

JUDGE JONES

12 CV 9239

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HUDSON & BROAD, INC.,

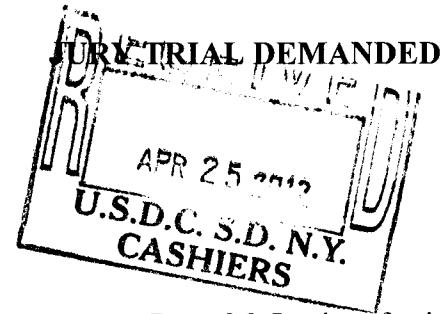
Plaintiff,

COMPLAINT

-against-

J.C. PENNEY CORPORATION, INC.,

Defendant.



Plaintiff, Hudson & Broad, Inc. ("H+B"), by its attorney, Peter M. Levine, for its

Complaint, states:

INTRODUCTION

1. On January 25, 2012, at the launch of a massive, multi-pronged advertising campaign featuring comedienne and talk show host Ellen DeGeneres, the Chief Executive Officer of J.C. Penney Corporation, Inc., Ron Johnson, pledged a commitment to a new corporate creed. Acknowledging that, since its founding 110 years ago, the company may have "picked up ... bad habits over the decades," J.C. Penney assured the public, "we're going to leave them far behind." This would be done, said J.C. Penney, by following a fundamental principle of decency, by following the Golden Rule: "We're simply going to treat people as we'd like to be treated ourselves. Fair and square." It took less than 60 days for J.C. Penney to prove that the herald of a new age was nothing but the cynical come-on of a huckster, that its promise to be "fair and square" was just a cruel joke.

2. This is the story of the disgraceful abuse of a vendor by senior executives at J.C. Penney, by those very people charged with leading the company into the era of Fair and Square. Seeking a powerful icon to symbolize the era and its guiding creed, J.C. Penney retained H+B to design and manufacture a three-dimensional symbol that would match the star of the Macy's retail chain and the target of the Target retail chain. Working from only vague and hackneyed ideas from

J.C. Penney, H+B designed the perfect meld of medium and message – the LED Illuminated Square with a remote color controller. Composed of two vertical rectangular columns seamlessly joined to two horizontal columns, the Square represented an elegant portal into a new era of transparency. The clean lines bespoke straight forward, easily understood, and gimmick-free pricing. The subtle ornamentation promised the sale of imaginative and attractive products; the lambent visage accentuated the appeal of an exciting store. The top-quality material bespoke a first-rate organization; the solid structure, tradition and stability. Brightly and consistently illuminated from within, the Square conveyed the vitality of the new era, the integrity of the new corporate culture. “We’ll keep dreaming up new ways to make you love shopping again”; no more “jumping through hoops,” declared J.C. Penney.

3. J.C. Penney was amazed by the Square but ultimately decided not to honor the promise that this proprietary product, if accepted, would be ordered only from H+B and that H+B’s design would not be misappropriated and bid out to other manufacturers. So, sloughing the Fair and Square creed as a snake would wriggle out of old and useless skin, J.C. Penney stole the Square.

4. Demanding to be treated the way J.C. Penney would like to be treated – fair and square – and offended to have been made to jump through hoops, H+B brings this action, asserting claims of misappropriation of trade secrets, unjust enrichment, and breach of contract.

THE PARTIES

5. H+B is a corporation organized and existing under the laws of the State of New York with its principal place of business at 174 Hudson Street, New York, New York 10013.

6. Upon information and belief, defendant J.C. Penney Corporation, Inc. ("JCP") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 6501 Legacy Drive, Plano, Texas 75024.

JURISDICTION AND VENUE

7. This Court has original jurisdiction over the claim for misappropriation of trade secrets, the claim of unjust enrichment, and the claim for breach of contract by virtue of 28 U.S.C. § 1332, because the matter in controversy for each claim exceeds \$75,000, exclusive of interest and costs, and each claim is between citizens of different States.

8. This Court has jurisdiction over the person of the defendant by virtue of section 301 of the New York Civil Practice Law & Rules, because defendant is present in the State of New York and doing, or has done for relevant periods of time, business in the State of New York.

9. This Court has jurisdiction over the person of defendant by virtue of section 302 of the New York Civil Practice Law & Rules, because defendant has (a) transacted business in the State of New York, and plaintiff's claims arise out of that transaction of business, or (b) committed tortious acts within the State of New York, and plaintiff's claims arise out of those tortious acts.

10. Venue is proper in this District pursuant to 28 U.S.C. § 1391, because (a) defendant is subject to personal jurisdiction in this District and thus is deemed to reside in this District or (b) a substantial part of the events or omissions giving rise to each of the claims occurred in this District.

OPERATIVE FACTS

11. Hudson & Broad designs and manufactures fixtures for the display of merchandise in retail stores. Hudson & Broad products include chandeliers, mannequin platforms, racks, sign holders, and tables. Customers retain Hudson & Broad to impress a branding upon a retail space and create a unique image to distinguish for an individual store or a retail chain. H+B's customers include brands such as Levi's and Ralph Lauren and retailers such as Macy's. Established in 2009, H+B is run by its President, James Maharg, who has been in the visual merchandising business for more than 30 years.

12. On November 22, 2011, Maharg received an e-mail from Bruce Moen, JCP's Visual Graphics Director, who said he planned to be in New York December 7-9, during Market Week, and asked for a meeting. They met December 8 from 4:00 to 5:00 p.m. at the H+B offices in the Tribeca section of Manhattan. A "big change" was coming to JCP Moen told Maharg. To create a unique image for its chain of stores, JCP had decided to adopt a square as an icon to match the Macy's star and the Target target. The square would change color each month to correspond with the month's catalog and merchandise colors. Moen suggested a slip-covered armature or frame, but after noticing the LED designs in the H+B showroom, he asked Maharg to consider a LED product. Moen provided no specific directions for the design of such a product.¹

13. After his meeting with Moen, Maharg discussed the project with a colleague at H+B, Tom Conley, Vice President of Sales. Maharg wanted to create something "over the top"

¹ LED stands for Light Emitting Diode. LED operates on the same principle as fluorescent lights: The electron transference between molecules causes the release of energy (called photons) that can be seen as light. Since LED entails an electrical transfer, rather than conversion of energy, more light is generated for a given power level. In contrast, incandescent bulbs use a resistive filament that impedes electron flow. The impedance generates heat, causing the filament to glow and project light. The conversion of heat energy to light energy is wasteful; of the energy generated, 75 percent is heat, 25 percent is light. With photon-generated light, nearly 100% of the energy is used as light, allowing four times as much light for the same wattage as incandescent bulbs.

and make JCP a leader in the retail sector. Maharg and Conley quickly dispensed with the slipcover idea as banal. They began to develop a square frame with a removable face and back to enable the insertion of colored film that would be internally lit.

14. On December 21, 2011, Maharg received an e-mail from Moen, who wanted Maharg to meet James Francois, JCP's Vice President for Visual Marketing: "We are in need of your expertise - or someone on your staff - to help with a major branding initiative for our Manhattan store. I have recommended your company and need to find out if anyone would be available to meet next Tuesday afternoon or Wednesday to discuss the details." Maharg offered to fly to JCP's corporate headquarters in Plano, Texas, to discuss this matter, but Moen explained that the meeting would be in Manhattan: "Actually - I need you at the store in Manhattan - to meet Jim - we have talked about some great ideas and you are the perfect company to make it happen for an investor tour- great OPPORTUNITY!"

15. On December 28, 2011, Maharg and Conley met with Francois and William Pandolfo, the Merchandise Execution Manager of the J.C. Penney store in the Manhattan Mall, 100 West 33rd Street, New York, New York 10001. Francois began the meeting by describing the changes coming to JCP, especially the new pricing strategy JCP was planning to introduce. He showed Maharg and Conley the product catalogue that was scheduled for release February 1, 2012. The catalogue conveyed the new pricing strategy. Maharg and Conley could not retain a copy, because the catalogue was still a secret and contained what was then non-public information. Maharg said that his thinking has gone beyond slip covers and was focused on a magnetic frame with colored film. He showed as examples small models that had been fabricated. "Great. Love the idea," said Francois. The group walked around the store to discuss locations for the installation of the squares. Francois suggested two sizes for the squares – 48 by 48 inches, which would hang from the ceiling,

and 84 by 84 inches, which would sit on the floor. Francois said he wanted the squares installed by January 23, 2012. For that to happen, H+B would have to become an official JCP vendor. Francois soon provided the appropriate forms, which were promptly completed and submitted.

16. After their meeting at the Manhattan Mall, Maharg and Conley discussed how to give JCP a unique branding icon. They concluded that the concept should be realized electronically rather than with film. Electronically-generated light would create a distinctive aura and would obviate the labor needed to exchange one strip of film for another. On January 3, 2012, they developed another concept – a square composed from four rectangles, each constructed with a proprietary matte acrylic; the entire structure lit from within by means of LED, the color changeable and controlled by an external box and a hand-held remote control, the LED color uniformly diffused throughout the fixture by the matte acrylic. This concept became the Square.

17. Conveying the passion and drama of the radical change JCP would soon promise the public, the Square represented a breakthrough. Never had such a fixture been used in the retail sector.

18. Maharg reported the breakthrough to Moen January 3 in an e-mail: “We are aggressively working on your renderings. We have developed a great concept to electronically change your colors.” Moen responded: “I couldn’t be more excited.” Maharg and Conley completed the drawings for the Square later the following day and sent them to Francois and Moen, who loved them. “These look great,” effused Moen in an e-mail. As requested, H+B presented a design for a small Square, 48x48 inches, and a large Square, but 79 rather than 84 inches, to accommodate the proprietary matte acrylic. Three days later, H+B received approval from JCP for the fabrication and installation of the Square in the Manhattan Mall store. The installation had to be completed by January 23, two days in advance of the announcement by JCP’s Chief Executive Officer, Ron

Johnson, of the “New J.C. Penney.” H+B met the tight deadline by mobilizing a staff of 17, who assembled and installed the Square through the night, beginning at 5:00 p.m. January 22 and finishing the following morning. During the installation, Francois kept photographing the Square on his iPhone and forwarding them to his then-boss, Greg Clark, Senior Vice President for Creative.

19. On January 24, 2012, after the installation of the Square in the Manhattan Mall store, Maharg sent an e-mail to Francois: “Happy with the results?” Francois responded: “Yes. Very much so. Let’s talk roll out.” They agreed to meet the next day to walk through the Manhattan Mall store to map the locations for the Square.

20. On January 25, 2012, in a presentation titled “In Praise of Fresh Air,” Ron Johnson, JCP’s Chief Executive Officer, and Michael Francis, its President, detailed the initiatives that would transform and re-image every aspect of the company’s business. “Every initiative we pursue will be guided by our core value to treat customers as we would like to be treated - fair and square,” said Johnson. The cornerstone of JCP’s transformation would be the “Fair and Square Every Day” pricing strategy. Instead of using deep discount sales to attract customers, JCP would simply offer three prices: (1) Every Day, (2) Month Long Value (theme sales such as back-to-school products in August), and (3) Best Prices (clearance). Prices would also now end in “0” instead of “99,” and price tags would list just one price (instead of including the “previously sold at a higher price” convention). The transformation of the JCP shopping experience would be symbolized by new brand identity. Square-frame imagery would be evident throughout all of JCP’s marketing, “to remind customers to frame the things they love,” said Johnson.

21. As Johnson beamed with approval, Ellen DeGeneres read JCP’s new Mission Statement:

This year, we turn 110. We’re fine with growing old. We’re not fine with growing stale. So, to celebrate, we’re going to throw open the windows and

let in some fresh air.

We're rethinking and reimagining, and if we find that we've picked up any bad habits over the decades, we're going to leave them far behind.

We're simply going to treat people as we'd like to be treated ourselves. Fair and square.

We won't make anyone jump through hoops to get a good price. We won't fill mailboxes with junk. We'll have great prices every day and spectacular prices that last a whole month. And it won't stop there.

We'll keep dreaming up new ways to make you love shopping again, matching our calendar to the rhythm of your life. Because we're not interested in being the biggest store or the flashiest store.

We want to be your favorite store.

22. After Johnson's presentation and press conference, Maharg, Conley, Moen, Francois, and Pandolfo went out to lunch. During the meal, Francois said to Maharg, "It's a new day for JCP," and putting his hand on Maharg's shoulder, Francois looked him in the eye and said earnestly, "It's all about integrity." Francois spoke about the Mission Statement, quoting different parts: "breath of fresh air"; "no more jumping through hoops." He spoke about the upcoming advertising campaign and the new catalogue, which would focus on creating a new brand identity for JCP rather than pushing the sale of specific products. The Square, said Francois, would be at the core of the new identity. Francois could not thank H+B enough for creating such an icon for JCP. Near the end of the lunch, Francois asked Maharg to develop a mannequin platform to replace the "old school" carpet tile JCP had been using. Francois provided rough quantities of the 48-inch and 79-inch Squares and of the mannequin platform he wanted H+B to deliver to JCP.

23. After lunch, while walking through the Manhattan Mall store, Francois and Maharg met Steven Roth, Chairman of Vornado Realty Trust, who sits on JCP's board of directors. "Are these squares part of the new concept of JCP?" asked Roth. "Yes," said Maharg. "Can you tell me about it?" asked Roth. Maharg deferred to Francois, who explained the concept. "The store has never looked better," said Roth, "This looks great."

24. On January 26, 2012, after he had walked through the Manhattan Mall store and had seen the installed Square, Moen sent an e-mail to Maharg: "Congrats on the incredible LED units - I was telling everyone last night to make sure they get over to the store to check them out!"

25. At the conclusion of their walk through the Manhattan Mall store on January 25, Francois said the next step would be to "re-image the corporate headquarters." He asked H+B to install the Square at the corporate headquarters right after the lavish party set to kick off the branding campaign. Maharg, Conley, and Jessica Worthington flew to Plano, Texas, to install two 79-inch and three 48-inch Squares. They completed the installation January 31. The two 79-inch Squares adorned the entrance to Ron Johnson's executive suite.

26. The H+B team met with Francois and Moen the next day, February 1. Opening the meeting by saying how thrilled he was with the Square, Francois began to plan dates for the installation of Squares in JCP stores across the country. Before continuing, Maharg sought assurance that JCP viewed H+B as a fixture manufacturer, not a design firm, that both sides were working toward a purchase order for H+B to deliver Squares, and that JCP would not knock-off H+B's design. He said to Francois, "We are not a design firm. We do not sell designs. We sell fixtures, which are custom-designed for our customers. I want your assurance that the square Hudson and Broad will design for J.C. Penney is proprietary and is ours." Francois agreed. He asked Maharg to give a price for the 79-inch Square, the 48-inch Square, and the mannequin platform. Maharg was not prepared to quote prices. Francois said, "Give me a rough number. I'm meeting with Kramer tomorrow," referring to Michael Kramer, Chief Operating Officer for JCP. "I'll give you a price later today," said Maharg, "What's the next step?" "Getting you a purchase order and a deposit," said Francois. Maharg left the meeting convinced that H+B would receive an order. Later that day, by phone, Maharg quoted a price of \$9,900 for each 79-inch square, \$5,800 for each 48-inch square,

and \$13,800 for each mannequin platform. Francois did not challenge or question any price.

27. On February 2, 2012, after he had met with Kramer, Francois sent an e-mail to Maharg: "I have secured the capital." Also on February 2, after he had seen the installed Squares in the corporate headquarters, Moen sent an e-mail to Maharg and Conley: "I can't tell you how much I appreciate everything the both of you have done for us – simply amazing! Thank you so much for coming to install our LED lights in the office – they look amazing!" The H+B team flew back to New York that day.

28. On February 6, 2012, Maharg presented a quote for H+B to deliver Squares and mannequin platforms to 739 JCP stores. The quote reiterated the prices Maharg had orally quoted to Francois February 1. H+B would deliver 3,453 79-inch Squares at \$9,900 each, 250 48-inch Squares at \$5,800 each, and 1,650 platforms at \$13,800 each, plus crating and shipping charges.

29. On February 7, 2012, Maharg called Francois to discuss Francois's February 2 meeting with Kramer. Francois said the meeting had gone well and that he had secured the funds for the Squares, which were to be part of the "reinvent," in the parlance of the JCP senior management. Maharg sought an assurance that the Square was a proprietary product owned by H+B. "Absolutely," said Francois. "The next thing I have to do with you is the count. I want to make sure we have an exact amount by door."² As he hung up, Maharg was convinced that H+B had a deal with JCP for the manufacture of the 79-inch Squares.

30. On February 14, 2012, Maharg and Conley flew to Plano, Texas, to determine the number of Squares and the number of mannequin platforms to be installed in each of the 739 JCP stores that had been initially selected to receive the Square. They remained in Plano through February 17, meeting with Francois, Moen, and many different people from Store Environment.

² "Door" in the context of Francois's statement is industry shorthand for store location.

Determining the number of Squares to be installed in each store was a huge undertaking. The quantity for each store depended on the number of locations suitable for placement. Since, once installed, each Square was to remain in place for two years, each location had to be chosen with care. Each Square needed to be situated to achieve maximum impact. The floor plans for each store had to be reviewed to determine not only the optimal locations but also where to install electrical outlets. At the conclusion of a series of many meetings, the total of the selected stores had been adjusted from 739 to 682, and the number of Squares and the number of mannequin platforms to be installed in each store had been set.

31. On February 15, 2012, Maharg and Conley met with Steven Wysong and Bruce Cue from JCP Procurement, Inc. They spoke about when H+B could start shipping the Squares and how the Squares would be rolled out to the stores across the country. Maharg provided the details of production – how many workers, how many shifts, how many days each week the production line would be in operation. Raw materials could be ordered as early as February 17. H+B could start shipping Squares by April 30 and complete shipping by September 21, 2012. At no point during this meeting did Wysong or Cue challenge or question the prices Maharg had quoted to Francois on February 1 and had reiterated February 6. All Wysong and Cue wanted to know from Maharg was when H+B could start delivering the Squares and when H+B planned to be finished with the production for all the selected stores.

32. On Friday, February 17, 2012, at the conclusion of his meetings in Plano, Maharg prepared a quote to JCP: H+B would deliver 1,500 79-inch Squares at \$9,900 each, 682 48-inch Squares at \$5,800 each, and 495 mannequin platforms at \$13,800 each. The total cost, excluding shipping charges, would be \$25,636,600. Maharg presented the quote to Francois before his departure for New York.

33. Following his meetings in Plano, Maharg spoke by telephone with Francois, who said JCP was “all set with the 79-inch Square, but I may have to pull the mannequin platforms and the 48-inch Square.” The reason, said Francois, was “all about return on investment. Right now, we have cardboard squares in the stores. Those squares have to be changed each month. Each month we throw away \$1 million worth of cardboard. Based on your quote, the 79-inch Squares will be paid for in a year. It’s a no-brainer.” They discussed the number of 79-inch Squares and mannequin platforms JCP would need. Francois asked for a revised quote.

34. The following Monday, February 20, Moen dispatched an e-mail to Maharg, requesting a quote for 1,870 79-inch Squares and 699 mannequin platforms; the 48-inch Square was not to be included. Maharg presented the revised quote: H+B would deliver 1,870 79-inch Squares at \$9,900 each and 699 mannequin platforms at \$13,800 each. The total cost, excluding shipping charges, would be \$28,159,200.

35. On February 28, 2012, while at the Visual Market trade show in Las Vegas, H+B employees spoke with the supplier of the custom matte acrylic from which the Squares would be fabricated. This product is available in the United States only through this supplier under an exclusive contract with H+B. The supplier informed the H+B employees that other vendors had approached him for a large order with J.C. Penney and that the product was a square.

36. Upon hearing this, Maharg immediately flew to Plano to meet with Francois. When he saw Maharg in the corporate headquarters on Wednesday, February 29, Francois said, “Why are you here?” in a tone indicating that such a meeting was not necessary, because there was an agreement between JCP and H+B. The two engaged in the following exchange:

JM: Jim, I have people walking the show in Vegas, and they’re telling me that someone is asking my supplier for quotes on plexiglass for squares.

JF: I don’t know if Procurement is at the show.

JM: Someone is out there bidding this contract.
JF: Actually, someone from Procurement showed me a cheaper version of the Square.
JM: Jim, we discussed this. This is our proprietary idea and product.
JF: Procurement has to get other bids. That's just procedure.
JM: This is not what you've told me in the past. You agreed this is proprietary.
JF: We don't bid mannequins, so we don't have to bid this. You're OK; there's nothing to worry about.
JM: But I am worried. Why should I develop innovative products for you if you're just going to bid them out? What happened to Fair and Square? What happened to No More Jumping Through Hoops? That's what you're doing: You're making me jump through hoops.
JF: I know. I know.

Francois said the H+B quote would be reviewed by the Capital Authorization Committee on Monday, March 5. He expected to give H+B the go-ahead that day. This was the first time anyone from JCP had ever mentioned that the contract for the Squares was contingent upon the approval of the Capital Authorization Committee.

37. Also on February 29, Francois informed Maharg that JCP had decided not to purchase mannequin platforms and requested a quote for only the 79-inch Square. Complying with Francois's request, Maharg presented a revised quote: H+B would deliver 1,870 79-inch Squares at \$10,250 each. When Francois asked why the unit price had increased from \$9,900, Maharg explained that the price had been based on quantity, and because H+B would be purchasing far fewer LED units from its supplier, H+B would not be getting the same discount, thus increasing the manufacturing cost.

38. On Friday, March 2, 2012, Maharg met with Moen, who presented a chart showing the installation of 1,872 (rather than 1,870) 79-inch Squares on a store-by-store basis. Maharg adjusted the H+B quote accordingly. Maharg expressed his concern about what he had heard from Francois. "Yes," said Moen, "I'm aware of that, but you have nothing to worry about, because

the only numbers we have turned in to this committee are your numbers.” After seeking but being refused another meeting with Francois, Maharg returned to New York.

39. On March 5, 2012, Maharg received an e-mail from Moen stating that the meeting of the Capital Authorization Committee had been scheduled for March 20. In an e-mail that day, Maharg warned that too much of a delay could force the supplier of the matte acrylic to increase the price due to a rise in the price of petroleum. Francois responded: “I’ll see what I can find out tomorrow. We do at times issue produce and hold po’s. I’ll talk to Kramer.”

40. On March 20, 2012, Moen called Maharg to say that another firm had submitted a bid on the Square project and that the Capital Authorization Committee would be meeting March 22 to review both bids. Maharg responded: “Bruce, you’re not going to do this to us. Did you do this to Ellen DeGeneres? Did you negotiate a fee with her then say you could get Rosie O’Donnell for half price? Did you do this to the ad agency that came up with the Fair and Square campaign? What happened to Fair and Square?” Moen sought to placate Maharg. He related a conversation he had had that day with people in the Procurement Department: “They wanted to know whether J.C. Penney was getting the best price from Hudson & Broad, and I told them yes. You’ve got nothing to worry about.”

41. In late March 2012, after many unanswered e-mails and unreturned phone calls, Maharg spoke to Moen, who said the H+B quote had been reviewed by the Capital Authorization Committee. “Call Jim Francois,” said Moen.

42. On March 30, 2012, Maharg spoke with Francois, who said the other firm had submitted a bid for “a better product at half price.” That was arrant nonsense, and Maharg said so. The quality of the H+B product could not be beat, and getting anything at half price would entail getting by far an inferior product. Maharg demanded to know just how the competing product was

superior to the H+B Square. Francois could offer only one particular: The competing product was a few inches taller, standing 84 inches by 84 inches. That wasn't an improvement, and Francois knew it. Maharg reminded Francois of why the dimensions of the Square were set at 79 inches: If taller, the Square would have to be made of a glossy material rather than the more expensive matte material and would have to be illuminated by ribbon lighting rather than LED. This would result in uneven lighting, inconsistent color, and power outages arising from voltage and heat issues. The H+B Square, in contrast, displayed uniform illumination and color, provided precise and easy color mixing, had an internalized heat sink, and operated on a constant 24-volt current, which was essential for a long shelf life. Francois could not argue with the logic.

43. During the March 30 telephone conversation, Francois offered to have JCP pay a design fee to H+B. Maharg rejected that sop, reminding Francois that H+B was a manufacturer, not a design firm, and had no interest in receiving a design fee. In line with the agreement reached at the February 1 meeting, which was confirmed during their February 7 telephone conversation, H+B expected to receive an order for the manufacture of the Squares. Willing to modify the design of the Square, Maharg asked if JCP would be amenable to receiving a quote from H+B for 84-inch Squares manufactured with glossy material. "Yes," said Francois, "I'll inform Procurement to expect a revised quote."

44. The next day, March 31, H+B presented a revised quote to JCP. In a covering e-mail, Maharg explained the changes from the quote presented February 29:

- (1) We have increased the fixture size to 84" square.
- (2) We have switched from a matte finished acrylic to a glossy light diffusing acrylic. By making this switch, we can give you the exact size you want while reducing the cost.
- (3) We have reduced your price by 35%.

Despite the changes, H+B did not stint on quality or corrupt the integrity of the product:

We also thought about using cheaper LED ribbon lighting from China like

the knock off vendors that you submitted our proprietary design to are most likely using, but the result would be inconsistent color and outages resulting from voltage and heat issues that this ribbon lighting is known for. Ultimately, we decided to put our financial self interest aside by continuing to utilize our own expensive custom lighting technology so as not to compromise the integrity of our design or ruin the impact that this fixture will have in your stores and with your customers.

45. Lured by a quote for a second-rate product at a cheaper price, JCP gave H+B's Square to someone else to manufacture. On April 3, 2012, Steven Wysong, JCP's Procurement Director, dispatched an e-mail to Maharg: "Based on several factors, we regret to inform you that we will not be placing an order for the large frames with your company." Maharg responded the next day: "The large frame is a Hudson + Broad proprietary product. We have not authorized JCP to have our product produced elsewhere, nor will we. We expect that JCP will respect our intellectual property as well as its commitments to Hudson + Broad."

FIRST CLAIM
(Misappropriation of Trade Secrets)

46. All prior averments are repeated.

47. JCP, without authorization from H+B, is using H+B's confidential and proprietary information.

48. JCP is liable to H+B for the unauthorized use of H+B's confidential and proprietary information.

49. As a proximate and foreseeable result of JCP's wrongful conduct, H+B has been damaged.

50. By virtue of the foregoing, H+B is entitled to recover from JCP the profits H+B would have earned from the sale of 1,872 79-inch Squares to JCP.

51. JCP therefore owes H+B not less than \$10,000,000.

SECOND CLAIM
(Unjust Enrichment)

52. All prior averments are repeated.

53. JCP has been unjustly enriched at H+B's expense for the reasonable value of the concept and design of the Square and for the reasonable value of the confidential and proprietary information H+B disclosed to JCP but for which JCP has not paid.

54. As a proximate and foreseeable result of JCP's wrongful conduct, H+B has been damaged in an amount not yet determined but estimated in excess of \$1,000,000.

55. By virtue of the foregoing, JCP owes H+B not less than \$1,000,000.

THIRD CLAIM
(Breach of Contract)

56. All prior averments are repeated.

57. H+B and JCP entered into a contract whereby JCP agreed to purchase 1,872 79-inch Squares at \$10,250 each.

58. JCP breached the contract.

59. As a proximate and foreseeable result of said breach, H+B was damaged in the amount of not less than \$19,188,000.

60. By virtue of the foregoing, JCP owes H+B not less than \$19,188,000.

WHEREFORE, plaintiff demands judgment against defendant as follows:

A. *on the First Claim*, awarding to plaintiff compensatory damages in the amount not less than \$10,000,000, with interest thereon, and punitive damages in the amount of not less than \$20,000,000;

B. *on the Second Claim*, awarding to plaintiff compensatory damages in the amount to be determined at trial but not less than \$1,000,000, with interest thereon, and punitive damages in an amount to be determined at trial but not less than \$2,000,000;

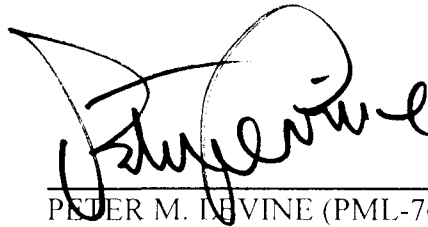
C. *on the Third Claim*, awarding to plaintiff compensatory damages in the amount of not less than \$19,188,000, with interest thereon;

D. *on each Claim*, awarding to plaintiff its costs and disbursements of this action, including reasonable counsel fees, and granting to plaintiff such other, further, and different relief the Court deems just and proper.

JURY DEMAND

PLEASE TAKE NOTICE that plaintiff demands a trial by jury on all issues.

Dated: New York, New York
April 24, 2012

A handwritten signature in black ink, appearing to read "Peter M. Devine", is written over a horizontal line.

PETER M. DEVINE (PML-7630)

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