

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN

CHRYSLER GROUP LLC, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 MODA GROUP, LLC, dba PURE )  
 DETROIT, KEVIN BORSAY, and )  
 SHAWN SANTO, )  
 )  
 Defendants. )  
 )

Civil Action No.:

**COMPLAINT**

Chrysler Group LLC (“Chrysler”) states its Complaint against Defendants Moda Group, LLC dba Pure Detroit, Kevin Borsay, and Shawn Santo as follows:

**NATURE OF THE CASE**

1. This suit arises from Defendants’ blatant misappropriation of Chrysler’s IMPORTED FROM DETROIT™ tagline, introduced by Chrysler to tremendous public acclaim during Super Bowl XLV. Upon seeing Chrysler’s stunning ad, capped off by the powerful tagline, Defendants immediately and opportunistically sought to usurp Chrysler’s goodwill and exploit Chrysler’s investment for themselves. They both copied Chrysler’s tagline exactly and used it on some of the very goods for which Chrysler had filed a trademark application, clothing. Falsely promoting themselves as an “exclusive” provider, and promoting their products by touting “the tagline that is making headlines across America!,” Defendants have sold huge numbers of t-shirts featuring Chrysler’s IMPORTED

FROM DETROIT™ tagline. Indeed, by their own admission, the IMPORTED FROM DETROIT™ branded shirts have been their “best ever” selling product. As a result, Defendants have wrongfully reaped tremendous profits for themselves and devalued Chrysler’s mark.

2. Since learning of Defendants’ infringement, Chrysler has repeatedly attempted to resolve this matter without involving the court. It has repeatedly asked Defendants to stop, and has sought to have a portion of Defendants’ ill-gotten gains contributed to charity. Defendants, however, have refused to stop, have persisted in their intentional infringement, and have left Chrysler no choice but to bring this lawsuit to prevent Defendants from deceiving and confusing the public and harming Chrysler’s goodwill.

3. Accordingly, Chrysler brings this action for trademark infringement, false designation of origin, false descriptions, and unfair competition in violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125(a), for false and deceptive trade practices under the laws of the State of Michigan, MICH. COMP. LAWS § 4415.901 *et seq.*, and of all the states in which Defendants have sold their products, and for unjust enrichment and unfair competition under state common law.

#### **PARTIES**

4. Plaintiff Chrysler Group LLC is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business in this District, in Auburn Hills, Michigan.

5. Moda Group LLC (“Moda”) is a limited liability company organized under the laws of the State of Michigan with its principal place of business in this District, at 500 Griswold, Suite 250, Detroit, Michigan 48226. Moda does business as “Pure Detroit” and engaged in the trademark infringement, unfair competition, false and deceptive trade practices, and other tortious activity that is the subject of this Complaint.

6. Kevin Borsay (“Borsay”) is an individual who, together with Defendant Shawn Santo, directs and controls the business of Pure Detroit and who directed, controlled, and participated in the trademark infringement, unfair competition, false and deceptive acts and other tortious actions that are the subject of this Complaint. Borsay is a resident of this District, who may be served at 1333 Harvard Road, Grosse Pointe Park, Michigan 48230.

7. Shawn Santo (“Santo”) is an individual who, together with Defendant Kevin Borsay, directs and controls the business of Pure Detroit and who directed, controlled, and participated in the trademark infringement, unfair competition, false and deceptive acts and other tortious actions that are the subject of this Complaint. Borsay is a resident of this District, who may be served at 1333 Harvard Road, Grosse Pointe Park, Michigan 48230.

### **JURISDICTION AND VENUE**

8. This Court has federal question jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338 and 1367(a).

9. This Court has personal jurisdiction over each of the Defendants because each is a resident of this State, transacts business within this State, and has otherwise made or

established contacts with this State sufficient to permit the exercise of personal jurisdiction over him.

10. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Chrysler's claims occurred in this District, in that Defendants have conducted their activities that are the subject of this Action in this District.

## **FACTS**

### ***Chrysler and Its IMPORTED FROM DETROIT™ mark***

11. Chrysler is one of the United States' leading manufacturers of automotive vehicles and producer of the famous Chrysler®, Dodge®, Jeep® and Ram® brand cars and trucks. Since 1925, Chrysler and its assignors have been based in the Detroit area and, like the other major U.S. automotive manufacturers, Chrysler has long been closely associated in the public's mind with the city of Detroit.

12. It is well-known that the U.S. automotive industry has in recent years seen its own sales decrease and the sales of vehicles of foreign manufacturers increase and that the city associated with the industry, Detroit, the "Motor City," has suffered with it. It is no secret that Chrysler in particular has experienced difficult times.

13. In the last half of 2010, however, through tremendous effort and hard work, Chrysler began to experience a turn-around and saw an opportunity to educate the American public that consumers did not need to turn to foreign manufacturers for quality or luxury in an automobile. And so an ad tagline was born, a tagline intended to communicate

particularly to that portion of the consuming public that favors imported vehicles that they do not have to buy a foreign manufacturer's vehicle to have luxury and quality. They could obtain the luxury that they associate with foreign imports from a manufacturer based in the U.S.: IMPORTED FROM DETROIT™ fancifully and creatively combines inconsistent terms to connote this concept.

14. Accordingly, on November 23, 2010, Chrysler applied to the United States Patent and Trademark Office (the "PTO") to register the mark IMPORTED FROM DETROIT™ for automotive vehicles, Application Serial Number 85,183,477.

15. To launch the tagline with maximum impact, Chrysler decided to introduce it through a television commercial during the Super Bowl, the most watched television program of the year, with over 100 million viewers in each of the last several years. Chrysler elevated the prominence of the launch to an even higher level: it sought and obtained an unprecedented two-minute commercial slot during the Super Bowl.

16. Thus, during the third quarter of the game, on February 6, 2011, Chrysler's compelling advertisement was revealed. In the ad, with the pulsing music of Detroit's own Eminem playing and views of iconic Detroit landmarks appearing on the screen, the Chrysler 200 model vehicle rolls through the streets of the city, while a voiceover captivates the audience with the lines:

**What does this city know about luxury? What  
does a town that has been to hell and back  
know about the finer things in life?**

With its raw music and gritty scenes, the ad built to a climax in which Eminem himself emerged from the car, walked down the aisle and onto the stage of the Fox Theatre with a gospel choir performing, looked straight into the camera and announced:

**This is the Motor City. And this is what we do**

Immediately thereafter, the screen falls to black and the tagline and the famous Chrysler Wing Badge flash and linger on the screen:



17. Chrysler spent millions of dollars for the launch. The ad and the tagline were seen by tens of millions of viewers during the Super Bowl, and the ad, including a shortened version, and the tagline have, in just a few short weeks, had over a billion commercial impressions.

18. The commercial was a sensation, the tagline immediately resonated with the consuming public, and the public immediately associated it with Chrysler. For example:

a) At approximately 9:00 p.m. on February 6, during the third quarter of the Super Bowl and immediately after the ad aired, the Internet traffic to Chrysler's

b) On Super Bowl Sunday, Edmunds.com recorded a 1,619% surge in traffic to the Chrysler 200 model page on its site; in comparison, other model vehicles that were advertised during Super Bowl XLV posted far more modest gains: 69% for the Chevy Camaro and 271% for the VW Beetle; Audi, Ford, and Hyundai Super Bowl ads produced even lesser gains for their models;

c) On Super Bowl Sunday, Kelly Bluebook's site, kbb.com, recorded a traffic spike to its page for the Chrysler 200 of 1,013% over the previous Sunday's traffic and to Chrysler's general page of 213% over the previous Sunday's traffic;

d) On Super Bowl Sunday, the second most searched term on the search engine Google was "Chrysler 200";

e) Chrysler dealers, recognizing the power of the tagline, immediately seized on the Super Bowl launch: among other things, one dealer ordered promotional t-shirts using the IMPORTED FROM DETROIT™ tagline that night; another dealer sent out thousands of emails respecting the ad and the Chrysler 200 that night; another ordered more Chrysler 200 vehicles early the next morning; numerous dealers received phone calls, text messages, and emails about the ad, tagline, and vehicle that night;

f) As of Monday morning, the ad was being shared once every 20 seconds on social media, with more than 98% of the commentary regarding Chrysler and the ad rated as positive;

g) By Tuesday morning, Congresswoman Candice Miller made a speech on the floor of the United States House of Representatives extolling the Chrysler 200 Super Bowl ad, Chrysler's assembly plant workers, and their building of the "great Chrysler 200 ... in Detroit;" and

h) In the days immediately following the Super Bowl, hundreds of highly favorable articles appeared in print media and online regarding Chrysler, the ad, and the tagline.

19. In the ensuing weeks, the ad and tagline have been widely hailed for bringing pride back to Detroit and the U.S. automotive industry. Indeed, the Detroit City Council specifically recognized and "saluted" Chrysler in a resolution for "coining" "IMPORTED FROM DETROIT" and "uplifting" the city through the campaign, as shown in the copy of the resolution attached as Exhibit A.

20. Chrysler enthusiasts, Detroit city boosters, and promoters of American industry and the American worker have all become fans of the IMPORTED FROM DETROIT™ tagline.

***Chrysler's Use of IMPORTED FROM DETROIT™***

21. Fans like to display their brand allegiance on clothing because it enables them readily to connect with others who share their excitement.



22. Automotive enthusiasts in particular have long clamored for clothing that displays car and truck brand names and taglines and designs associated with them, so that they can communicate to others their enthusiasm for the brand through their attire. Each year, Chrysler sells, directly and through licensees, hundreds of thousands of dollars worth of such branded clothing. Accordingly, before the launch, Chrysler had applied to the PTO to register the IMPORTED FROM DETROIT™ mark for clothing, as well as other goods, under Application Serial Number 85,219,920, filed January 18, 2011.

23. Branded t-shirts are among the most frequently worn items of clothing used by fans to demonstrate their fandom, and they are a particular favorite of automotive enthusiasts. Given the immediate public excitement for the tagline, Chrysler began shipping t-shirts bearing the IMPORTED FROM DETROIT™ mark shortly after the Super Bowl, on February 11, 2011.

24. In light of the public demand for IMPORTED FROM DETROIT™ branded goods, Chrysler also filed Application Serial Number 85,237,193 on February 8, 2011, covering a wide variety of additional goods, as well as retail store services.

#### *Defendants' Unauthorized Use of Chrysler's Mark*

25. Before the Super Bowl, Defendants had never used the IMPORTED FROM DETROIT™ tagline. They seized on it only when they saw the power of the Chrysler ad and the public reaction to it. Instead of spending their own money to develop their own ideas, shortly after the Super Bowl, Defendants embarked on a course to free-ride on Chrysler's substantial investment and to reap where they had not sown. Without authorization, they

began selling t-shirts boldly featuring Chrysler's exact IMPORTED FROM DETROIT™ mark, depicted in a flashy eye-catching manner as shown below:



26. Defendants' marketing of the shirts clearly showed that Defendants knew the mark was a source-identifying tagline and that Defendants were brazenly intending to trade on the tagline. For example, Defendants touted the women's t-shirt as follows:

**Imported From Detroit -  
Women's - Black**

A tagline that is making headlines across America! Get your very own Imported From Detroit T-Shirt today. Grey Letters on a Ladies Black Tee. A Pure Detroit Exclusive!

27. By proclaiming their products "A Pure Detroit Exclusive," Defendants' ads falsely represented that Pure Detroit had "exclusive" rights, and falsely suggested either that Pure Detroit had an exclusive relationship with the owner of the tagline, i.e. Chrysler, or that Pure Detroit was the owner of the tagline.

28. Defendants flooded the market with product, rapidly selling large quantities of t-shirts bearing the IMPORTED FROM DETROIT™ mark and taking in considerable

29. When Chrysler learned of Defendants' infringement, on February 14, 2011, it immediately notified Defendants of Chrysler's rights and requested that Defendants stop selling products displaying the IMPORTED FROM DETROIT™ mark. Pure Detroit's response was to the effect that Pure Detroit did not believe Chrysler had rights in the mark.

30. By letter dated February 18, Chrysler's counsel wrote to Defendants' counsel, explaining Chrysler's rights and again requesting that Defendants cease.

31. Instead of ceasing, Defendants changed their website to remove the reference to the "tagline," seeking to hide the evidence of their clear recognition of Chrysler's rights, and continued marketing the shirts. Meanwhile, they ordered and began marketing new products, including tote bags and additional t-shirts with a new IMPORTED FROM DETROIT™ design:



32. After further communications between counsel, finally, in a phone call on February 23, Defendants' counsel informed Chrysler's counsel that Defendants were "in the process of" ceasing sales of the infringing products. In an email dated February 24, counsel

33. However, with knowledge that Chrysler had understood that they were ceasing sales of the infringing products, and contrary to their counsel's representations to that effect, Defendants continued selling numerous t-shirts and tote bags bearing the IMPORTED FROM DETROIT™ mark. As of March 1, 2011, all of Defendants' retail locations in Detroit continued to market and sell the infringing products.

34. When Defendants were confronted about the ongoing sales, Defendants' counsel informed Chrysler that Pure Detroit had "ceased its cessation activities." Chrysler has subsequently made several more attempts to reach an agreement for Defendants to cease, to no avail.

35. Defendants' continued sales activity, in the face of their having been informed of Chrysler's rights and their representations that they were ceasing, shows that Defendants have acted duplicitously, intentionally, and in bad faith to infringe Chrysler's rights, to deceive the public, and to usurp Chrysler's goodwill. They are seeking wrongfully to profit not from their own efforts or investment, but from Chrysler's, by trading on the commercial magnetism of Chrysler's unique IMPORTED FROM DETROIT™ mark.

36. Through their actions, Defendants have deceived and confused the public and are likely to continue to deceive and confuse the public, they have harmed the value of Chrysler's brand and are likely to continue to harm the value of Chrysler's brand, and Defendants have been dramatically unjustly enriched.

**COUNT I**  
**False Designation of Origin, False Representations, Trademark Infringement, and**  
**Federal Unfair Competition**  
**15 U.S.C. § 1125(a)**

37. Chrysler repeats and incorporates by reference the allegations of paragraphs 1-36.

38. Defendants' unauthorized use of Chrysler's mark and Defendants' statement that their IMPORTED FROM DETROIT™ products are a "Pure Detroit exclusive" constitute false representations, false descriptions and false designations of origin that likely have caused and are likely to cause confusion or mistake, or to deceive consumers as to the affiliation, connection or association of Defendants with Chrysler. Such actions constitute unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

39. Defendants' unauthorized use of Chrysler's mark and Defendants' statement that their IMPORTED FROM DETROIT™ products are a "Pure Detroit exclusive" constitute false representations, false descriptions and false designations of origin that likely have caused and are likely to cause confusion or mistake, or to deceive as to the affiliation, connection or association of their goods with Chrysler, or as to the origin, sponsorship or approval of their goods. Such actions constitute unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

40. Defendants' unauthorized use of Chrysler's mark and statement that their infringing products are a "Pure Detroit exclusive" have caused and, unless restrained, will continue to cause great and irreparable injury to Chrysler, and the business and goodwill represented thereby, and to impair the value of Chrysler's IMPORTED FROM DETROIT™

mark, resulting in damages in an amount that cannot be presently ascertained and leaving Chrysler with no adequate remedy at law. Chrysler, therefore, is entitled to injunctive relief under 15 U.S.C. § 1114.

41. Defendants' actions demonstrate a willful intent to trade on the reputation and goodwill associated with Chrysler and Chrysler's mark, thereby entitling Chrysler to recover treble Defendants' profits, treble damages, costs, and reasonable attorneys' fees pursuant to 15 U.S.C. §1117.

**COUNT II**  
**Deceptive Trade Practices and Acts**  
**Violation of MICH. COMP. LAWS § 445.903 and Other State Statutes**

42. Chrysler repeats and incorporates by reference the allegations in paragraphs 1-36.

43. Defendants' acts constitute unfair, unconscionable, or deceptive methods, acts, or practices in conducting trade or commerce in violation of MICH. COMP. LAWS § 445.901 *et seq.* and the common law.

44. Defendants' unauthorized use of the IMPORTED FROM DETROIT™ mark in connection with the sale, distribution, offer for sale, or advertisement of goods is likely to cause confusion or misunderstanding as to the source, sponsorship, approval, or certification of the goods in violation of MICH. COMP. LAWS § 445.903(1)(a).

45. By promoting themselves as the "exclusive" provider of goods bearing the IMPORTED FROM DETROIT™ mark, Defendants have represented that these goods have sponsorship, approval, or characteristics that they do not have and that Defendants have

sponsorship, approval, status, affiliation, or connection that they do not have in violation of MICH. COMP. LAWS § 445.903(1)(c).

46. Defendants' acts also constitute unfair and deceptive acts or practices in the course of business, trade, or commerce in violation of the unfair and deceptive trade practices statutes of other states, including California, CAL. BUS. & PROF. CODE § 17200, *et seq.* (West 2009); Colorado, COLO. REV. STAT. ANN. §§ 6-1-101 to 6-1-115 (West 2009); Delaware, DEL. CODE ANN. tit. 6, §§ 2531 to 2536 (2009); Georgia, GA. CODE ANN. §§ 10-1-370 to 10-1-375 (2009); Hawaii, HAW. REV. STAT. §§ 481A-1 to 481A-5 (2009); Illinois, ILL. COMP. STAT. ANN., ch. 815, 510/1 to 510/7 (2009); Maine, ME. REV. STAT. ANN. tit. 10, §§ 1211 to 1216 (West 2009); Minnesota, MINN. STAT. ANN. § 325D.43 to .48 (West 2009); Nebraska, NEB. REV. STAT. §§ 87-301 to 87-306 (2009); New Mexico, N.M. STAT. ANN. §§ 57-12-1 to 57-12-22 (Michie 2009); New York, N.Y. GEN. BUS. Law § 349 (McKinney 2009); Ohio, OHIO REV. CODE ANN. §§ 4165.01 to 4165.04 (Baldwin 2009); and Oklahoma, OKLA. STAT. ANN. tit. 78, §§ 51 to 55 (West 2009).

47. Defendants' unauthorized use of the IMPORTED FROM DETROIT™ mark and Defendants' statement that their IMPORTED FROM DETROIT™ products are a "Pure Detroit exclusive" likely have caused and, unless restrained, will continue to cause substantial injury to the public and to Chrysler. Chrysler is entitled to injunctive relief and to recover damages, and, as appropriate, punitive damages, costs, and reasonable attorneys' fees.

**COUNT III**  
**Unjust Enrichment Under State Common Law**

48. Chrysler repeats and incorporates by reference the allegations in paragraphs 1-36.

49. Defendants' conduct has resulted in an inequitable benefit to Defendants, and, unless restrained, will continue to do so, causing substantial and irreparable injury to Chrysler. Defendants have profited and, unless restrained, will continue to profit from their unauthorized use of Chrysler's IMPORTED FROM DETROIT™ mark and corresponding goodwill, which is substantial, but in which Defendants have made no investment. As a result of this unjust enrichment, Chrysler is entitled under Michigan common law and the law of the several states in which Defendants have marketed and sold their products to injunctive relief and to recover Defendants' profits, Chrysler's damages, and, as appropriate, punitive damages, costs, and reasonable attorneys' fees.

**COUNT IV**  
**Unfair Competition Under State Common Law**

50. Chrysler repeats and incorporates by reference the allegations of paragraphs 1-36.

51. Defendants' actions constitute unfair competition in violation of the common law of states in which they have marketed and sold their infringing goods..

52. Defendants' unauthorized use of Chrysler's mark has caused and, unless restrained, will continue to cause great and irreparable injury to Chrysler, and the business



and goodwill represented thereby, in an amount that cannot be presently ascertained.

Chrysler, therefore, is entitled to injunctive and monetary relief.

### **PRAYER FOR RELIEF**

WHEREFORE, Chrysler prays:

1. That the Court enter judgment that Defendants' actions have violated and, unless enjoined, will continue to violate the rights of Chrysler under Section 43 of the Lanham Act, and under state statutory and common law.

2. That the Court preliminarily and permanently enjoin and restrain Defendants, their subsidiaries and affiliated companies, and their officers, directors, agents, servants, employees, affiliates, and all other persons acting in concert, or participating, with Defendants:

(a) From using the IMPORTED FROM DETROIT™ mark, or any other trademark, service mark, name, logo or source designation of any kind that is confusingly similar to Chrysler's IMPORTED FROM DETROIT™ mark for any product or service;

(b) From using Chrysler's marks in any way that is likely to confuse the public that Defendants are approved or licensed by, or associated with, Chrysler;

(c) From otherwise competing unfairly with Chrysler in any manner;

(d) From conspiring with, aiding, assisting or abetting any other person or business entity from engaging in or performing any of the activities referred to in subparagraphs (a)-(c) above.

3. That the Court preliminarily and permanently enjoin and restrain Defendants, their subsidiaries and affiliated companies, and their officers, directors, agents, servants, employees, affiliates, and all other persons acting in concert, or participating, with Defendants to deliver up and/or destroy all infringing articles and materials in their possession or control that depict the unauthorized use of Chrysler's mark, including all products, signs and marketing materials.

4. That the Court order Defendants to file with the Court and to serve on counsel for Chrysler, within thirty (30) days after the entry and service on Defendants of an injunction, a report in writing and under oath setting forth in detail the manner and form in which Defendants have complied with the foregoing injunction provisions.

5. That the Court order an accounting and render judgment against Defendants for an amount equal to treble all profits received from their unauthorized use of Chrysler's mark.

6. That the Court enter judgment in favor of Chrysler for all damages sustained on account of Defendants' unfair competition and false designation of the origin of its products and that such damages be trebled pursuant to Section 35 of the Lanham Act, 15 U.S.C. § 1117(a).

7. That Chrysler be awarded its attorneys' fees and costs incurred in this action pursuant to 15 U.S.C. § 1117(a).

8. That Chrysler be awarded punitive damages pursuant to state law.

9. For such other and further relief as the Court deems just and equitable.

s/Marshall G. MacFarlane

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DATED: March 15, 2011

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