



infringement in violation of Section 43(a) of the Lanham Act; (ii) false designation of origin in violation of Section 43(a) of the Lanham Act; (iii) unfair competition in violation of Section 43(a) of the Lanham Act; (iv) copyright infringement in violation of 15 U.S.C. § 500 *et seq.*; (v) trade dress dilution in violation of the Delaware antidilution statute, 6 Del. C. § 3313; and (vi) unjust enrichment.

### **JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction over this action pursuant to, *inter alia*, 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338 and 1367, in that this is a trade dress dispute that arises under the federal Lanham Act, 15 U.S.C. §§ 1114 *et seq.*

3. This Court has personal jurisdiction over Perrigo because Perrigo regularly transacts business in this judicial district through, among other things, its sales and distribution of products into this district.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b) and (c) because a substantial part of the events giving rise to the claims in this action occurred in this judicial district and because Perrigo markets and sells its infringing products in this judicial district.

### **PARTIES**

5. Plaintiff S-P is a Delaware corporation with a principal place of business at 3030 Jackson Avenue, Memphis, TN 38151.

6. Defendant Perrigo Company is a Michigan corporation with its principal place of business at 515 Eastern Avenue, Allegan, Michigan 49010.

## **FACTUAL BACKGROUND**

### **History of MiraLAX®**

7. MiraLAX® is an oral laxative, the active ingredient of which is polyethylene glycol 3350 (“PEG 3350”). It competes with other products that treat occasional constipation (*e.g.*, Dulcolax®, ex-lax® and Phillips®).

8. MiraLAX® was originally available only by prescription. In October 2006, the U.S. Food and Drug Administration (“FDA”) approved a switch for MiraLAX® from prescription to over-the-counter (“OTC”). The FDA also granted MiraLAX® marketing exclusivity for three years following the FDA’s approval of the prescription-to-OTC switch, such that no generic OTC versions of MiraLAX® could be marketed before October 2009.

9. Since MiraLAX® changed from a prescription product to an OTC product, S-P has been its exclusive manufacturer, promoter and distributor. Among other things, S-P developed, and owns all rights, title and interest in, the distinctive packaging for OTC MiraLAX®.

10. S-P brought OTC MiraLAX® to market in February 2007. Since the product’s launch, S-P has promoted and sold OTC MiraLAX® in food, drug, club, convenience and retail outlet stores across the country, including military and hospital trade channels.

11. During the period of marketing exclusivity for OTC MiraLAX®, S-P built substantial brand awareness and goodwill in MiraLAX® through, among other things, extensive advertising and promotional efforts. To date, S-P has invested nearly \$100 million in advertising and promoting its OTC MiraLAX®.

12. Since its launch in February 2007, OTC MiraLAX® has become the number one selling OTC laxative in the country, with more than \$360 million in retail sales since its entry

into the OTC market.

13. In that same time period, MiraLAX® has also become a leader in its product category in top-of-mind awareness among consumers (meaning that, when asked to name an OTC laxative product, consumers name MiraLAX® more than any other product).

14. MiraLAX® has been advertised in nearly every major media outlet in the United States, including network and syndicated television, the Internet and magazines.

15. S-P's advertisement and promotion of MiraLAX® emphasizes the unique purple, pink and white color scheme of MiraLAX®'s packaging, which is a key component of the product's brand recognition.

16. MiraLAX®'s packaging design is unique. No other laxative product on the market has a similar package design, nor does any other laxative product use the unique purple, pink and white color scheme of MiraLAX®.

**S-P's MiraLAX® Trade Dress, MiraLAX® Trademarks and Copyrighted Designs**

17. S-P is the owner of all right, title and interest in the highly distinctive MiraLAX® trade dress that it uses in promoting and selling its products under the MiraLAX® mark (the "MiraLAX® Trade Dress"). S-P's distinctive MiraLAX® Trade Dress is depicted below.



18. As shown above, the MiraLAX® Trade Dress features numerous unique elements that individually and in combination create an overall look and feel that is readily identifiable by consumers as a product originating with S-P and/or associated with the MiraLAX® brand.

19. In particular, the distinctive MiraLAX® Trade Dress is comprised of at least some or all of the following key features:

- a. Packaging comprising an overall color scheme of specific and distinctive shades of purple, pink and white;
- b. A label comprising a “fading” design that transitions from dark purple to pink to white;
- c. Silver and purple curved lines suggesting a circular shape;
- d. A prominent white circular shape;
- e. A silver shield with “Original Prescription Strength” written in purple;
- f. For MiraLAX® bottles, an opaque white bottle; and
- g. For MiraLAX® bottles, a cap that is roughly 1-1/4” high and 1-3/4” in diameter, and that is the same shade of pink that is featured in the purple, pink and white color scheme of the MiraLAX® label.

20. The MiraLAX® Trade Dress elements described above are not functional.

Rather, they are decorative, distinctive and serve as a source identifier.

21. S-P created and promoted its MiraLAX® Trade Dress at considerable expense. It

made significant investment in research and development to develop product packaging that is distinctive, memorable and appealing to consumers.

22. As a result of S-P's work in developing the unique MiraLAX® Trade Dress, and its extensive investment in a large scale, national advertising campaign to promote the MiraLAX® Trade Dress and MiraLAX® brand, consumers readily identify the MiraLAX® Trade Dress as identifying a product of the highest quality that originates from a single source (*i.e.*, S-P). S-P's continued and extensive use of the MiraLAX® Trade Dress for several years has built up substantial goodwill and consumer brand loyalty in the MiraLAX® brand.

23. S-P is also the owner of several federally registered trademarks and applications for registrations in the U.S. Trademark Office relating to the MiraLAX® brand including, among others, Registration Nos. 3120379, 3412356, 3412370 and 2982512, and Application Serial Nos. 77-753735 (filed June 5, 2009, Notice of Allowance issued October 27, 2009) and 77-753736 (filed June 5, 2009, Notice of Allowance issued October 27, 2009) (collectively, the "MiraLAX Registrations"). Copies of the MiraLAX Registrations are attached hereto as Exhibit A.

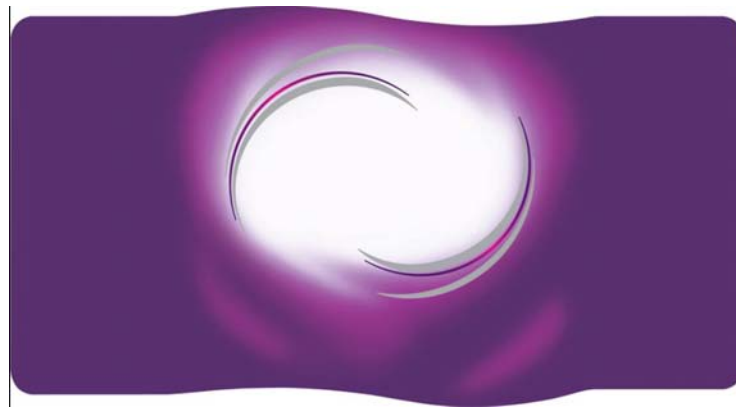
24. In addition, S-P created a distinctive sculptural design for a 30-dose bottle for MiraLAX® (the "Double-Necked Bottle"), as pictured below.



25. S-P distributed MiraLAX® in this uniquely designed bottle until at least about July 2009. MiraLAX® products in the Double-Necked Bottle design are still available in some retail stores.

26. The Double-Necked Bottle is an original work of sculptural design that is entitled to copyright protection. S-P is the owner of the valid copyright in the Double-Necked Bottle design and related designs, and has applied to register its copyrights in those designs. Copies of S-P's applications to register its Double-Necked Bottle designs with the United States Copyright Office are attached hereto as Exhibit B.

27. S-P's distinctive label design (the "Packaging Label"), shown below, is also an original artistic work that is entitled to copyright protection.



28. S-P is the owner of the valid copyright in its Packaging Label design and has applied to register its copyright in that design. A copy of S-P's application to register its Packaging Label design with the United States Copyright Office is attached hereto as Exhibit C.

**Perrigo's Competing Products, Infringing Packaging and Strategy for Appropriating the Goodwill of the MiraLAX® Brand**

29. Perrigo is a healthcare supplier that develops, manufactures and distributes OTC and prescription pharmaceuticals, nutritional products, active pharmaceutical ingredients (API) and consumer products. Perrigo manufactures numerous products that are marketed as private label or store brand versions of national brand products, including store brand versions of popular consumer health care products such as Tylenol®, Advil®, Claritin® and now MiraLAX®. According to its website, [www.perrigo.com](http://www.perrigo.com), Perrigo is the world's largest manufacturer of OTC pharmaceutical products for the store brand market.

30. In October 2009, promptly upon the expiration of the three-year marketing exclusivity period for OTC MiraLAX®, Perrigo began distributing generic PEG 3350 laxative products to compete with MiraLAX® in retail outlets across the country, including national retail pharmacy chains such as CVS, Rite-Aid and Walgreens, national and regional retail stores such as Walmart, Target, Costco and Meijer stores, and grocery store chains such as Kroger and Safeway.

31. Perrigo's PEG 3350 laxative products are not just designed to compete with MiraLAX® on the basis of their purportedly comparable ingredients. Rather, they are designed, and intended, to appropriate the goodwill that S-P has built in its MiraLAX® brand. All of Perrigo's PEG 3350 laxative products (including but not limited to the products discussed in greater detail below) are packaged in containers that incorporate some or all of the distinctive elements of the MiraLAX® Trade Dress and copyrighted Packaging Label design, including, among other things, labels that comprise the precise shades of purple, pink and white that are featured in the MiraLAX® Trade Dress and Packaging Label design, as well as bottle designs that combine an opaque white bottle with a brightly colored cap of the same dimensions as the

MiraLAX® cap in the same shade of purple that is prominently featured in the MiraLAX® Trade Dress. Perrigo also has copied the distinctive Double-Necked Bottle design that S-P created, and is using bottles of that design for its 30-dose bottle packages.

32. Perrigo has made no secret of its intention to be the leading private label competitor for MiraLAX® across the country. As reported in a November 9, 2009 trade article published in *"The Tan Sheet,"* titled "Perrigo Strives to Stand Out Against Incoming Private Label Competition," Perrigo's Chief Executive Officer, Joseph Papa, confirmed Perrigo's plan to be the dominant private label competitor for MiraLAX® (among other products), noting that Perrigo will offer retailers "a program that is not just manufacturing and having a product available, but will be a full turnkey program. . . a full marketing program that helps to reinforce that this product is comparable to its branded equivalent." The article further reported that Perrigo expects store brands to capture 40% of the market share for MiraLAX® within 12-18 months and that Perrigo expects to have 80% of that share.

33. Perrigo's strategy for claiming virtually all of the private label market share in PEG 3350 laxatives is not based simply on a plan to manufacture PEG 3350 laxatives of a comparable quality to MiraLAX® and offer them to consumers as an alternative to MiraLAX®. Rather, Perrigo's strategy depends largely, if not entirely, upon its use of product packaging that copies S-P's distinctive MiraLAX® packaging and thus draws consumers to the Perrigo products through their association of the distinctive packaging with the goodwill that S-P has built in its MiraLAX® brand.

34. Apart from its stated plan to manufacture PEG 3350 laxatives for sale under various retail store house brands, Perrigo appears to be pursuing a national branding campaign of its own. Perrigo has applied for federal trademark registration for the brand names it is using on

its generic PEG 3350 laxatives, including “GENTLELAX” “SMOOTHLAX,” “PURELAX” and “CLEARLAX.” Perrigo has used the “ClearLax” brand on more than half of its PEG 3350 laxative products. Perrigo’s “ClearLax” products, like all of its PEG 3350 laxative products, have packaging that mimics S-P’s distinctive MiraLAX® packaging. Perrigo has introduced “ClearLax” in various iterations of packaging designs that all copy the MiraLAX® packaging, in at least six different national and regional retail chains across the country.

### **Perrigo’s Infringing Products For CVS Pharmacies and Kroger Supermarkets**

35. The PEG 3350 laxative products that Perrigo distributes through at least two retail chain outlets – CVS pharmacies and Kroger supermarkets – illustrate some of the ways in which Perrigo has copied the MiraLAX® packaging.

36. In CVS pharmacies, Perrigo distributes a PEG 3350 laxative product under its “PURELAX” trademark. As shown below, the packaging that Perrigo uses for “Purelax” in CVS copies wholesale some of the most distinctive elements of the MiraLAX® packaging.



37. In particular, the Purelax packaging copies the overall layout of the text and visuals of the MiraLAX® Trade Dress, as well as the actual colors, color pattern and text from the MiraLAX® label, so that the overall impression of Purelax is nearly identical to that of MiraLAX®. The elements of the Purelax packaging that infringe S-P's MiraLAX® Trade Dress include:

- a. Packaging comprising an overall color scheme of the identical shades of purple, pink and white that are a predominant feature of the MiraLAX® Trade Dress;
- b. A label comprising a “fading” design that transitions from dark purple to pink to white;
- c. For Purelax bottles, an opaque white bottle; and
- d. For Purelax bottles, a cap that is roughly 1-1/4” high and 1-3/4” in diameter, and that is the same shade of purple that is featured in the purple, pink and white color scheme of the MiraLAX® label.

38. The Purelax packaging also wrongfully copies S-P's copyrighted Packaging Label design, while the Purelax 30-dose bottle further wrongfully copies S-P's copyrighted Double-Necked Bottle design.

39. In Kroger supermarkets, Perrigo distributes a PEG 3350 laxative under its “GENTLELAX” trademark. As shown below, the packaging that Perrigo uses for “GentleLax” in Kroger also copies wholesale some of the most distinctive elements of the MiraLAX® packaging.



40. In particular, the GentleLax packaging copies the overall layout of the text and visuals of the MiraLAX® Trade Dress, as well as the actual colors, color pattern and text from the MiraLAX® label, so that the overall impression of GentleLax is nearly identical to that of MiraLAX®. The elements of the GentleLax packaging that infringe S-P’s MiraLAX® Trade Dress include:

- a. Packaging comprising an overall color scheme of the identical shades of purple, pink and white that are a predominant feature of the MiraLAX® Trade Dress;
- b. A label comprising a “fading” design that transitions from dark purple to pink to white;
- c. A prominent white circular shape;
- d. A silver band with purple lettering reading “Original Prescription Strength” that mimics the silver shield with “Original Prescription Strength” written in purple on the MiraLAX® packaging;
- e. For GentleLax bottles, an opaque white bottle; and
- f. For GentleLax bottles, a cap that is roughly 1-1/4” high and 1-3/4” in diameter, and that is the same shade of purple that is featured in the purple, pink and white color scheme of the MiraLAX® label.

41. The GentleLax packaging also wrongfully copies S-P’s copyrighted Packaging Label design, while the GentleLax 30-dose bottle further wrongfully copies S-P’s copyrighted

Double-Necked Bottle designs.

**Harm to S-P's Rights in Its Distinctive MiraLAX® Packaging**

42. Before October 2009, no laxative product on the market had anything like the distinctive MiraLAX® packaging. On the contrary, other laxative products use packaging in a range of colors, including blue, yellow and green.

43. Since October 2009, Perrigo has flooded the national retail market with PEG 3350 laxative products that mimic the MiraLAX® packaging and dilute its distinctiveness.

44. Perrigo's copying of the MiraLAX® packaging – including the MiraLAX® Trade Dress and the copyrighted Packaging Label and Double-Necked Bottle designs – is willful, deliberate and without authorization. By infringing S-P's MiraLAX® Trade Dress and copyrights, Perrigo intends to make, promote, distribute and sell PEG 3350 laxative products in retail outlets across the country in a way that is intended to cause, and will cause, a likelihood of confusion among consumers.

45. By copying the overall look, feel and commercial impression of MiraLAX®, Perrigo intends, and is likely, to falsely suggest to consumers that some connection exists between Perrigo's PEG 3350 laxative products and MiraLAX®.

46. Perrigo's actions have been deliberate, willful and intentional, undertaken in bad faith and with the intent of trading on the goodwill and reputation of S-P and its distinctive MiraLAX® brand, with full knowledge of and in conscious disregard of S-P's rights.

47. Perrigo's unlawful actions are having and will continue to have a substantial and adverse effect on commerce in the United States.

**COUNT ONE**  
**Federal Trade Dress Infringement**

48. S-P repeats the allegations in the foregoing paragraphs as if fully set forth herein.

49. S-P is the owner of all rights and title to the distinctive MiraLAX® Trade Dress.

50. Perrigo's manufacture and distribution of PEG 3350 laxative products in packaging that mimics the MiraLAX® Trade Dress is likely to cause confusion, or to cause mistake, or to deceive as to affiliation, connection or association of Perrigo with S-P, or as to the origin, sponsorship, or approval by S-P of Perrigo's goods, services or commercial activities.

51. Perrigo's manufacture and distribution of PEG 3350 laxative products in packaging that mimics the MiraLAX® Trade Dress enables Perrigo to benefit unfairly from the reputation and success of S-P's products sold under the MiraLAX® Trade Dress, thereby giving Perrigo's infringing products commercial value that they would not otherwise have.

52. Perrigo's actions constitute trade dress infringement in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

53. Perrigo's actions have caused, and will continue to cause, irreparable harm to S-P, and will continue to so harm S-P unless preliminarily and permanently enjoined.

54. Furthermore, Perrigo is realizing profit and will continue to realize a profit from its unlawful actions. Perrigo's unlawful actions are causing and will cause S-P monetary damage in amounts to be determined at trial.

**COUNT TWO**  
**Federal False Designation of Origin**

55. S-P repeats the allegations in the foregoing paragraphs as if fully set forth herein.

56. The acts of Perrigo as complained of herein constitute false designation of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

57. Perrigo's actions have caused, and will continue to cause, irreparable harm to S-P,

and will continue to so harm S-P unless preliminarily and permanently enjoined.

58. Furthermore, Perrigo is realizing profit and will continue to realize a profit from its unlawful actions. Perrigo's unlawful actions are causing and will cause S-P monetary damage in amounts to be determined at trial.

**COUNT THREE**  
**Federal Unfair Competition**

59. S-P repeats the allegations in the foregoing paragraphs as if fully set forth herein.

60. S-P is the owner of all rights and title to the MiraLAX® Trade Dress.

61. Perrigo's manufacture and distribution of PEG 3350 laxative products in packaging that mimics the MiraLAX® Trade Dress is likely to cause confusion, or to cause mistake, or to deceive as to affiliation, connection or association of Perrigo with S-P, or as to the origin, sponsorship, or approval by S-P of Perrigo's goods, services or commercial activities.

62. Perrigo's manufacture and distribution of PEG 3350 laxative products in packaging that mimics the MiraLAX® Trade Dress enables Perrigo to benefit unfairly from the reputation and success of S-P's MiraLAX® Trade Dress and related trademarks, thereby giving Perrigo's infringing products commercial value that they would not otherwise have.

63. Perrigo's actions constitute unfair competition, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

64. Perrigo's actions have caused, and will continue to cause, irreparable harm to S-P, and will continue to so harm S-P unless preliminarily and permanently enjoined.

65. Furthermore, Perrigo is realizing profit and will continue to realize a profit from its unlawful actions. Perrigo's unlawful actions are causing and will cause S-P monetary damage in amounts to be determined at trial.

**COUNT IV**  
**Copyright Infringement**

66. S-P repeats the allegations in the foregoing paragraphs as if fully set forth herein.

67. The Packaging Label and Double-Necked Bottle designs are original works of authorship that are entitled to copyright protection.

68. S-P is the owner of the copyrights in the Packaging Label and Double-Necked Bottle designs.

69. Perrigo has copied the Packaging Label design for the packaging of its PEG 3350 laxative products.

70. Perrigo has had access to the Packaging Label design and its own PEG 3350 laxative product packages are at least substantially similar, if not identical, to that design.

71. Perrigo has copied the Double-Necked Bottle designs for its 30-dose sized bottles of PEG 3350 laxative products.

72. Perrigo has had access to the Double-Necked Bottle design and its own 30-dose sized bottles are at least substantially similar, if not identical, to that design.

73. By marketing and selling its competitive PEG 3350 laxative products in bottles that copy S-P's Packaging Label and Double-Necked Bottle designs, Perrigo is copying, distributing, selling and displaying and creating derivative works from S-P's copyrighted designs.

74. Perrigo's actions constitute copyright infringement in violation of 15 U.S.C. § 501 *et seq.*

75. Perrigo's actions have caused, and will continue to cause, irreparable harm to S-P, and will continue to so harm S-P unless preliminarily and permanently enjoined.

76. Furthermore, Perrigo is realizing profit and will continue to realize a profit from

its unlawful actions. Perrigo's unlawful actions are causing and will cause S-P monetary damage in amounts to be determined at trial.

**COUNT FIVE**  
**Dilution Under Delaware State Law**

77. S-P repeats the allegations in the foregoing paragraphs as if fully set forth herein.

78. S-P owns the MiraLAX® Trade Dress, which is distinctive.

79. Perrigo's use of trade dress that mimics the MiraLAX® Trade Dress on its PEG 3350 laxative products is likely to dilute the distinctiveness of S-P's MiraLAX® Trade Dress.

80. Perrigo's actions have caused, and will continue to cause, irreparable harm to S-P, and will continue to so harm S-P unless preliminarily and permanently enjoined.

81. Furthermore, Perrigo is realizing profit and will continue to realize a profit from its unlawful actions. Perrigo's unlawful actions are causing and will cause S-P monetary damage in amounts to be determined at trial.

**COUNT SIX**  
**Unjust Enrichment**

82. S-P repeats the allegations in the foregoing paragraphs as if fully set forth herein.

83. By wrongfully misappropriating the goodwill S-P has developed in its MiraLAX® brand through deliberate copying of S-P's MiraLAX® Trade Dress and copyrighted designs, Perrigo has been unjustly enriched to the material detriment of S-P.

84. Perrigo's actions have caused, and will continue to cause, irreparable harm to S-P, and will continue to so harm S-P unless preliminarily and permanently enjoined.

85. Furthermore, Perrigo is realizing profit and will continue to realize a profit from its unlawful actions. Perrigo's unlawful actions are causing and will cause S-P monetary damage in amounts to be determined at trial.

### **PRAYER FOR RELIEF**

WHEREFORE, S-P prays for relief against Perrigo as follows:

a. That Perrigo, its servants, agents, employees, and all those in active concert or participation with Perrigo, be preliminarily and permanently enjoined and restrained from:

(i) using in any manner, on, or in connection with any of Perrigo's PEG 3350 laxative products, the copyrighted Packaging Label and/or Double-Necked Bottle designs, or any designs that are identical or substantially similar thereto;

(ii) using in any manner, on, or in connection with any of Perrigo's PEG 3350 laxative products, the MiraLAX® Trade Dress, or any trade dress confusingly similar thereto, that is likely to cause confusion, deception, or mistake or that dilutes or is likely to dilute the distinctive quality thereof;

(iii) using in any manner, on, or in connection with any of Perrigo's PEG 3350 laxative products, any of the following MiraLAX® Trade Dress elements, alone or in combination, in a manner that is likely to cause confusion, deception, or mistake or that dilutes or is likely to dilute the distinctive quality of S-P's MiraLAX® Trade Dress:

- a. Packaging comprising an overall color scheme of the specific and distinctive shades of purple, pink and white that are featured in the MiraLAX® Trade Dress;
- b. A label comprising a "fading" design that transitions from dark purple to pink to white;
- c. Curved lines suggesting a circular shape;
- d. A prominent white circular shape;
- e. A silver shield with "Original Prescription Strength" written in purple;
- e. For bottle packaging, an opaque white bottle; and/or
- f. For bottle packaging, a cap that is roughly 1-1/4" high and 1-3/4" in diameter, in the same pink or purple shades that are featured in the purple, pink and white

color scheme of the MiraLAX® label.

(iv) passing off, inducing, or enabling others to sell or pass off Perrigo's PEG 3350 laxative products as and for products produced by S-P, not Perrigo, or not produced under the control and supervision of S-P and approved by S-P for the sale under the MiraLAX® brand;

(v) engaging in any other conduct that tends to falsely represent, or is likely to confuse, mislead, or deceive purchasers, Perrigo's customers, and/or other members of the public to believe that Perrigo's PEG 3350 laxative products are connected with S-P or are sponsored, approved, or licensed by S-P, or are in some way connected or affiliated with S-P;

(vi) further diluting and infringing the MiraLAX® Trade Dress and otherwise damaging S-P's good will;

(vii) using any reproduction, counterfeit, copy or colorable imitation of the Packaging Label design, Double-Necked Bottle designs or MiraLAX® Trade Dress in connection with Perrigo's publicity, promotion, offer to sell, marketing, distribution, or advertising of its PEG 3350 laxative products;

(viii) destroying any records documenting the manufacture, sale, offer to sell, distribution, location, or receipt of Perrigo's PEG 3350 laxative products; and

(ix) assisting, aiding or abetting any other person or business entity in engaging in or in performing any of the activities referred to in subparagraphs (i) – (viii) above.

b. that Perrigo be required to deliver to the Court for destruction, or show proof of destruction of any and all products, labels, signs, prints, packages, wrappers, receptacles, and advertisements in Perrigo's possession or control that are found to infringe the Packaging Label Design, Double-Necked Bottle designs or MiraLAX® Trade Dress, and any molds, dies, screens, or other devices to produce same;

c. that Perrigo be ordered to notify its and any affiliates' customers, in writing, that they are not to sell PEG 3350 laxative products that are found to infringe the Packaging Label Design, Double-Necked Bottle designs or MiraLAX® Trade Dress, and that said customers are to impound and return all units of the infringing products to Perrigo;

d. that Perrigo be ordered to file with this Court and to serve upon S-P, within 30 days after the entry and service on Perrigo of each injunction, a report in writing and under oath setting forth in detail the manner and form in which Perrigo has complied with the injunction;

e. that S-P recover all damages sustained as a result of Perrigo's activities and that said damages be trebled;

f. that an accounting be directed to determine Perrigo's profits resulting from its and its affiliates' unlawful activities and that such profits be paid over to S-P, increased as this Court finds to be just under the circumstances of this case;

g. that S-P recover its reasonable attorneys' fees;

h. that S-P recover punitive damages and its costs of this action, together with prejudgment and post-judgment interest; and

i. that S-P recover such other and further relief as this Court deems just and proper.

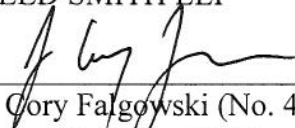
**JURY TRIAL DEMAND**

S-P demands a trial by jury of all issues so triable.

Dated: November 25, 2009

REED SMITH LLP

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