

Civil No. 84-15853 (CM)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

(Title omitted in printing)

**SECOND AMENDED COMPLAINT FOR DAMAGES  
FOR VIOLATION OF THE ANTITRUST LAWS  
(SECTIONS 1 & 2 OF THE SHERMAN ACT AND  
SECTION 3 OF THE CLAYTON ACT); BREACH OF  
CONTRACT; FRAUD; VIOLATION OF FEDERAL  
RACKETEERING LAWS (18 U.S.C. §1964(c));  
UNFAIR COMPETITION; BAD FAITH BREACH  
OF IMPLIED COVENANT OF GOOD FAITH AND  
FAIR DEALING; VIOLATION OF THE  
CARTWRIGHT ACT (California Business and  
Professions Code Section 16600 and Section 16700)**

**[Jury Trial Demanded]**

(Filed July 21, 1986)

Plaintiffs bring this action for treble damages resulting from defendants' violations of the antitrust laws and the racketeering laws of the United States, and for violation of the Cartwright Act, breach of contract, fraud, unfair competition, bad faith breach of the implied covenant of good faith and fair dealing, interference with prospective advantage and conversion under the laws of the State of California.

**JURISDICTION AND VENUE**

1. This Court has jurisdiction under sections 4 and 16 of the Act of Congress of October 15, 1914, 15 U.S.C. sections 15, 26, as amended, commonly known as the Clayton Act and 28 U.S.C. section 1337(a). The first

through third counts of the complaint arise under sections 1 and 2 of the Sherman Act (15 U.S.C. §§1, 2) and section 3 of the Clayton Act (15 U.S.C. §15);

2. Jurisdiction is also based on this court's jurisdiction to hear any civil action brought by any person injured in his business or property by reason of a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §1961 *et seq.* ("RICO"). Counts six through nine of this complaint are filed pursuant to title 18 U.S.C. section 1964(c) to recover damages which plaintiffs have sustained due to violations of the federal racketeering laws;

3. Jurisdiction is also based on this court's pendent jurisdiction over the claims of plaintiffs arising under California law;

4. Jurisdiction is also based on the court's diversity jurisdiction, 28 U.S.C. section 1332(a)(1), in that the claims herein are between citizens of different states and involve matters in controversy in excess of the sum or value of \$10,000.00 exclusive of interest and costs.

5. Venue is appropriate in this judicial district pursuant to the provisions of title 15 U.S.C. section 22, title 18 U.S.C. section 1965, and title 28 U.S.C. sections 1391(b) and (c) and section 1392(a). Each defendant maintains an office, transacts business, has an agent, transacts his affairs in or is found within this district. Plaintiffs reside in this district and plaintiffs' causes of action arose in this district and each defendant is within the jurisdiction of this court for the purpose of service. Many of the unlawful acts done pursuant to the combination and conspiracy hereinafter alleged were performed or carried out within this district; caused injury within the district and the interstate trade and

commerce hereinafter described was carried on, in part, within this district. The ends of justice require that all parties defendant be brought before this court and that the action be maintained in this district.

### PARTIES

6. Plaintiffs SHIRLEY McQUILLAN and LARRY McQUILLAN are individuals residing in the County of San Diego, State of California and at all times material conducted business under the name SORBOTURF ENTERPRISES.

7. Defendant SORBOTHANE, INC. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in the State of Ohio. SORBOTHANE, INC. is a wholly-owned subsidiary of a company known as SW Industries which is a wholly-owned subsidiary of BTR, INC. Plaintiffs are informed and believed that SORBOTHANE, INC. was formerly known as SORBO, INC., which was formed in or about April 1982 to take over the Sorbothane business that had been conducted by HAMILTON-KENT MANUFACTURING COMPANY, a separate corporation which acted as a division of defendant BTR, INC. SORBOTHANE, INC. did, in fact, take over the Sorbothane business conducted by HAMILTON-KENT MANUFACTURING COMPANY and has acquired the assets and liabilities associated with the Sorbothane business of HAMILTON-KENT MANUFACTURING COMPANY. Hereinafter a reference to SORBOTHANE, INC. will include SORBO, INC. and HAMILTON-KENT MANUFACTURING COMPANY. At all times material since the formation of SORBOTHANE, INC., in or about April 1982, SORBOTHANE, INC. was the agent and alter ego of

BTR, INC. in that there was a failure to respect the separate corporate identity of SORBOTHANE, INC. by BTR, INC. and BTR, INC. completely controlled and dominated the affairs of SORBOTHANE, INC. In equity and fairness, the separate corporate identity of SORBOTHANE, INC., if any, should be disregarded and SORBOTHANE, INC. should be regarded as the agent and alter ego of BTR, INC.

8. Defendant BTR, INC. (hereinafter "BTR") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in the State of Rhode Island. Plaintiffs are informed and believe and thereupon allege that BTR, INC. is a wholly-owned subsidiary of either BTR, plc, BTR Industries, Ltd. or BTR, Silvertown, corporations organized and existing under the laws of the United Kingdom. The stock of BTR, plc, is publicly traded on the London Stock Exchange.

9. Defendant SPECTRUM SPORTS, INC. (formerly known as Ohio Cushions) is a corporation organized and existing under the laws of the State of Ohio with its principal place of business in Twinsburg, Ohio.

10. Defendant HAMILTON-KENT MANUFACTURING COMPANY (hereinafter "HAMILTON-KENT") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at the BTR offices in Providence, Rhode Island. At all times material and at least from the period of the acquisition of HAMILTON-KENT by BTR's subsidiary, SW Industries, and at least until the formation of SORBO, INC. in or about April or May, 1982, HAMILTON-KENT functioned as a division of BTR, INC. and was held out, in California and elsewhere, as a division of BTR, INC. In addition, at all

material times, HAMILTON-KENT was the agent and alter ego of BTR, INC. in that there was a failure to respect the separate corporate identity of HAMILTON-KENT by BTR and BTR completely controlled and dominated the affairs of HAMILTON-KENT. In equity and fairness, the separate corporate identity of HAMILTON-KENT, if any, should be disregarded and HAMILTON-KENT should be regarded as the agent and alter ego of BTR, INC.

11. Defendants KENNETH M. LEIGHTON and KENNETH B. LEIGHTON are father and son, respectively, and are each individual residents of the State of Ohio. KENNETH M LEIGHTON was, at all material times, president of SORBOTHANE, INC. and HAMILTON-KENT and KENNETH B. LEIGHTON was, at all material times, president of SPECTRUM SPORTS, INC.

#### NATURE OF TRADE AND COMMERCE

12. This complaint concerns a combination and conspiracy in restraint of trade and other wrongful conduct relating to a product known as Sorbothane which is a material the patent for which is held by an entity located in the United Kingdom known as British Technology Group. Defendants BTR, HAMILTON-KENT and SORBOTHANE have, at all material times, held a non-exclusive license for the manufacture of Sorbothane products for sale in the United States.

13. Plaintiffs are informed and believe that at all material times, defendant SORBOTHANE, INC. has, consistent with its license to manufacture Sorbothane in the United States, been involved in the manufacture and nationwide distribution of Sorbothane for all commercial, industrial and medical uses.

14. Sorbothane is a high shock absorbency polymer material which has been demonstrated to be extremely effective in diverse applications. Sorbothane has received nationwide acclaim and attention for its shock absorbent properties.

15. Sorbothane was first introduced into the United States market in or about July 1980 through BTR's division, HAMILTON-KENT. To date, the most commercially successful application of the product is in the manufacture of sporting shoe innersole and heel inserts including shoe inserts sold by shoe manufacturers (such as Nike) as part of the innersole of the shoes. Other Sorbothane products, some of which are on the market and some of which are still in the development stage, include medical products, miscellaneous industrial applications and horseshoe pads.

16. The "shoe insert" market for Sorbothane has experienced considerable growth since its introduction into the U.S. market and plaintiffs are informed and believe that the shoe insert market is presently in excess of \$5.5 million in gross sales nationwide. At the present time, SORBOTHANE, INC. has approximately 90% to 95% of the market for polymer shock absorbent sporting shoe inserts. Most major manufacturers of sporting shoes (Nike, Addidas, New Balance, Tiger, Musak, Converse and Brooks) manufacture shoe inserts designed primarily for use with or as replacement inserts for shoes marketed by them. With the exception of Nike (which uses Sorbothane for its inserts) these products are not made from polymer materials and lack the shock absorbent properties of Sorbothane. Non-polymer inserts are not properly included in the same product market as Sorbothane inserts.

17. Because Sorbothane is a patented material which has received wide acclaim for its shock absorbent properties, Sorbothane inserts are perceived as unique and desirable as a supplement to or replacement for shoe inserts sold with sporting shoes or as an insert for shoes with no other innersole or heel insert.

18. Sorbothane shoe inserts are sold in sporting goods stores, shoe stores carrying sport and training shoes, department stores carrying sport and training shoes and general or "box-shoe" type retail outlets. Sorbothane is also sold as "sheet stock" for adaptation to various uses by the purchaser.

19. As of August 1983, plaintiffs had developed a substantial volume of business for Sorbothane shoe inserts and sheet stock primarily with retail accounts in the southwestern United States. Gross sales were approximately \$303,000 for the first eight months of 1983 and would have averaged approximately \$45,000 to \$60,000 per month for January through August 1983 had non-defective product been made available to plaintiffs in sufficient quantities.

#### BACKGROUND FACTS

20. Beginning sometime in or about October 1980, the exact date being unknown to the plaintiffs, and continuing to the present time, defendants and others knowingly entered into and participated in a continuing conspiracy and unlawful combination in unreasonable restraint of trade and commerce in violation of sections 1 and 2 of the Sherman Act (title 15 U.S.C. §§1 and 2) and section 3 of the Clayton Act (title 15 U.S.C. §14).

21. In or about October, 1980, plaintiff SHIRLEY McQUILLAN became aware of the existence of Sorbothane and met with Maurice Hiles (who was



represented as a BTR representative and the inventor of the product) and representatives of HAMILTON-KENT. As a result of this meeting, plaintiff SHIRLEY McQUILLAN and defendant HAMILTON-KENT entered into an agreement providing for the development by plaintiff SHIRLEY McQUILLAN of horseshoe pads and other equestrian products developed from Sorbothane. From that point forward and until approximately February 1983, plaintiff SHIRLEY McQUILLAN spent a considerable amount of time, energy and money in the development of an equestrian application for Sorbothane.

22. In or about January 1981 through August 1981, HAMILTON-KENT, through defendant KENNETH M. LEIGHTON, represented to plaintiffs that it was developing its plan for the promotion and distribution of products to be manufactured from Sorbothane. As a result of her interests in the equestrian uses of the product and based on her contacts with representatives of HAMILTON-KENT and the inventor of the product, plaintiff SHIRLEY McQUILLAN participated in discussions with representatives of HAMILTON-KENT to become a distributor for all other Sorbothane products in a specified region of the southwestern portion of the United States.

23. In or about August, 1981 defendant HAMILTON-KENT entered into an oral agreement with plaintiff SHIRLEY McQUILLAN whereby SHIRLEY McQUILLAN was designated as the exclusive distributor for the southwestern United States for Sorbothane products. The essential terms of the agreement were as follows:

a. Plaintiff SHIRLEY McQUILLAN was to have the exclusive right to distribute Sorbothane products then contemplated for the United States



market in the Southwestern United States territory consisting of Southern California, New Mexico, Arizona, Colorado and parts of Nevada. HAMILTON-KENT was to provide support and assistance to SHIRLEY McQUILLAN to accomplish the goals shared by both HAMILTON-KENT and plaintiff SHIRLEY McQUILLAN of developing a market for Sorbothane products and developing and enhancing the positive reputation for Sorbothane.

b. In exchange, plaintiff SHIRLEY McQUILLAN agreed to use her best efforts to develop the market for Sorbothane products within her territory and to spend such time, energy and money as was necessary and appropriate to develop the retail market for Sorbothane products and promote and sell Sorbothane throughout her territory.

c. SHIRLEY McQUILLAN was initially advised that she would remain as a distributor in her territory for so long as she was using her best efforts to carry out her responsibilities as a distributor in a satisfactory way. After some discussion, the agreement evolved to provide for an initial term of five years renewable for five-year periods, at the election of plaintiff SHIRLEY McQUILLAN, provided her performance as a distributor was satisfactory. KENNETH M. LEIGHTON represented that a written agreement embodying the terms of the distributorship would be prepared and presented to her for execution.

24. In or about the second half of 1981, HAMILTON-KENT was in the process of establishing a nationwide distribution system for Sorbothane products by the creation of independent regional distributors under agreements similar to the agreement entered into with SHIRLEY McQUILLAN. Plaintiffs are informed

and believe that as of January 1982, the distribution system for Sorbothane was in place with a total of five distributors (including plaintiff SHIRLEY McQUILLAN) each of which commenced operation under an oral agreement with HAMILTON-KENT for the distribution of its products in a specified geographical territory. One of those distributors was defendant KENNETH B. LEIGHTON, who had resigned from his position as a vice-president of HAMILTON-KENT and had formed a corporation then known as Ohio Cushions (now SPECTRUM SPORTS) for the purpose of distributing Sorbothane products in a territory of approximately 30 states.

25. In or about August 1981, plaintiffs SHIRLEY McQUILLAN and LARRY McQUILLAN commenced doing business under the name SORBOTURF ENTERPRISES and plaintiff SORBOTURF ENTERPRISES acted, with the consent of HAMILTON-KENT, as the distributor for the southwestern United States territory under the oral agreement referred to in paragraph 23 hereinabove.

26. At all times material, and up to the wrongful termination of plaintiffs' distributorship in or about August 1983, plaintiffs performed all conditions and covenants on their part to be performed in accordance with the distributorship agreement referred to hereinabove, and did invest substantial time, energy and money to develop a market for Sorbothane products and promote and sell Sorbothane and did use their best efforts to carry out their responsibilities in accordance with the various specific policies and guidelines established from time to time by HAMILTON-KENT and SORBOTHANE.

27. As of at least the date of the consummation of the oral agreement designating plaintiffs as the southwestern United States distributor for Sorbothane products, and continuing until the present, defendants, and each of them, along with others including a company known as I.E.M. Orthopedics, which was appointed distributor for medical Sorbothane products, have knowingly entered into and participated in a continuing combination and conspiracy in unreasonable restraint of trade in violation of the Sherman Act and the Clayton Act by engaging in conduct designed to accomplish the following anti-competitive goals: (1) to establish and maintain resale prices for Sorbothane products at both the wholesale and retail levels; (2) to eliminate all independent distributors of Sorbothane athletic products except for a co-conspirator, defendant SPECTRUM SPORTS, INC., and to establish SPECTRUM SPORTS, INC. as the sole and exclusive nationwide distributor for Sorbothane sporting shoe products and sheet stock in order to establish and maintain resale prices for Sorbothane products at both the wholesale and retail levels; (3) to fix prices and allocate markets and territories among distributors so as to eliminate price competition for Sorbothane products and artificially inflate and support the price of certain Sorbothane products (such as medical products); (4) to enforce minimum price schedules and eliminate retailers who refused to conform to price schedules and anti-discounting policies dictated by members of the conspiracy; (5) to use the distributors to establish markets for Sorbothane products in their respective distribution territories and after markets were sufficiently developed, to terminate distribution agreements with the distributors, refuse to sell Sorbothane products to plaintiffs and deliver their

territories to co-conspirators, SPECTRUM SPORTS, INC. and KENNETH B. LEIGHTON; (6) to enforce exclusive dealing arrangements whereby distributors were precluded from dealing in competitors' products; and (7) to monopolize and/or attempt to monopolize the market for polymer shock absorbent shoe inserts and sheet stock and the sub-market for the distribution of Sorbothane shoe inserts and sheet stock nationwide.

28. In addition, defendants BTR, INC., HAMILTON-KENT MANUFACTURING COMPANY, SORBOTHANE, INC. and KENNETH M. LEIGHTON have, since at least July 1980, knowingly entered into and participated with each other and with others including the Leyland and Birmingham Rubber Company, Ltd., BTR Marketing Company, BTR Kennon, Sanshin Enterprises, and BTR Development Services, Ltd., in a continuing contract combination and conspiracy in unreasonable restraint of trade in violation of the Sherman Act, by engaging in the following conduct: (1) the allocation of world markets for the sale of Sorbothane products; (2) the imposition of restrictions on the sale of Sorbothane products from and into the United States by members of the conspiracy; (3) the boycotting of potential purchasers of Sorbothane products who fail to comply with unreasonable resale restrictions imposed for anticompetitive purposes; (4) the fixing of prices for Sorbothane products; (5) the elimination of competitors and potential competitors by coercing the patent holder to withhold the granting of additional licenses to manufacture Sorbothane; (6) the boycotting of suppliers of members of the conspiracy and engaging in other coercive conduct designed to cause suppliers to refuse to supply materials to non-members of the conspiracy; (7) the threatening patent infringement litigation to anyone who attempts to manufacture a

polymer shock absorbent material in order to discourage competitors and potential competitors; and (8) monopolizing, attempting to monopolize and conspiring to monopolize the market for the manufacture and sale of Sorbothane products worldwide.

29. In furtherance of the combination and conspiracy referred to in paragraph 27, defendants, and each of them, engaged in the following acts among others:

a. Intentionally misrepresenting to plaintiffs that plaintiffs would be given a distributorship for Sorbothane products if they agreed to develop the market in their territory and that they would remain as the distributor in their region for so long as they performed satisfactorily and used their best efforts to carry out their responsibilities as distributors;

b. Intentionally misrepresenting to plaintiffs that a written distributorship agreement embodying the essential terms and conditions agreed upon would be promptly prepared and executed by HAMILTON-KENT;

c. Establishing wholesale prices to be charged by distributors to retail outlets and insisting that distributors not set prices below the published price list or permit volume discounts or other price incentives;

d. Requiring distributors, as a condition to maintaining their distributorship, to police retailers to insure that retailers were not engaging in price cutting or discounting in violation of established retail prices set by defendants;

e. Prohibiting distributors from selling Sorbothane products to discount stores or other prohibited retail outlets;

f. Prohibiting distributors from dealing in competitors' products;

g. Engaging in conduct intended to frustrate distributors and cause distributors to relinquish their distributorship after a market had been developed within their territory including, without limitation, the following specific acts:

i. Setting quotas unrealistically high and misrepresenting the sales volume achieved by other distributors in order to support unreasonably high quotas;

ii. Raising prices to distributors without sufficient notice preventing distributors from passing on those price increases to their customers;

iii. Pressuring distributors to sell their distributorships to defendant SPECTRUM SPORTS, INC.;

iv. Misrepresenting their intention not to engage in arm's length negotiations for the acquisition of plaintiffs' distributorship;

v. Engaging in threats and intimidation designed to coerce plaintiffs to sell their distributorship to SPECTRUM SPORTS, INC.;

vi. Eliminating products from the product line of the regional distributors and creating national distributions for these products (*i.e.*, medical products, "box shoe" products and military products); and

vii. Establishing highly restrictive credit terms for the purchase of Sorbothane products.

h. Intentionally shipping defective products;



i. Misrepresenting their intent to grant plaintiffs an exclusive distributorship for equestrian products;

j. Fabricating complaints with the performance of plaintiffs under plaintiffs' distributorship with HAMILTON-KENT and SORBOTHANE, INC.;

k. Threatening to terminate plaintiffs from their distributorship if they dealt in competitors' products;

l. Refusing to negotiate in good faith for the consummation of a written distributorship agreement;

m. Systematically reducing each distributor's product line by introducing exclusive nationwide distributors for certain markets and ultimately terminating each of the distributors for Sorbothane sporting shoe and sheet stock products and delivering to SPECTRUM SPORTS, INC. the territories serviced by each such distributor until SPECTRUM SPORTS, INC. was the sole and exclusive distributor for Sorbothane sporting shoe and sheet stock products;

n. Allocating markets between distributors (such as I.E.M. Orthopedics and the athletic products distributors) so as to reduce competition at the wholesale level and support the fixed price for certain Sorbothane products (such as medical products);

o. Wrongfully terminating the distributorship of plaintiffs and refusing to sell Sorbothane products to plaintiffs from and after August 1983;

p. Misrepresenting their intention regarding the acquisition and confidentiality of the customer lists of plaintiffs;

q. Delivering plaintiffs' confidential customer list to defendants SPECTRUM SPORTS, INC. and KENNETH B. LEIGHTON.

30. In furtherance of the contract combination and conspiracy referred to in paragraph 28, defendants BTR, INC., HAMILTON-KENT MANUFACTURING COMPANY, SORBOTHANE, INC. and KENNETH M. LEIGHTON engaged in the following additional acts in concert with each other and with the other members of the conspiracy referred to in paragraph 28;

a. Allocating world markets for the sale of Sorbothane products;

b. Restricting sales into and out of the United States by members of the conspiracy;

c. Engaging in secondary group boycotts of suppliers who failed to comply with anti-competitive restrictions;

d. Engaging in primary group boycotts of purchasers and potential purchasers of Sorbothane products who failed to comply with resale restrictions;

e. Entering into and enforcing horizontal price fixing agreements;

f. Threatening baseless litigation to deter and frustrate competitors;

g. Coercing the patent holder to restrict sublicenses in order to further the unlawful goals of the conspiracy and to perpetrate the monopoly on polymer shock absorbent products held by members of the conspiracy in their respective markets.

#### FIRST COUNT

(Conspiratorial Refusal to Deal, Resale Price Maintenance and Exclusive Dealing [Section 1 of the Sherman Act] [Against All Defendants])

31. Plaintiffs refer to paragraphs 1 through 29 above and by this reference thereto, incorporate the same as though herein set forth at length.

32. The relevant geographic market is the United States and the relevant product markets are polymer shock absorbent sporting shoe inserts and sheet stock. Sorbothane shoe inserts and sheet stock is a relevant product sub-market.

33. The foregoing conspiracy in restraint of trade and actions taken in furtherance of the conspiracy occurred in the interstate commerce of the United States.

34. Plaintiffs have been injured in their business and property by reason of defendants' conspiracy in violation of section 1 of the Sherman Act in that plaintiffs have lost their distributorship and have suffered and continue to suffer loss of profits, revenues and other income and loss of goodwill and damage to their reputation as a result of the termination of their distributorship and as a direct and proximate result of the wrongful conduct of defendants as alleged hereinabove.

## SECOND COUNT

(Group Boycott, Horizontal Price Fixing, Horizontal Market Allocation [Section 1 of the Sherman Act] [Against Defendants BTR, INC., HAMILTON-KENT MANUFACTURING COMPANY, SORBOTHANE, INC. and KENNETH M. LEIGHTON])

35. Plaintiffs refer to paragraphs 1 through 32 above and by this reference thereto incorporate the same as though herein set forth at length.

36. By the acts described in paragraphs 28 through 30 above, *inter alia*, BTR, INC., SORBOTHANE, INC., HAMILTON-KENT MANUFACTURING COMPANY and KENNETH M. LEIGHTON, in concert with each other and with others, including BTR Kennon, Leyland and Birmingham Rubber Company, Ltd., BTR Development Services, Ltd., Sanshin Enterprises and BTR Marketing Company, have engaged in an unlawful contract combination and conspiracy in unreasonable restraint of trade in violation of section 1 of the Sherman Act.

37. The foregoing conspiracy in restraint of trade and actions taken in furtherance of the conspiracy occurred in the Interstate and Foreign Commerce of the United States.

38. Plaintiffs have been injured in their business and property by reason of defendants' conspiracy in violation of section 1 of the Sherman Act in that plaintiffs have lost their distributorship and have suffered and continue to suffer loss of profits, revenues and other income and loss of goodwill and damage to their reputation as a result of the termination of their distributorship and as a direct and proximate result of the wrongful conduct of defendants as alleged hereinabove.

### THIRD COUNT

(Monopolization [Section 2 of the Sherman Act]  
[Against All Defendants])

39. Plaintiffs refer to paragraphs 1 through 30 above and by this reference thereto incorporate the same as though herein set forth at length.

40. By the acts described in paragraph 27 through 30 above, *inter alia*, defendants and other co-conspirators have intended to and have monopolized, conspired to monopolize or have attempted to monopolize and are now monopolizing, conspiring to monopolize or attempting to monopolize the markets for the manufacture and distribution to retail outlets of polymer shock absorbent sporting shoe inserts and sheet stock and the sub-market for Sorbothane sporting shoe inserts and sheet stock.

41. Because of their substantial resources and market power, defendants have a dangerous probability of success in their attempt to monopolize the markets for the manufacture and distribution of polymer shock absorbent sporting shoe inserts and Sorbothane shoe inserts to retail outlets.

42. Plaintiffs have been injured in their business and property by reason of defendants' monopolization, conspiracy to monopolize or attempt to monopolize the market and sub-market referred to in paragraph 30 above in that plaintiffs have lost their distributorship and have suffered loss of profits, revenues and other monies from the termination of their distributorship and loss of goodwill and damage to their reputation as a direct and proximate result of defendants' monopolization, conspiracy to monopolize or attempt to monopolize as alleged hereinabove.

#### FOURTH COUNT

(Exclusive Dealing [Section 3 of the Clayton Act]  
[Against All Defendants])

43. Plaintiffs refer to paragraphs 1 through 30 above and by this reference thereto incorporate the same as though herein set forth at length.

44. At all times material, defendants BTR and SORBOTHANE insisted that distributors of Sorbothane products, including plaintiffs, refrain from dealing in the products of competitors as a condition for maintaining their distributorship.

45. On or about June 3, 1983, and approximately two months prior to the wrongful termination of plaintiffs' distributorship, defendants SORBOTHANE, INC. and KENNETH M. LEIGHTON commented on plaintiffs' purported discussions with a competitor of SORBOTHANE, INC. and demanded an explanation of those discussions.

46. By letter dated August 1, 1983, SORBOTHANE, INC. purported to terminate plaintiffs as distributors of Sorbothane products because, *inter alia*, plaintiffs were engaging in discussions with a competitor of SORBOTHANE, INC. and because plaintiffs refused to conform to the agreement to fix wholesale and retail prices.

47. Plaintiffs have been injured in their business and property by reason of defendants' conspiracy in violation of section 3 of the Clayton Act in that plaintiffs have lost their distributorship and have suffered and continue to suffer loss of profits, revenues and other income and loss of goodwill and damage their reputation as a result of the termination of their distributorship and as a direct and proximate result of the wrongful conduct of defendants as alleged hereinabove.

#### FIFTH COUNT

(Breach of Oral Contract [Against Defendants BTR, INC., HAMILTON-KENT and SORBOTHANE, INC.] )



48. Plaintiffs refer to paragraphs 1 through 30 above and by this reference thereto incorporate the same as though herein set forth at length.

49. In or about August, 1981, defendant BTR, INC., through its division, agent and alter ego, HAMILTON-KENT, and plaintiff SHIRLEY McQUILLAN entered into an oral agreement wherein plaintiff SHIRLEY McQUILLAN was designated as the distributor for Sorbothane products in the Southwestern United States which territory included Southern California, New Mexico, Arizona, Colorado and a portion of Nevada. The essential terms of the oral agreement are set forth in paragraph 23 above. Thereafter, plaintiffs SHIRLEY McQUILLAN and LARRY McQUILLAN formed SORBOTURF ENTERPRISES for the purpose of carrying out the business of the distribution of Sorbothane products. At all times material, plaintiffs conducted the business of distributor of Sorbothane products under the terms and conditions of the oral agreement with defendants BTR, SORBOTHANE, INC. and HAMILTON-KENT and with the knowledge and consent of said defendants. Plaintiffs have performed all conditions and covenants on their part to be performed under the subject oral agreement.

50. Despite repeated representations to the effect that a written agreement would be prepared embodying the oral distributorship agreement, and despite the submission of a proposed written agreement by plaintiffs, defendants have failed and refused to enter into a written distributorship agreement embodying the terms of the oral agreement although at all times material, defendants BTR, SORBOTHANE, INC. and HAMILTON-KENT have accepted the performance of plaintiffs under the oral agreement, have induced

plaintiffs to perform under the oral agreement, and have caused plaintiffs to change their position and to expend considerable sums of money and amounts of time and energy on the representation that plaintiffs had a valid distributorship of Sorbothane products and that the oral agreement would be reduced to writing.

51. At all times material, plaintiffs relied upon the representations regarding their status as distributor.

52. On or about August 1, 1983, defendants BTR, HAMILTON-KENT and SORBOTHANE, INC. breached the oral agreement by purporting to terminate plaintiffs' status as a distributor of Sorbothane products and by refusing to continue to supply Sorbothane products as a distributor and by designating SPECTRUM SPORTS, INC. as the exclusive national distributor for Sorbothane sporting shoe inserts and sheet stock and supplying SPECTRUM SPORTS, INC. with Sorbothane products and a copy of plaintiff's confidential customer list to enable SPECTRUM SPORTS to commence sales in plaintiffs' exclusive territory.

53. As a direct and proximate result of said defendants' breach of contract as aforesaid, plaintiffs have been damaged in the loss of their distributorship and the loss of revenues and profits and the destruction of their valuable business as a distributor of Sorbothane products.

#### SIXTH COUNT

(Fraud [Against Defendants BTR, HAMILTON-KENT, SORBOTHANE, INC., KENNETH M. LEIGHTON, KENNETH B. LEIGHTON and SPECTRUM SPORTS, INC.] )

54. Plaintiffs refer to paragraphs 1 through 30 above and by this reference thereto incorporate the same as though herein set forth at length.

55. In or about January 1984, plaintiffs first discovered that defendants BTR, HAMILTON-KENT, SORBOTHANE, INC., KENNETH M. LEIGHTON, acting as an individual and president and officer of defendants HAMILTON-KENT and SORBOTHANE, INC., and KENNETH B. LEIGHTON, acting as an individual and president and officer of SPECTRUM SPORTS, INC., perpetrated and conspired to perpetrate a fraudulent scheme against plaintiffs that began in or about October 1980, and has continued through the present.

56. The fraudulent scheme and conspiracy included, among other things, the following:

a. In or about October 1980, said defendants, through KENNETH M. LEIGHTON, and Laurene Heinsohn, as marketing manager of HAMILTON-KENT and SORBOTHANE, INC., falsely represented to plaintiff SHIRLEY McQUILLAN that SHIRLEY McQUILLAN would be designated as the exclusive distributor of equestrian products developed from Sorbothane if she would devote her time, money and energy in the development of prototype equestrian products and in the development of a market for such products;

b. In or about the fall of 1981, defendants, through KENNETH M. LEIGHTON and Laurene Heinsohn, falsely represented to plaintiff SHIRLEY McQUILLAN that she was the exclusive distributor for Sorbothane products in the southwestern territory and that so long as she properly discharged her

responsibilities as distributor and used her best efforts to promote and develop the retail market for Sorbothane products, she would remain as distributor for Sorbothane products within her territory.

c. Defendants, through KENNETH M. LEIGHTON and Laurene Heinsohn, falsely represented to plaintiffs that SORBOTHANE, INC. and HAMILTON-KENT would provide cooperation and assistance to plaintiffs in the development of a retail market for Sorbothane products within plaintiffs' territory.

d. Defendants, through KENNETH M. LEIGHTON and Laurene Heinsohn, falsely represented to plaintiffs that as new products were developed, plaintiffs would have the exclusive right to distribute such products in their territory.

e. Defendants, through KENNETH M. LEIGHTON and Laurene Heinsohn, falsely represented to plaintiffs that as distributors, plaintiffs would be treated equally and fairly with other distributors as to credit terms, priority of supply of shipments of Sorbothane products, allocation of territories, allocation of funds for national advertising and other activities engaged in by SORBOTHANE, INC. and HAMILTON-KENT for the benefit of the development of the national market;

f. Defendants, through KENNETH M. LEIGHTON and Laurene Heinsohn, falsely represented to plaintiffs that the establishment of sales quotas were fair and based on accurate information and falsely represented the extent of sales by other distributors for purposes of supporting unrealistically high sales quotas;

g. Defendants, through KENNETH M. LEIGHTON and Laurene Heinsohn, falsely represented that plaintiffs' distributorship would not be unreasonably interfered with or terminated;

h. Defendants, through KENNETH M. LEIGHTON and Laurene Heinsohn and KENNETH B. LEIGHTON, falsely represented that plaintiffs should sell their distributorship to SPECTRUM SPORTS, INC. and KENNETH B. LEIGHTON so that plaintiffs could be given the nationwide distributorship for equestrian products;

i. Defendants, through KENNETH M. LEIGHTON and Laurene Heinsohn, falsely represented that customer lists must be provided to HAMILTON-KENT AND SORBOTHANE, INC. for purposes of said defendants protecting the interests of all distributors and preventing the improper sales by other distributors into plaintiffs' territory and that such customer lists would be kept confidential and would not be given to other distributors or used to take over plaintiffs' retail accounts.

57. These representations, at the times made, were false and fraudulent and designed to induce plaintiffs to continue to invest their time, money and energy in the development of markets for Sorbothane products and in the development of prototype products for equestrian use and to turn over customer lists to defendants. In truth and in fact, defendants had, at the time of the making of said representations, formed a plan to induce plaintiffs to develop equestrian products and prototypes and to develop the market for Sorbothane products in the southwestern United States with the intent of ultimately, without cause, terminating their distributorship and the continued right to distribute

Sorbothane products within the territory of the plaintiffs and absorbing that territory into the sales territory of SPECTRUM SPORTS, INC. and KENNETH B. LEIGHTON. Defendants had no intention of designating plaintiffs as the exclusive nationwide distributor for equestrian products and fully intended to intimidate, harass and interfere with the ability of the plaintiffs to continue their business as a distributor in order to cause plaintiffs to abandon their distributorship or to sell it to SPECTRUM SPORTS, INC. for less than its value. Defendants further intended to employ tactics to discourage and frustrate plaintiffs in the conduct of their business including, without limitation, the manipulation of credit terms and sales quotas, the arbitrary changing of prices, the shipment of defective product, the failure to provide sufficient quantities of product, the misuse of national advertising monies to the disadvantage of plaintiffs, the diversion of plaintiffs' customer lists and ultimately the wrongful termination of plaintiffs' right to continue to sell Sorbothane products.

58. At the time the representations referred to in paragraph 56 were made, plaintiffs were ignorant of the falsity of said representations, but believed them to be true. In reliance on the truth of said representations, plaintiffs invested considerable time, money and energy in the development of markets for Sorbothane products and in the development of prototype products for equestrian use and delivered to HAMILTON-KENT and SORBOTHANE, INC. a list of their customers for Sorbothane products, which list was ultimately delivered to SPECTRUM SPORTS, INC. and KENNETH B. LEIGHTON.

59. As a proximate result of the fraudulent actions of defendants as aforesaid, plaintiffs have been damaged by the loss of their distributorship and the loss of



revenues and income and the valuable and exclusive rights to market Sorbothane products within their territory and the exclusive right to market Sorbothane equestrian products nationwide and by the disclosure of their customer list to a competitor, SPECTRUM SPORTS, INC. and KENNETH B. LEIGHTON.

60. The actions of said defendants, and each of them, were done maliciously, oppressively and fraudulently and with the intent to injure and harass plaintiffs so as to justify an award of punitive and exemplary damages in the sum of \$5 million to punish and make an example of these defendants.

#### SEVENTH COUNT

(Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §1962(c) [Against Defendants BTR, SORBOTHANE, INC., HAMILTON-KENT, SPECTRUM SPORTS, KENNETH M. LEIGHTON and KENNETH B. LEIGHTON])

61. Plaintiffs refer to paragraphs 1 through 30 and 55 through 60 above and by this reference thereto, incorporate the same as though herein set forth at length.

62. Each of the plaintiffs is a "person" within the meaning of 18 U.S.C. section 1964(c).

63. Each of the defendants is a "person" within the meaning of 18 U.S.C. section 1961(3).

64. At all material times, defendant BTR was an "enterprise" engaged in, or the activities of which affected, interstate commerce within the meaning of 18 U.S.C. section 1961(4).

65. At all material times, defendant SORBOTHANE, INC. was an "enterprise" engaged in, or the activities of which affected, interstate commerce within the meaning of 18 U.S.C. section 1961(4).

66. At all material times, defendant HAMILTON-KENT was an "enterprise" engaged in, or the activities of which affected, interstate commerce within the meaning of 18 U.S.C. section 1961(4).

67. At all material times, defendant SPECTRUM SPORTS, INC. was an "enterprise" engaged in, or the activities of which affected, interstate commerce within the meaning of 18 U.S.C. section 1961(4).

68. At all material times, plaintiff SORBOTURF ENTERPRISES was an "enterprise" engaged in, or the activities of which affected, interstate commerce within the meaning of 18 U.S.C. section 1961(4).

69. By engaging in the conduct described hereinabove in the fifth count, defendants, and each of them, engaged in a pattern of "racketeering activity" within the meaning of 18 U.S.C. section 1961(1) specifically including, without limitation, acts indictable under title 18 U.S.C. section 1341 in that, in consummating the fraudulent schemes, acts and omissions described hereinabove, defendants, and each of them, did knowingly and willfully cause letters or other mailable items to be sent and delivered by means of the United States mail and receive letters and other mailable matters through the United States mail all as prohibited by 18 U.S.C. section 1341.

70. Specific examples of the use of the mails for the consummation of the fraudulent schemes, acts and omissions described hereinabove are as follows:

<i>Date</i>	<i>Item</i>
a. August 1, 1983	Letter from KENNETH M. LEIGHTON to SORBOTURF ENTERPRISES purporting to terminate distributorship.
b. March 1, 1983	Letter from KENNETH M. LEIGHTON to SORBOTURF ENTERPRISES discussing purported distribution of Sorbothane products through I.E.M. and Intermark.
c. February 16, 1983	Letter from SORBO, INC. to SORBOTURF ENTERPRISES discussing new distribution system and reiterating request for customer lists.
d. December 7, 1982	Letter from SORBO, INC. to SORBOTURF ENTERPRISES establishing national advertising budget for 1983 and requesting SORBOTURF ENTERPRISES' contribution to that budget.
e. October 28, 1982	Letter from SORBO, INC. to SORBOTURF ENTERPRISES demanding customer list of SORBOTURF ENTERPRISES and threatening change in distribution system "such as in-house sales force."
f. July 2, 1982	Letter from SORBO, INC. to Shirley McCone [MCQUILLAN] re selling SORBOTURF

ENTERPRISES to KENNETH B. LEIGHTON and representing that McCone would not get equestrian market because she would not give up SORBOTURF ENTERPRISES.

- g. January 6, 1982 Letter from HAMILTON-KENT to "Dear Distributors" re establishing national medical products distribution.
- h. January 27, 1981 Letter from HAMILTON-KENT to Ms. McCone re intent to designate Ms. McCone as distributor for Sorbothane in the Southwest and submit distributors' contract within "two to three weeks."
- i. July 23, 1982 Letter from SORBO, INC. to SORBOTURF ENTERPRISES requesting monthly reports including customer lists.
- j. February 17, 1982 Letter from HAMILTON-KENT to "Dear Distributors" representing sales forecasts and setting performance level quota for SORBOTURF ENTERPRISES.
- k. Undated Letter from SORBO, INC. to SORBOTURF ENTERPRISES explaining purported reasons for demanding customer lists.

71. Each of the foregoing letters was sent in furtherance of the fraudulent scheme referred to hereinabove in that each constitutes a fraudulent misrepresentation or an action or notice of action consummating the fraudulent scheme.

72. Defendants SORBOTHANE, INC., HAMILTON-KENT, SPECTRUM SPORTS, INC., KENNETH M. LEIGHTON and KENNETH B. LEIGHTON, and each of them, are employed by or are associated with BTR, an enterprise, and have conducted or participated, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity in violation of 18 U.S.C. section 1962(c).

73. Defendants BTR, HAMILTON-KENT, SPECTRUM SPORTS, INC., KENNETH M. LEIGHTON, and KENNETH B. LEIGHTON, and each of them, are employed by or are associated with SORBOTHANE, INC., an enterprise, and have conducted or participated, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity in violation of 18 U.S.C. section 1962(c).

74. Defendants BTR, SORBOTHANE, INC., SPECTRUM SPORTS, INC., KENNETH M. LEIGHTON, and KENNETH B. LEIGHTON, and each of them, are employed by or are associated with HAMILTON-KENT, an enterprise, and have conducted or participated, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity in violation of 18 U.S.C. section 1962(c).

75. Defendants, BTR, SORBOTHANE, INC., HAMILTON-KENT, KENNETH M. LEIGHTON and KENNETH B. LEIGHTON, and each of them, are employed by or are associated with SPECTRUM SPORTS, INC., an enterprise, and have conducted or participated, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity in violation of 18 U.S.C. section 1962(c).

76. As a direct and proximate result of defendants' violations of 18 U.S.C. section 1962(c), plaintiffs have been injured in their business and property in that plaintiffs have lost their distributorship and have suffered and continue to suffer loss of profits and revenues, and other income as a result of the loss of their distributorship and as a direct and proximate result of the wrongful conduct and have lost the value of their investment in money, time and energy.

#### EIGHTH COUNT

(Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §1962(a) [Against Defendants BTR, SORBOTHANE, INC., HAMILTON-KENT, KENNETH M. LEIGHTON and KENNETH B. LEIGHTON])

77. Plaintiffs refer to paragraphs 1 through 30, 55 through 60 and 62 through 76 above and by this reference thereto incorporate the same as though herein set forth at length.

78. Defendants BTR, SORBOTHANE, INC., HAMILTON-KENT, KENNETH M. LEIGHTON and KENNETH B. LEIGHTON, and each of them, have received income derived, directly or indirectly, from a pattern of racketeering activity, and have used or invested, directly or indirectly, such income, or the



proceeds of such income, in the acquisition of an interest in, or the establishment or operation of, SPECTRUM SPORTS, INC., an enterprise which is engaged in, or the activities of which affect interstate commerce in violation of 18 U.S.C. section 1962(a).

79. As a direct and proximate result of said defendants' violations of 18 U.S.C. section 1962(a), plaintiffs have sustained injury to their business and property in that plaintiffs have lost their distributorship and have suffered and continue to suffer loss of profits and revenues, and other income as a result of the loss of their distributorship and as a direct and proximate result of the wrongful conduct and have lost the value of their investment in money, time and energy.

#### NINTH COUNT

(Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §1962(b) [Against Defendants BTR, SORBOTURF, INC., HAMILTON-KENT, SPECTRUM SPORTS, INC., KENNETH B. LEIGHTON and KENNETH M. LEIGHTON])

80. Plaintiffs refer to paragraphs 1 through 30, 55 through 60, 62 through 76, and 78 and 79 above and by this reference thereto incorporate the same as though herein set forth at length.

81. Defendants, and each of them, have, through a pattern of racketeering activity, acquired and maintained ownership and control over the business and customer accounts of plaintiffs SORBOTURF ENTERPRISES, an enterprise which is engaged in or which affects interstate commerce in violation of 18 U.S.C. section 1962(b).

82. As a direct and proximate result of defendants' violations of 18 U.S.C. section 1962(b), plaintiffs have sustained injury to their business and property in that

plaintiffs have lost their distributorship and have suffered and continue to suffer loss of profits and revenues, and other income as a result of the loss of their distributorship and as a direct and proximate result of the wrongful conduct and have lost the value of their investment in money, time and energy.

#### TENTH COUNT

(Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §1962(d) [Against Defendants BTR, HAMILTON-KENT, SORBOTHANE, INC., SPECTRUM SPORTS, KENNETH M. LEIGHTON and KENNETH B. LEIGHTON])

83. Plaintiffs refer to paragraphs 1 through 30, 51 through 55, 62 through 76, 78 through 79 and 81 and 82 above and by this reference thereto incorporate the same as though herein set forth at length.

84. Defendants, and each of them, alleged in the aforesaid violations of 18 U.S.C. section 1962(a), (b) and (c), and each of them, conspired among themselves and with each other to commit and conceal the aforesaid violations of 18 U.S.C. sections 1962(a), (b) and (c), and each of them, in violation of 18 U.S.C. section 1962(d).

85. As a direct and proximate result of defendants' violations of 18 U.S.C. section 1962(d), plaintiffs have sustained injury to their business and property in that plaintiffs have lost their distributorship and have suffered and continue to suffer loss of profits and revenues, and other income as a result of the loss of their distributorship and as a direct and proximate result of the wrongful conduct and have lost the value of their investment in money, time and energy.

## ELEVENTH COUNT

(Bad Faith Breach of the Implied Covenant of Good Faith and Fair Dealing [Against Defendants BTR, HAMILTON-KENT and SORBOTHANE, INC.]

86. Plaintiffs refer to paragraphs 1 through 30, 49 through 53, and 55 through 60 above and by this reference thereto incorporate the same as though herein set forth at length.

87. Implied in every contract is a covenant of good faith and fair dealing requiring each party to act in good faith in the performance of his or her obligations thereunder and in his or her dealing with the other party to the contract.

88. Defendants BTR, HAMILTON-KENT and SORBOTHANE, INC., in addition to breaching the oral contract, seek to shield themselves, and each of them, from liability by denying, in bad faith and without probable cause, that the contract exists. By said conduct and the conduct referred to hereinabove, defendants BTR, HAMILTON-KENT and SORBOTHANE, INC. have breached the implied covenant of good faith and fair dealing.

89. As a direct and proximate result of said breach of the implied covenant of good faith and fair dealing, plaintiffs have been damaged in the loss of their distributorship and the loss of revenue and income and the valuable rights to market Sorbothane products and the exclusive right to market Sorbothane equestrian products nationwide.

90. The actions of said defendants, and each of them, were done maliciously, oppressively and fraudulently and with the intent to harass and injure plaintiffs so as to justify an award of punitive and exemplary damages in the amount of \$5 million to punish and make an example of these defendants.

## TWELFTH COUNT

(Unfair Competition [Against Defendants BTR, HAMILTON-KENT, SORBOTHANE, INC., KENNETH M. LEIGHTON, KENNETH B. LEIGHTON and SPECTRUM SPORTS, INC.]

91. Plaintiffs refer to paragraphs 1 through 30 and 55 through 60 hereinabove and by this reference thereto incorporate the same as though herein set forth at length.

92. The actions of said defendants, and each of them, as aforesaid, constitute unfair competition pursuant to California Business and Professions Code section 17200.

## THIRTEENTH COUNT

(California Cartwright Act, Bus. & Prof. Code §16,600 and §16,700 [Against Defendants BTR, HAMILTON-KENT, SORBOTHANE, INC., KENNETH M. LEIGHTON, KENNETH B. LEIGHTON and SPECTRUM SPORTS, INC.]

93. Plaintiffs refer to paragraphs 1 through 30, 32 through 34, 36 through 38 and 40 through 42 and 44 through 47 hereinabove and by this reference thereto incorporate the same as though herein set forth at length.

94. The actions of said defendants, and each of them, as aforesaid, constitute a violation of the California Cartwright Act, Business and Professions Code section 16,600 and section 16,700.

95. Plaintiffs have been injured in their business and property by reason of defendants' conspiracy in violation of the California Cartwright Act in that plaintiffs have lost their distributorship and have suffered and continued to suffer loss of profits, revenues

and other income and loss of goodwill and damage to their reputation as a result of the termination of their distributorship and as a direct and proximate result of the wrongful conduct of defendants as alleged hereinabove.

#### FOURTEENTH COUNT

(Interference With Prospective Advantage [Against Defendants BTR, HAMILTON-KENT, SORBOTHANE, INC., KENNETH M. LEIGHTON, SR., KENNETH B. LEIGHTON, JR. and SPECTRUM SPORTS, INC.] )

96. Plaintiffs refer to paragraphs 1 through 30, 49 through 52 and 55 through 58 above and by this reference thereto incorporate the same as though herein set forth at length.

97. The actions of defendants, and each of them, as aforesaid, were wrongful and were known by them, and each of them, to result in plaintiffs' loss of numerous retail accounts and the interference with plaintiffs' valuable economic relationship with their retail customers thereby constituting interference with contract and interference with prospective advantage.

#### FIFTEENTH COUNT

(Conversion [Against Defendants BTR, HAMILTON-KENT, SORBOTHANE, INC. and KENNETH M. LEIGHTON])

98. Plaintiffs refer to paragraphs 1 through 30 hereinabove and by this reference thereto incorporate the same as though set forth at length.

99. Plaintiffs developed a prototype horseshoe pad using Sorbothane products and developed a marketing plan for the development of the equestrian market for

horseshoe pads and provided said prototype product and marketing plan to defendants BTR, HAMILTON-KENT and SORBOTHANE, INC. and KENNETH M. LEIGHTON. Said property was presented to defendant KENNETH M. LEIGHTON on the express representation by KENNETH M. LEIGHTON that plaintiffs would be appointed the exclusive distributor of Sorbothane equestrian products nationwide. Thereafter, these defendants converted plaintiffs' property to their own use, refused to appoint plaintiffs as the exclusive distributor of Sorbothane in the equestrian market and instead used plaintiffs' property to create a distributorship for defendant KENNETH M. LEIGHTON and others under the corporate name of Sterivet Laboratories, Inc.

WHEREFORE, plaintiffs pray for judgment against defendants as follows:

#### ON COUNTS ONE, THREE AND FOUR

1. For damages for violation of sections 1 and 2 of the Sherman Act and section 3 of the Clayton Act against defendants SORBOTHANE, INC., HAMILTON-KENT, BTR, INC., KENNETH M. LEIGHTON, KENNETH B. LEIGHTON and SPECTRUM SPORTS according to proof;

2. That said damages be trebled;

3. For attorneys' fees and expenses according to proof.

#### ON COUNT TWO

4. For damages for violation of Section 1 of the Sherman Act against defendants BTR, INC., SORBOTHANE, INC., HAMILTON-KENT, and KENNETH M. LEIGHTON according to proof;

5. That said damages be trebled;
6. For attorneys' fees and expenses according to proof.

ON COUNT FIVE

7. For damages for breach of contract against defendants BTR, INC., HAMILTON-KENT, and SORBOTHANE, INC. according to proof.

ON COUNT SIX

8. For damages for fraud against all defendants according to proof;
9. For punitive damages in the amount of \$5 million dollars.

ON COUNTS SEVEN THROUGH TEN

10. For damages for violation of the Racketeer Influenced and Corrupt Practices Act against all defendants according to proof;
11. That said damages be trebled;
12. For attorneys' fees and expenses according to proof.

ON COUNT ELEVEN

13. For damages for breach of the covenant of good faith and fair dealing against defendants BTR, HAMILTON-KENT, and SORBOTHANE, INC. according to proof;
14. For punitive damages in the amount of \$5 million dollars.



ON COUNT TWELVE

15. For damages for unfair competition against all defendants according to proof.

ON COUNT THIRTEEN

16. For damages and violations of the Cartwright Act, California Business and Professions Code section 16700 *et seq.*, against all defendants according to proof;

17. That said damages be trebled;

18. For attorneys' fees and expenses according to proof;

ON COUNT FOURTEEN

19. For damages for interference with prospective advantage against all defendants according to proof.

ON COUNT FIFTEEN

20. For damages for conversion against defendants BTR, INC., HAMILTON-KENT, SORBOTHANE, INC. and KENNETH M. LEIGHTON according to proof.

ON ALL COUNTS

21. For costs of suit herein incurred.

22. For such other and further relief as the court deems just and proper.

DATED: 7-21, 1986

JAMES F. STIVEN

JEFFREY M. SHOHET

ROBERT A. MCGREGOR

By: /s/ JEFFREY M. SHOHET

*Attorneys for Plaintiffs*

*Of Counsel:*

GRAY, CARY, AMES & FRYE

JURY DEMAND

Plaintiffs demand a trial by jury on all claims and all issues.

DATED: 7-21, 1986

JAMES F. STIVEN

JEFFREY M. SHOHE

ROBERT A. MCGREGOR

By: /s/ JEFFREY M. SHOHE

*Attorneys for Plaintiffs*

*Of Counsel:*

GRAY, CARY, AMES & FRYE