcrum unless enjoined by this Court.

121. Valcrum has no adequate remedy at law because the damage to Valcrum's brand will be irreversible if Dexter is permitted to dilute the one-to-one correlation in the minds of the public between the red hex bezel and Valcrum.

122. Dexter's conduct described herein is willful, wanton, malicious, reckless, and in conscious disregard of Valcrum's rights in its red hex bezel mark, and has directly and proximately injured Valcrum, such that Valcrum is entitled to actual damages, disgorgement of Dexter's profits, costs of this action, and punitive and exemplary damages.

Count V – Unjust Enrichment

Indiana Common Law

123. Valcrum realleges and incorporates by reference all the preceding paragraphs.

124. At the expense of and to the detriment of Valcrum, and without Valcrum's express or implied authorization, and contrary to the express agreement of the parties, Dexter has profited from their knowing, intentional, willful and malicious, actions of using the infringing, confusingly similar, and indistinguishable copy of Valcrum's trademark and trade dress in connection with the distribution, advertising, promotion, and sale of Dexter's hubcaps.

125. By selling the infringing products which infringe Valcrum's valuable red hex bezel trademark and trade dress, Dexter has been unjustly enriched at Valcrum's expense in violation of the common law of Indiana and elsewhere.

126. Dexter's ill-gotten profits are based in whole or in part on the unauthorized use of the confusingly similar red hex bezel mark in violation of Indiana law.

127. As a direct and proximate result of Dexter's wrongful conduct, Dexter has been and continues to be unjustly enriched through their unauthorized use of a colorable imitation of Valcrum's red hex bezel mark and trade dress.

128. Defendant Dexter's enrichment has been to the detriment of Valcrum's business, goodwill and reputation, and Dexter's ill-gotten gains should be accounted for, disgorged and paid over to Plaintiff Valcrum.

PRAYER FOR RELIEF

WHEREFORE, Valcrum respectfully requests that this Court enter judgment against Dexter as follows:

1. For injunctive relief, as provided in the Mutual Nondisclosure Agreement, requiring Dexter to make no further use of any Confidential Information provided by Valcrum, to withdraw from the market and account for all products which make use of the Confidential Information, and to account for all Dexter's use of Confidential Information in the design or development of any products, including but not limited to "Fortress."
2. For injunctive relief, as provided for in 15 U.S.C. § 1116, Fed. R. Civ. P. 65, and state law, namely for temporary, preliminary, and permanent injunctive relief preventing

Dexter and their officers, agents, affiliates, servants, employees, and attorneys, and all those persons acting or attempting to act in concert or participation with them, (including their distributors) from directly or indirectly:

- a) manufacturing, advertising, promoting, marketing, importing, or selling the Accused Hubcaps or any other hubcaps bearing Valcrum's red hex bezel mark or any confusingly similar mark or trade dress;
 - b) using any false designation of origin or false description for the Accused Hubcaps or any other trailer components bearing Valcrum's red hex bezel mark or any confusingly similar mark, that can, or is likely, to lead the consuming public, or individual members thereof, to believe that any goods produced, advertised, promoted, marketed, provided, imported, or sold by Dexter are in any manner associated or connected with Valcrum, or are advertised, promoted, imported, marketed, sold, licensed, sponsored, approved or authorized by Valcrum;
 - c) using any counterfeit or spurious mark or trade dress in connection with Dexter's Accused Hubcaps that is identical to or substantially indistinguishable from Valcrum's red hex bezel mark;
 - d) unfairly competing with Valcrum in any manner whatsoever in the offering, advertising, promotion, importation, or sale of any hubcaps; and
 - e) engaging in any activities that will impair the goodwill and reputation of Valcrum's red hex bezel mark;
3. For an order, as provided for in 15 U.S.C. § 1118, requiring that all materials bearing and used to produce the infringing goods be delivered up and destroyed, and requiring Dexter to withdraw from the market all infringing products and advertising and promotional

materials displaying the infringing products, including from Dexter's and third party websites.

4. Requiring Dexter to recall from any distributors and retailers, and to deliver to Valcrum for destruction or other disposition, all remaining inventory of all infringing products including the red hex bezel mark and confusingly similar trade dress, including all advertisements, promotional and marketing materials therefore, as well as all means of making same.
5. For an order directing Dexter to file with the Court and serve upon Valcrum's counsel within thirty (30) days after entry of the order of injunction, a report setting forth the manner and form in which Dexter has complied with the injunction, including the provision relating to destruction and recall of infringing products and materials.
6. Directing such other relief as the Court may deem appropriate to prevent consumers, the public, and/or the trade from deriving any erroneous impression that any product at issue in this action that has been manufactured, imported, advertised, marketed, promoted, supplied, distributed, offered for sale, or sold by Dexter, has been authorized by Valcrum or is related in any way with Valcrum and/or Valcrum Hubcaps.
7. For an order requiring Dexter to account for and pay to Valcrum any and all direct or indirect profits wrongfully derived by Dexter from the marketing and sale of infringing products including the infringing mark.
8. For judgment for actual compensatory damages to be proven at the time of trial as provided for in 15 U.S.C. § 1117 and applicable state law, including Dexter's profits or gains of any kind resulting from their acts of infringement and unfair competition.

9. For judgment of enhanced damages for Dexter's willful infringement and unfair competition, as provided for in 15 U.S.C. § 1117, including an award of treble damages, for an award of treble damages under state law, and for punitive and exemplary damages as appropriate under applicable federal and state laws.
10. For judgment for statutory damages of \$2,000,000 on Valcrum's claim for willful trademark infringement under Lanham Act, 15 U.S.C. § 1117.
11. For Valcrum's attorneys' fees, investigatory fees, expenses and costs of this action as provided for in 15 U.S.C. § 1117 and under Indiana law and the Mutual Nondisclosure Agreement.
12. For Plaintiff's prejudgment and post-judgment interest on any monetary award made part of the judgment against Dexter; and
13. For such further and additional relief as the Court may deem just and proper.

REQUEST FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Valcrum hereby requests a trial by jury of all causes of action and issues triable by jury.

Dated: March 1, 2024

Respectfully Submitted,

/s/ Andrew J. Chabot _____
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