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**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION**

PACIFIC CARGO CONTROL, INC., an
Oregon domestic business corporation,
Plaintiff,

v.

**QUALITY CHAIN CORPORATION d/b/a
QUALITY CARGO CONTROL**, an Oregon
domestic business corporation,
Defendant.

Case No. 3:13-cv-01750

**COMPLAINT FOR TRADEMARK
INFRINGEMENT, FALSE
DESIGNATION OF ORIGIN, AND
UNFAIR COMPETITION**

JURY TRIAL DEMANDED

Plaintiff PACIFIC CARGO CONTROL, INC. (“PCC” and “Plaintiff”) alleges as follows against Defendant QUALITY CHAIN CORPORATION d/b/a QUALITY CARGO CONTROL (“Quality Chain” and “Defendant”), on personal knowledge as to Plaintiff’s own activities and on information and belief as to the activities of others, as follows:

NATURE OF THE CASE

1. This is an action for trademark infringement, false designation of origin, and unfair competition under the Lanham Act (codified at 15 U.S.C. § 1051, *et seq.*); unfair business

practices and unfair and deceptive trade practices under the Oregon Uniform Trade Practices Act, ORS § 646.638 *et seq.*; and common law trademark infringement and unfair competition.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a) in that this case involves a federal question arising under the trademark laws of the United States.

3. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to the provisions of 28 U.S.C. § 1338(b) insofar as the claims are joined with a substantial and related federal claim arising under the trademark laws of the United States. *See* 15 U.S.C. § 1051 *et seq.*

4. This Court has personal jurisdiction over Defendant at least because Defendant is incorporated in the State of Oregon, has substantial contacts in the State of Oregon related to the claims in this action, and/or is engaged in the wrongful acts alleged herein in the State of Oregon.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2).

PARTIES


6. Plaintiff Pacific Cargo Control, Inc. is an Oregon domestic business corporation with its principal business address at 18200 SW Teton Ave., Tualatin, OR 97062.

7. Defendant Quality Chain Corporation is an Oregon domestic business corporation with its principal business address at 3365 NW 215th Ave., Hillsboro, OR 97124.

FACTS**PCC's Marks**

8. PCC is a leading provider of cargo restraint equipment for use in flatbed, interior van, trailer, and towing applications.

9. PCC is the owner of the following federally registered trademarks (collectively, “the PCC Marks”):

Mark	U.S. TM Reg. No.	Goods	Date of First Use in Commerce
PCC	4,390,661	cargo, towing and carrier equipment for vehicles, comprised of synthetic textile materials, namely, tow ropes, tow straps, ratchet tie-down straps, quick release tie down straps, lashing straps, winch straps, and tarp straps, and component parts and accessories therefore, namely, attachment hardware, cam buckles, corner protectors, D-rings, hooks, load locks, motorcycle tie downs, rope, ratchets, pan fittings, outrigger arms, door pulls, light boxes, sliding winches, winch bars, winch tracks, lock holders, safety chain anchors, binders, bungee cord, and light boxes, the foregoing not including artificial leather	February 1991
PCC (stylized): 	4,390,664	cargo, towing and carrier equipment for vehicles, comprised of synthetic textile materials, namely, tow ropes, tow straps, ratchet tie-down straps, quick release tie down straps, lashing straps, winch straps, and tarp straps, and component parts and accessories therefore, namely, attachment hardware, cam buckles, corner protectors, D-rings, hooks, load locks, motorcycle tie downs, rope, ratchets, pan fittings, outrigger	February 1991

		arms, door pulls, light boxes, sliding winches, winch bars, winch tracks, lock holders, safety chain anchors, binders, bungee cord, and light boxes, the foregoing not including artificial leather	
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10. PCC has used the PCC Marks continuously in connection with the advertising, promotion, and sales of its products since at least February 1991.

11. On account of its long and continuous use of the PCC Marks and sales of its products under the PCC Marks, PCC has established trademark rights in the PCC Marks.

12. Through its promotional efforts, business conduct, and continuous use of the PCC Marks, PCC has developed and maintains customers throughout Oregon and the United States. The PCC Marks have become an asset of substantial value as a symbol of PCC and its products.

13. One of the many products for which PCC has continuously used the PCC Marks is tie-down straps, particularly yellow tie-down straps such as the following:



14. PCC is not aware of any other entity, aside from Quality Chain, that prints a mark substantially similar to the PCC mark directly on its tie down straps.

Quality Chain's Infringement of the PCC Marks

15. Quality Chain claims to be the largest traction tire chain wholesaler in North America.

16. Quality Chain is aware of, and has been aware of, PCC, PCC's marks, and PCC's business for many years. PCC and Quality Chain have done business with each other in the past. Additionally, Quality Chain solicited PCC's employees on at least two separate occasions; one employee refused Quality Chain's offer, whereas the other employee accepted Quality Chain's offer and, on knowledge and belief, still works for Quality Chain. PCC's and Quality Chain's Oregon facilities are both located in the Portland metro area, with PCC's facility located in Tualatin, and Quality Chain's facility located in Hillsboro; according to a Google Maps search, these facilities are only approximately 20 miles, or roughly a 30 minute drive, apart from each other. Additionally, PCC owns and operates a website, www.pacificcargo.com, that is physically accessible to the public and that has displayed the PCC (stylized) mark since November 2000. PCC also owns and operates the publicly accessible website www.pac-ind.com, which displayed the PCC (stylized) mark as early as June 1998.

17. Until recently, Quality Chain has not used the mark "QCC" in the advertising, promotion, and sale of its products, but has rather used the marks QUALITY, QUALITY CHAIN, QUALITY CHAIN CORPORATION, QUALITY CARGO, and QUALITY CARGO CONTROL, both as word marks and in stylized forms such as the following:



It appears that Quality Chain does not hold any federal trademark registrations for these or any other marks.

18. On or about June 19, 2012, Quality Chain filed with the Oregon Secretary of State an “Assumed Business Name – New Registration” form to register “Quality Cargo Control” as an assumed business name for a business with the primary business activity of “Wholesaler of cargo control products.” Prior to this time, it is believed that Quality Chain was primarily engaged in the traction tire chain business, and not in the cargo restraint equipment business.

19. Despite being aware of PCC’s prior adoption and use of the PCC Marks, Quality Chain recently began using, with actual knowledge of the PCC Marks, the mark “QCC,” both as a word mark and in the following stylized form:



20. Despite being aware of PCC’s prior adoption and use of the PCC (stylized) mark as a mark printed directly on tie-down straps, including yellow tie-down straps, Quality Chain, with actual knowledge of the PCC (stylized) mark, recently began printing the QCC (stylized) mark directly on at least yellow tie-down straps:



21. Additionally, Quality Chain uses a part numbering system that is confusingly similar to the part numbering system used by PCC, further increasing the likelihood for confusion.

22. When PCC learned of Quality Chain's adoption of the QCC and QCC (stylized) marks, and of Quality Chain's printing of the QCC (stylized) mark directly on tie-down straps, PCC contacted Quality Chain and demanded that Quality Chain immediately cease use of the QCC and QCC (stylized) marks. Quality Chain refused.

23. Upon information and belief, Quality Chain is a new entrant to the cargo control restraint business, and specifically to the tie-down strap business. Despite having actual knowledge of PCC, PCC's presence in the cargo control restraint business, and PCC's use of the PCC Marks in connection with the promotion and sale of PCC's products, including tie-down straps, Quality Chain made a conscious decision to adopt and use a confusingly similar mark, in an apparent effort to trade off the substantial goodwill PCC has invested in the PCC Marks.

24. Because of the damage to PCC's goodwill that has already been caused is likely to continue to be caused by Quality Chain's use of the QCC and QCC (stylized) marks, and because of Quality Chain's apparent unwillingness to stop using the QCC and QCC (stylized) marks, this Complaint follows.

COUNT 1
Federal Trademark Infringement, 15 U.S.C. § 1114

25. PCC repeats and realleges each of the allegations contained in paragraphs 1 through 24 of this Complaint as if fully set forth herein.

26. Quality Chain's unauthorized use in interstate commerce of the QCC and QCC (stylized) marks in connection with Quality Chain's goods constitutes infringement of PCC's

trademark rights in the PCC Marks, misappropriates the valuable goodwill developed by PCC in the PCC Marks, and is likely to cause confusion, mistake, or deception.

27. The acts of Quality Chain described above constitute an infringement of PCC's rights in and to the use of its federally registered PCC Marks, with consequent damages to PCC and to the business and goodwill associated with and symbolized by the PCC Marks and, specifically, give rise to this action under 15 U.S.C. §§ 1114 *et seq.*

28. Quality Chain's acts of trademark infringement have caused and are causing great and irreparable harm to PCC, PCC's goodwill, and PCC's rights to exclusive use of the PCC Marks, all in an amount which cannot adequately be determined at this time and, unless Quality Chain is preliminarily and permanently restrained, Quality Chain's acts will cause further irreparable injury and damage, leaving PCC with no adequate remedy at law.

29. Quality Chain's acts are the proximate cause of such injury and damage.

30. Quality Chain's acts of infringement have been and are being committed after actual notice, actual knowledge, and notices effectuated by law, and are willful and in gross disregard of PCC's rights.

31. By reason of the foregoing, PCC is entitled to preliminary and permanent injunctive relief against Quality Chain, and anyone associated therewith, to restrain further acts of infringement and, after trial or summary judgment, to recover any damages proven to have been caused by reason of Quality Chain's aforesaid acts of infringement, and to recover enhanced damages and attorneys' fees based upon the willful, intentional, and/or grossly negligent activities of Quality Chain.

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COUNT 2

False Designation of Origin and Unfair Competition, 15 U.S.C. § 1125

32. PCC repeats and realleges each of the allegations contained in paragraphs 1 through 31 of this Complaint as if fully set forth herein.

33. Quality Chain, by its knowing and intentional unauthorized imitation, adoption, and/or use of the PCC Marks in association with Quality Chain's goods, has and continues to falsely designate its goods as being derived or affiliated with those of PCC.

34. Quality Chain's use of the PCC Marks, as aforesaid, is likely to cause relevant consumers to mistakenly believe that Quality Chain has an affiliation with PCC, that Quality Chain's business is sponsored or approved by PCC, and/or that Quality Chain is otherwise associated with or has obtained permission from PCC to use the PCC Marks in connection with the sale of goods and services by Quality Chain.

35. By engaging in the unauthorized activities described above, Quality Chain has made, and continues to make, false, deceptive, and misleading statements constituting false representations made in connection with the sale of goods or services distributed in interstate commerce in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Furthermore, in view of Quality Chain's knowledge of PCC, the PCC Marks, and PCC's business, such activities were, and remain, willful and intentional.

36. Quality Chain's willful and intentional acts of unfair competition and false designation of origin have caused and are causing great and irreparable injury and damage to PCC's business and its goodwill and reputation in an amount that cannot be ascertained at this time and, unless preliminarily and permanently restrained, will cause further irreparable injury and damage, leaving PCC with no adequate remedy at law.

37. Quality Chain's acts are the proximate cause of such injury and damage.

38. By reason of the foregoing, PCC is entitled to preliminary and permanent injunctive relief against Quality Chain, and anyone acting in concert with Quality Chain, to restrain further acts of unfair competition, false advertising, and false designation of origin and, after trial, to recover any damages proven to have been caused by reason of Quality Chain's aforesaid acts, and to recover enhanced damages based on Quality Chain's willful, intentional, and/or grossly negligent acts.

COUNT 3
Unlawful Trade Practices under Oregon Law, ORS 646.608

39. PCC repeats and realleges each of the allegations contained in paragraphs 1 through 38 of this Complaint as if fully set forth herein.

40. Quality Chain's unauthorized use of the QCC and QCC (stylized) marks is likely to cause confusion or misunderstanding as to the source, sponsorship, approval, or certification of Quality Chain's goods, and is likely to cause confusion or misunderstanding as to affiliation, connection, or association with, or certification by, PCC.

41. Quality Chain knew, or should have known, of PCC's use and registration of, and corresponding rights in, the PCC Marks. Quality Chain's acts aforesaid constitute willful and intentional ongoing violation of ORS 646.608.

42. Quality Chain's willful and intentional ongoing violation of ORS 646.608 has caused and is causing great and irreparable injury and damage to PCC's business, goodwill, and reputation in an amount that cannot be ascertained at this time and, unless preliminarily and permanently restrained, will cause further irreparable injury and damages, leaving PCC with no adequate remedy at law.

43. Quality Chain's acts are the proximate cause of such injury and damage.

44. By reason of the foregoing, PCC is entitled to declaratory and injunctive relief,

both preliminary and permanent, against Quality Chain, and anyone acting in concert with Quality Chain, to restrain further violation of ORS 646.608.

COUNT 4
Common Law Trademark Infringement

45. PCC repeats and realleges each of the allegations contained in paragraphs 1 through 44 of this Complaint as if fully set forth herein.

46. PCC was the first to adopt or use the PCC Marks either within or without the State of Oregon as well as other states and has continuously used the PCC Marks in commerce in connection with PCC's goods and services, including in connection with cargo restraint equipment such as but not limited to tie-down straps, since at least as early as February 1991 and, accordingly, has established common law trademark rights in the PCC Marks.

47. Quality Chain's unauthorized use in commerce of the QCC and QCC (stylized) marks in connection with cargo restraint equipment such as tie-down straps constitutes ongoing infringement of PCC's common law trademark rights, misappropriates the valuable goodwill developed by PCC in the PCC Marks, and is likely to cause or has caused confusion among the relevant consuming public with the PCC Marks.

48. Quality Chain was, or should have been, aware of PCC's use of and corresponding rights in the PCC Marks. Quality Chain's acts aforesaid, including using names, terms, and/or marks that are confusingly similar to the PCC Marks for identical or substantially similar goods and services, constitute willful infringement of PCC's rights in the PCC Marks.

49. Quality Chain's acts of willful infringement of PCC's rights in the PCC Marks have caused and, unless restrained, will continue to cause great and irreparable injury to PCC, PCC's business, and to the goodwill and reputation of PCC in an amount that cannot be ascertained at this time, leaving PCC no adequate remedy at law.

50. Quality Chain's acts are the proximate cause of such injury and damage.

51. By reason of the foregoing, PCC is entitled to declaratory and injunctive relief, both preliminary and permanent, against Quality Chain, and anyone acting in concert with Quality Chain, to restrain further acts of infringement of PCC's rights and, after trial, to recover any damages proven to have been caused by reason of Quality Chain's aforesaid acts of infringement and any enhanced damages justified by the willful and intentional nature of such acts.

COUNT 5
Common Law Unfair Competition

52. PCC repeats and realleges each of the allegations contained in paragraphs 1 through 51 of this Complaint as if fully set forth herein.

53. By advertising and marketing its products, including but not limited to its tie-down straps, under the QCC and QCC (stylized) marks, including printing the QCC (stylized) mark directly on its tie-down straps, Quality Chain exploits PCC's reputation in the market by selling confusingly similar goods under a confusingly similar mark in a way that suggests that Quality Chain's goods and services, such as its tie-down straps, are associated with PCC, in ongoing violation of the common law.

54. Quality Chain was, or should have been, aware of PCC's use of and corresponding rights in the PCC Marks. Quality Chain's acts aforesaid constitute willful violation and intentional acts of common law unfair competition.

55. Quality Chain's willful and intentional acts of common law unfair competition have caused and are causing great and irreparable injury and damage to PCC's business and its goodwill and reputation in an amount that cannot be ascertained at this time and, unless preliminarily and permanently restrained, will cause further irreparable injury and damage,

leaving PCC with no adequate remedy at law.

56. Quality Chain's acts are the proximate cause of such injury and damage.

57. By reason of the foregoing, PCC is entitled to declaratory and injunctive relief, both preliminary and permanent, against Quality Chain, and anyone acting in concert with Quality Chain, to restrain further acts of unfair competition and, after trial, to recover any damages proven to have been caused by reason of Quality Chain's aforesaid acts, and to recover enhanced damages based on Quality Chain's willful, intentional, and/or grossly negligent acts.

PRAYER FOR RELIEF

WHEREFORE, PCC asks this Court to enter judgment against Quality Chain and against Quality Chain's subsidiaries, affiliates, agents, servants, employees, and all persons in active concert or participation with them, granting the following relief:

- A. A judgment or order declaring that Quality Chain has infringed the PCC Marks;
- B. A judgment or order declaring that Quality Chain has unfairly competed with PCC;
- C. A judgment or order declaring that Quality Chain has engaged in unlawful trade practices;
- D. A determination that Quality Chain's infringement of the PCC Marks has been and is willful;
- E. Issuance of a preliminary and permanent injunction enjoining Quality Chain, its agents, officers, assigns, and all others acting in concert with them from:
 - a. imitating, copying, using, reproducing, registering, attempting to register, and/or displaying the QCC and QCC (stylized) marks, or any mark or designation which colorably imitates or is confusingly similar to those marks or the PCC Marks, alone or in combination with any other term(s), word(s), name(s), symbol(s),

- device(s), designation(s), and/or design(s) in any manner whatsoever;
 - b. using any other false description or representation or any other thing calculated or likely to cause confusion, deception, or mistake in the marketplace with regard to PCC's PCC Marks;
 - c. using the mark "QCC," both as a word mark and in the stylized form depicted in this Complaint, as well as any other confusingly similar stylized form;
 - d. stamping products, including but not limited to tie-down straps, with the QCC mark, the QCC (stylized) mark, or with any other confusingly similar mark;
 - e. referring to either Quality Chain Corporation or Quality Cargo Control as "QCC"; and
 - f. using the QCC and QCC (stylized) marks on websites, catalogs, and all other materials;
- F. An order directing that Quality Chain deliver up for destruction all materials and matter in its possession or custody or under its control that infringe or unfairly compete with PCC's PCC Marks;
- G. An order directing that Quality Chain remove all instances of the QCC and QCC (stylized) marks from its websites, catalogs, and all other materials;
- H. An order directing that Quality Chain file with the Court and serve upon counsel for PCC within thirty (30) days after the entry of such order or judgment, a report in writing and under oath setting forth in detail the manner and form in which Quality Chain has complied with the injunction;
- I. An order awarding to PCC treble actual damages and treble damages based upon an accounting of Quality Chain's profits, including all statutory enhancements and other

enhancements on account of the willful nature of Quality Chain's acts as provided in 15 U.S.C. § 1117;

- J. An order awarding to PCC punitive damages on account of Quality Chain's willful violations of law;
- K. An order awarding to PCC prejudgment and post judgment interest;
- L. An award of PCC's costs and expenses, including, without limitation, reasonable attorneys' fees;
- M. An order for corrective advertising in a form, manner, and frequency that is acceptable to PCC and the Court; and
- N. Such other and further relief as this Court deems just and proper.

JURY DEMAND

Pursuant to Federal Rules of Civil Procedure 38(b), Plaintiff demands a trial by jury as to all issues so triable in this action.

Respectfully submitted,

/s/ Hillary A. Brooks

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