

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN**

<b>TIP TOP POULTRY, INC.</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Complaint under the Lanham</b>
	)	<b>Act, Michigan Consumer</b>
<b>SANTEMP, INC., INTERNATIONAL</b>	)	<b>Protection Act, Unfair</b>
<b>INSPECTIONS, LLC, SANTEMP</b>	)	<b>Competition and Civil</b>
<b>TRUCK BROKERAGES, INC., and</b>	)	<b>Conspiracy</b>
<b>METRO COLD STORAGE, INC.,</b>	)	
	)	
<b>Defendants.</b>	)	

**COMPLAINT**

For its Complaint, Plaintiff Tip Top Poultry, Inc. (“Tip Top” or “Plaintiff”) alleges as follows:

**Nature of the Case**

1. This action arises from false designation of origin, trade dress infringement and false and misleading descriptions and representations under § 43 of the Lanham Act, violations of Michigan’s consumer protection law, unfair competition, civil conspiracy and such other relief as this Court deems just and proper. Tip Top is a chicken processor based in Georgia that sells primarily breeder hens that are processed for their meat, which is called “spent fowl.” Canadian import regulations place limitations on the amount of meat from broilers

that may be imported through a Tariff Rate Quota (“TRQ”), but Canada has not placed limitations on the amount of spent fowl that may be imported.

2. The primary cause of this action is a scheme to improperly and illegally utilize Tip Top’s name, trade dress and plant information to circumvent these Canadian tariffs. Santemp, Inc. (“Santemp”), Santemp Truck Brokerage, Inc. (“Santemp Truck”), Metro Cold Storage, Inc. (“Metro Cold”), and International Inspections, LLC (“International Inspection”) maintain a cold storage, import inspection and export station in Detroit. The four Defendants operate under the assumed name “Santemp Group.” Santemp Group has utilized its inspection station to evade Canadian import controls by labeling broiler meat, whose importation into Canada is limited, as spent fowl. Santemp Group circumvented Canadian tariffs by placing Tip Top’s labels onto broiler meat and submitting paperwork to the USDA inspector and Canadian border control agency falsely stating that the package contains spent fowl originating from Tip Top’s processing plants when it did not.

### **Jurisdiction and Venue**

3. The Court has jurisdiction in this action pursuant to 28 U.S.C. § 1332(a) in that, as alleged below, Tip Top, on the one hand, and Defendants, on the other hand, are citizens of different states, and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs. The Court also has

federal question jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 1338 (a) and (b) and 15 U.S.C. §§ 1116 and 1121. The Court has jurisdiction pursuant to the principles of supplemental jurisdiction and 28 U.S.C. § 1367(a), of Plaintiff's claims for unfair competition and conspiracy under the laws of the State of Michigan, because Plaintiff's federal and state claims are based on the same operative facts and judicial economy, convenience, and fairness to the parties will result if this Court assumes and exercises jurisdiction of such state law claims.

4. This action arises out of wrongful acts committed by Defendants in this judicial district and which subject Defendants to personal jurisdiction here. Because a substantial part of the events giving rise to these claims occurred in this judicial district, venue is proper under 28 U.S.C. § 1391(b)(2).

5. All Defendants reside within this district within the meaning of 28 U.S.C. § 1931(c).

### **The Parties**

6. Plaintiff Tip Top Poultry, Inc. is a for-profit Georgia corporation with its principal office located at 327 Wallace Road, Marietta, Cobb County, Georgia.

7. Defendant Santemp, Inc. is a corporation with its principal office located at 1532 Adelaide Street, Detroit, Michigan, 48207.

8. Santemp operates under the assumed names of the Santemp Group and Santemp Company.

9. Defendant Santemp Truck Brokerage, Inc. is a for profit corporation that operates under the assumed names of the Santemp Group and Santemp Company with its principal place of business located at 1532 Adelaide Street, Detroit, Michigan, 48207.

10. Defendant International Inspections, LLC. is a limited liability corporation with its principal office located at 1532 Adelaide Street, Detroit, Michigan, 48207.

11. International Inspections, Inc. operates under the assumed names of the Santemp Group and Santemp Company.

12. Defendant Metro Cold Storage, Inc. is a corporation with its principal office located at 2529 Orleans Street, Detroit, Michigan, 48207.

13. Metro Cold Storage, Inc. operates under the assumed names of the Santemp Group and Santemp Company.

#### **Facts Common to all Claims**

14. Defendants are collectively referred to as the Santemp Group, which maintains an import location station and provides export certification, import inspection, packaging, transportation, labeling and warehousing services to customers seeking to export meat, including poultry, to Canada.

15. The Santemp Group utilizes its location for the inspection and repackaging of poultry and assisting in the creation of documentation allowing poultry to be exported to Canada.

16. Chicken exported from the United States to Canada is subject to the TRQ, including controls on the exportation of broilers raised for meat consumption.

17. Under the TRQ, only a set amount of broiler meat can be imported to Canada before a prohibitive two hundred thirty-eight percent (238%) tariff applies.

18. A second type of chicken meat is referred to as “spent fowl”, *i.e.* egg-laying hens that are processed for meat once the hen’s egg laying productivity declines. Spent fowl is exempt from the import restrictions applicable to broiler meat and no tariff applies.

19. To escape the TRQ, Defendants are mislabeling broiler meat as spent fowl having originated from a spent-fowl processor.

20. Defendants’ mislabeling of the origin of poultry has occurred over a number of years. For example, in 2012 this mislabeling resulted in Canada being shown as having imported more “spent fowl” breast meat from the United States than was actually produced in the entire United States. In 2015, Defendants’ conduct resulted in Canada importing “spent fowl” equivalent to ninety-five point six percent (95.6%) of the United States’ spent fowl production in 2015. These

numbers are impossible by legitimate means given United States' domestic consumption and the fact that legitimate spent fowl is exported to countries other than Canada.

21. Tip Top Poultry is a family-owned and operated company founded in 1947 in Marietta, Georgia. One of Tip Top's major products is the processing and sale of spent fowl. Tip Top does not process broilers. One of Tip Top's major markets for its spent fowl is Canada.

22. Tip Top has spent over seventy years building and protecting its brand, trade name and reputation. The Tip Top name and goodwill associated therewith is a valuable asset of Plaintiff.

23. Tip Top's name is used to identify and distinguish its goods and products from those of other poultry producers.

24. Tip Top's name is used and recognized as being associated with its poultry products not only in the United States, but in the numerous foreign markets to which it exports, including Canada.

25. Tip Top advertises its name and mark to third parties worldwide and Tip Top conducts a large volume of trade worldwide under its name and mark. Tip Top's name and mark are recognized by both consumers and manufacturers who utilize Tip Top's products.

26. Tip Top's products have been made since 1947 and Tip Top's name and mark have become synonymous with high-quality spent fowl utilized worldwide.

27. On October 21, 2016, Tip Top received two letters referencing two separate case numbers, Case No. C-2016-003281 (**Exhibit "A"**) and Case No. C-2016-003210 (**Exhibit "B"**), constituting inquiries from the Canadian Border Services Agency regarding two shipments of poultry.

28. Attached to the inquiries from the Canadian Border Services Agency were Certificates for Export of Meat and Poultry Products ("Certificate of Export") for each shipment, both of which listed Tip Top's plant located in Marietta, Georgia (Plant No. P-1480) as the source of one thousand (1,000) boxes of spent fowl. *See Exhibit A and Exhibit B.*

29. However, Tip Top was not the source of the poultry listed on either Certificate of Export.

30. The documentation provided by the Canadian Border Services Agency in **Exhibit "A"** demonstrates that on November 29, 2015, the Santemp Group prepared a Certificate of Export listing itself as the consignor for a shipment allegedly imported by CNC Distributions, Inc. ("November Export").

31. The November 29, 2015 Certificate of Export falsely states 1,000 boxes of spent fowl weighing 40,000 pounds originated at Tip Top's Plant No. P-1480. *See* **Exhibit "A"**.

32. The inspection of the spent fowl took place at the Santemp Group's facility utilizing its inspection service.

33. Upon information and belief, the 1,000 boxes (or parts thereof) bore counterfeit Tip Top labels.

34. The documentation provided by the Canadian Border Services Agency in **Exhibit "B"** demonstrates that on December 27, 2015, the Santemp Group prepared a Certificate of Export listing itself as the consignor for a shipment allegedly imported by Les Aliments R S Inc. ("December Export").

35. The December 27, 2015 Certificate of Export falsely states 1,000 boxes of spent fowl weighing 40,000 pounds originated at Tip Top's Plant No. P-1480. *See* **Exhibit "B"**.

36. The inspection of the spent fowl took place at the Santemp Group's facility utilizing its inspection service.

37. Upon information and belief, the 1,000 boxes (or parts thereof) bore counterfeit Tip Top labels.

38. The documentation in **Exhibits "A"** and **"B"** from the Canadian Border Services Agency shows the Santemp Group additionally created and

participated in the submission of two separate “Canada Customs Invoices” that both falsely state the vendor on the two shipments as Tip Top and the source of the poultry was Tip Top’s plant located in Marietta, Georgia.

39. Placing Tip Top labels on poultry is a false commercial advertisement in interstate commerce that would deceive consumers or further poultry processors who are the audience for Tip Top’s products.

40. In August 2016, the Canadian Food Inspection Agency (“CFIA”) temporarily shut down the export of poultry from all inspection stations starting with a “V” or “I” prefix, including the Santemp Group’s inspection station.

41. The suspension was rescinded the next day because it had been too broadly targeted at all inspection stations.

42. Two weeks later, on September 6, 2016, the CFIA individually targeted the Santemp Group and suspended the Santemp Group’s authorization to export meat and meat product to Canada.

43. On information and belief, the Santemp Group is still able to mislabel poultry at its facility and ship the poultry to Canada by utilizing other exporters.

44. Through its counsel, Tip Top sent a letter to the Santemp Group on November 10, 2016, protesting the Santemp Group’s past and future use of Tip Top’s name and information.

45. Through its counsel, Santemp Group rejected Tip Top's demand on November 22, 2016.

46. Santemp Group's selection of Tip Top's name and plant number was deliberate and intended to confuse consumers, processors and Canadian inspectors of the origin of the product, falsely stating the product originated from Tip Top's plant.

47. The Santemp Group's use of Tip Top's name and plant number deprives Tip Top of the ability to control the nature and quality of the products associated with Tip Top and places the reputation and good will of Tip Top in the hands of the Santemp Group and other unknown parties, over whom Tip Top has no control.

48. On information and belief, the Santemp Group's acts complained of herein have been malicious, deliberate, willful, intentional, and in bad faith, committed with full knowledge or reckless disregard to the true origin of the products and with intent to trade in on Tip Top's goodwill and products.

49. Tip Top is placed at substantial risk if any product for which the Santemp Group utilized Tip Top's name is the subject of a recall.

50. Any cost of a recall would likely fall on Tip Top and cost millions of dollars to remedy.

51. The Santemp Group's use of Tip Top's name and plant number to circumvent Canadian custom's tariffs places Tip Top's export business to Canada at risk.

52. The Santemp Group's actions are likely to cause consumer and manufacturer confusion, cause mistake and deceive as to the affiliation, connection or association of Tip Top with the broiler meat the Santemp Group had and has in its facilities and those which Plaintiff is legitimately placing into the stream of commerce.

53. The Santemp Group's actions have misrepresented the characteristics, qualities and geographic origin of the poultry, stating the poultry originated at Tip Top's facility in Georgia as spent fowl when in fact the poultry did not originate at Tip Top's facility in Georgia and is not spent fowl.

54. The Santemp Group's use of Tip Top's name, labels, plant information, trade dress and reputation have deprived Tip Top of legitimate sales of its own products, causing damage to Tip Top's business.

## COUNT I

### **False Designation of Origin, Trade Dress Infringement and Unfair**

### **Competition under Lanham Act Section 43(a)**

**(15 U.S.C. § 1125(a))**

55. Plaintiff hereby repeats each and every allegation set forth in Paragraphs 1 through 54 as if fully set forth herein.

56. Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) provides, in relevant part, that:

Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which (1)(a) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person ...shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

57. Defendants made unauthorized use, in commerce, of the Tip Top name and plant number on Certificates of Export and Customs Invoices, constituting a “false designation of origin” that is likely to cause confusion, mistake or deception as to the affiliation or connection of Tip Top to poultry imports that are not its own and as to the origin, sponsorship, association or approval of Tip Top of the poultry shipments, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

58. Defendants placed Tip Top’s labels utilizing its name and trade dress, trade name and trademark on products that are not Tip Top’s, placing the improperly labeled products into the stream of commerce.

59. The Defendants' acts constitute the use in commerce of false designations of origin and false and/or misleading descriptions or representations, tending to falsely or misleadingly describe and/or represent products as those of Tip Top, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. 1125(a).

60. Defendants knew, or should have known, of Plaintiff's rights and Defendants' false description, false representation, and false designation of origin was knowing, willful, and deliberate, making this an exceptional case within the meaning of 15 U.S.C. § 1117.

61. Plaintiff has been, and will continue to be, damaged by such false description, false representation, and false designation of origin in an amount yet to be determined. Consumers and purchasers are likely to locate and purchase Defendants' deceptive products in the erroneous belief that Defendants products are associated with Plaintiff, creating a likelihood of confusion.

62. Defendants' egregious conduct in utilizing Tip Top's name, information and labels on product that has no connection to Tip Top is willful, intentional and in reckless disregard of Tip Top's rights.

## **COUNT II**

### **Unfair Trade Practices – Michigan Consumer Protection Act**

**MCLA § 445.903 and 905**

63. Plaintiff hereby repeats each and every allegation set forth in Paragraphs 1 through 62 as if fully set forth herein.

64. Defendants trafficked in poultry using unfair and deceptive acts or practices in a manner designed to cause a probability of confusion and misunderstanding as to the source of the poultry by stating the poultry was spent fowl originating from Plaintiff when it was not.

65. Defendants trafficked in poultry using deceptive designations on Certificates of Export and labels of the geographic origin of the poultry by stating the poultry originated at Plaintiff's plant in Marietta, Georgia when it did not.

66. The poultry Plaintiff trafficked in was primarily for personal, family or household purposes. Consumers and purchasers are likely to locate and purchase Defendants' deceptive products in the erroneous belief that Defendants products are associated with Plaintiff.

67. Plaintiff and consumers have been damaged by Defendants' deceptive acts.

**COUNT III**

**Common Law Unfair Competition**

68. Plaintiff hereby repeats each and every allegation set forth in Paragraphs 1 through 67 as if fully set forth herein.

69. Defendants purposefully, deceptively and fraudulently misrepresented the origin of poultry and misrepresented Tip Top as the source of poultry for the purpose of deceiving and misleading the public and Canadian regulators. Defendants used Tip Top's name, plant number, labels and symbols to accomplish this deception.

70. Plaintiff's name, labels and symbols have been associated with its products for over seventy years and are associated in the minds of purchasers and consumers with the goods originating from Tip Top's processing plants.

71. Plaintiff has been injured by lost sales, loss of goodwill and the possibility of future loss of access to a market and dilution of the distinctiveness of Plaintiff's name and trade dress. Plaintiff's business has been harmed through lost sales and the general public has been harmed by being deceived as to the source of and type of poultry being placed into the stream of commerce.

72. Defendants' acts have caused, and will continue to cause, irreparable injury to Tip Top.

#### **COUNT IV**

##### **Civil Conspiracy**

73. Plaintiff hereby repeats each and every allegation set forth in Paragraphs 1 through 72 as if fully set forth herein.

74. Defendants acted in concert to accomplish an unlawful purpose by purposefully deceive consumers, producers and the Canadian regulators as to the source of poultry, stating the poultry originated from and was a Tip Top product when it was not and using Tip Top's name, plant number, labels and symbols to accomplish this deception.

75. Defendants' acted pursuant to a common design to unfairly compete and deceive consumers, producers and regulators in a manner that harmed Plaintiff's business and the general public.

76. Plaintiff and consumers have been damaged by Defendants' acts.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays:

1. For a Final Judgment that:

- a. Defendants have violated Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a);
- b. Defendants have engaged in violations of the Michigan Consumer Protection Act;
- c. Defendants have engaged in unfair competition; and
- d. Defendants have engaged in a civil conspiracy.

2. For the entry of an **Order** permanently enjoining and restraining Defendants, and their officers, agents, servants, employees and attorneys and all those in active concert with any of them from:
  - a. Using Tip Top's name, plant number, label or trade dress in connection with any goods not authorized by and originating from Tip Top;
  - b. Engaging in any course of conduct likely to cause confusion, deception or misstate, or to injure Plaintiff's reputation or dilute Plaintiff's brand; and
  - c. Using any false description or representation as to the origin of any products.
3. For an assessment of damages suffered by Plaintiff, and an award of all profits Defendants have derived from the use of Tip Top's name, plant number and trade dress, trebled, as well as costs and attorneys' fees to the full extent provided for by 15 U.S.C. § 1117, MCLA § 445.911 and Michigan law.
4. For the costs of this suit, and for such other and further relief as the Court deems appropriate.

Respectfully Submitted,

This 31<sup>st</sup> day of January, 2017.

**GREGROY, DOYLE, CALHOUN & ROGERS, LLC.**

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