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Sulzer Mixpac continues to enforce its rights and protect its customers

Sulzer Mixpac Ltd operates globally in the field of static mixing tips, cartridges and dispensing devices for the dental business. In recent times, substantially identical copies of the static mixing tips for two-component cartridges and syringes have increasingly been discovered. These copies by other manufacturers are not subject to Sulzer's strict quality controls and are therefore not covered by its warranty. In the interests of its customers, Sulzer will continue to take legal steps against all such copies.

Starting with its ruling in 2010 (Court ref.: 33 O 306/09), the Cologne District Court has decided that copies of Mixpac's Candy Color (e.g. yellow, teal, blue, pink, purple, and brown) dome-shaped mixing tips represent unfair copies of the mixing tips of Sulzer Mixpac Ltd and result in an avoidable deception with respect to the commercial origin. This initial decision was also confirmed by the Cologne Higher Regional Court with its 2011 ruling (Court ref.: 6 U 189/10).

Mixpac has continued to successfully enforce these rights over the years in many dozens of court actions against, or out-of-court settlements with, imitators of its mixing tips as well as to successfully enforce its patent, trademark or other IP rights against certain infringing colored mixing tips in many countries, such as Germany, Japan, Brazil, the US and the United Kingdom.

For example, in 2009 a US Court in *Sulzer Mixpac v. Ritter GmbH, NSJ and Peng Waves* (09 Civ. 9705 (DAB)) issued a temporary restraining order, followed by a preliminary injunction, and a default judgement and permanent injunction confirming the validity and infringement of Mixpac's Colored Dome trademark and two US patents in force at the time and protecting technical aspects of Mixpac's bayonet coupling mechanism. Several technical aspects of Mixpac's mixing tips were also covered by European Patents at the time (inter alia EP 0 730 913 B1 and EP 0 723 807 B1) and the German District Court of Düsseldorf as well as the German Higher Regional Court of Düsseldorf confirmed in several PI and patent infringement proceedings that Ritter's mixing tips were infringing the German parts of these European patents at the time (Court refs: 4b O 110/09, I-2 U 151/09, 4a O 30/15, 4a O 36/15).

With the intention of clarifying its rights, settling open disputes, and avoiding future disputes, Mixpac entered into a settlement agreement with Ritter GmbH and its brother owners in 2016. This agreement included a cease and desist undertaking by Ritter (with contractual

penalty) that the following dental mixing tips (below) should not be offered anymore:



Fig. 1: Mixing Tips from Undertaking

Soon thereafter, Ritter however began offering and selling the slightly different dental mixing tips (below). After its negotiation efforts failed to resolve the dispute, Mixpac filed a lawsuit to end the breach of the agreement, and, as requested, the district court of Munich (Landgericht München I; 37 O 852/20) granted an injunction against the defendants Ritter GmbH, Frank Ritter, and Ralf Ritter, and ordered that the Ritter Defendants must stop offering those slightly different dental mixings tips (below).



Fig. 2: Ritter slightly different Mixing Tips

The Ritter Defendants argued in vain that the settlement agreement would not be valid for various reasons, but the Court rejected their arguments. In addition, the court decided that Mixpac’s contractual claims are justified. The minor differences between the mixing tips (above Fig. 1 vs. Fig. 2) were found to be irrelevant and the main characteristics unchanged.

Furthermore, the court found that Ritter’s colored dental mixing tips (as shown in the settlement agreement, above Fig. 1) are very likely an unfair imitation of Mixpac’s dental mixing tips. In the event of a lawsuit, one would thus seriously expect that Mixpac would have statutory claims (based on German unfair competition law) to prohibit Ritter from offering these colored dental mixing tips (above Fig. 1). Their differences from the original Mixpac mixing tips are mainly limited to their transparent dome, colored mixer tube (similar to Mixpac’s Candy Colors), and the ribbing of the dome. In view of the overall visual impression, those differences were found by the Court to not be significant from the point of view of the average consumer.

According to the Court's judgment, Ritter's dental mixing tips (above Fig. 1) are an almost identical imitation of the Mixpac mixing tips and lead to an avoidable deception of origin. This deception is not overcome by the (nearly invisible) word "Ritter" embossed on the top of the dome. Furthermore, the Court found that there is no factually justified reason for Ritter's almost identical use of Mixpac's aesthetic design features. Instead, it would be reasonable to expect that Ritter would instead change to other aesthetic features in order to create their own design with distinct visual differences from Mixpac mixing tips.

In addition to the injunction, the Court ordered in what is now a final and legally-binding decision that Ritter must render a detailed account of offers and sales of the colored mixing tips, and that Ritter must pay the contractual penalty, damages, and the costs of the proceedings.

In dozens of successful court cases in various jurisdictions worldwide, Sulzer Mixpac has gained judgments and permanent injunctions that prohibit the selling of counterfeit products in the form of near identical copies of Mixpac's mixing tips or other imitation products. Counterfeit products can lead to inconsistent or improper mixing, contamination of mixing material, and/or delays in procedures. Mixpac is committed to protecting its products. Genuine Mixpac tips can be identified by the MIXPAC™ name stamped on the retaining ring and the Candy Color Quality Seal.

About Sulzer Mixpac Ltd.

Sulzer Mixpac AG is a worldwide leading manufacturer and supplier of products and services for liquid application and mixing technology. As part of the Applicator Systems Division within the Sulzer Group, the Mixpac business unit can draw on a strong international network. The head office is located in Switzerland. For optimal service to its customers, subsidiaries are located in the U.S., UK and China.

Through its well-known brands (Mixpac, Transcodent, Cox, Medmix, Haselmeier and Geka), Sulzer APS develops and delivers innovative products and services for liquid application and mixing solutions within the healthcare, adhesives and beauty markets. Our IP-protected applicator solutions make our customers' products precise, safe, unique and more sustainable, leveraging our industry-leading expertise in plastic-injection molding, two-component mixing, drug delivery and micro-brushes.

MIXPAC™ - is a registered trademark of Sulzer Mixpac Ltd, Switzerland.

T-MIXER™ - is a registered trademark of Sulzer Mixpac Ltd, Switzerland.

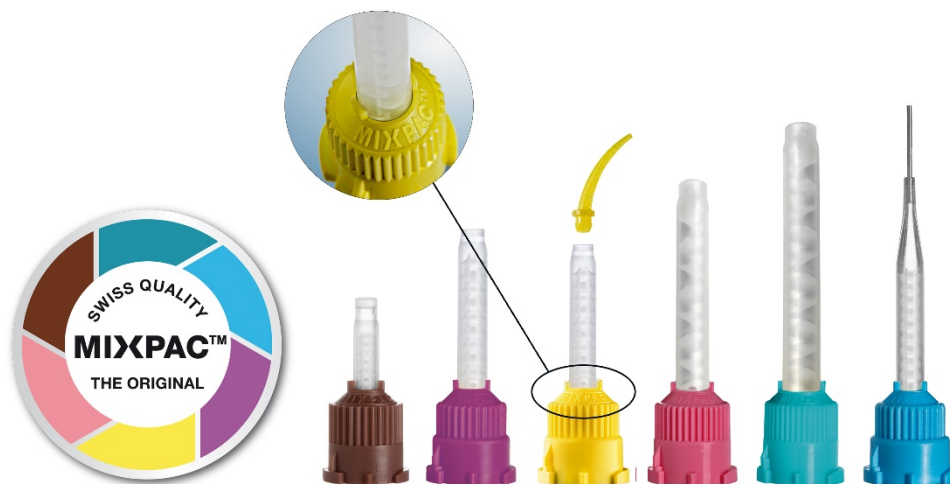
CANDY COLORS™ – is a registered trademark of Sulzer Mixpac Ltd, Switzerland

www.sulzer.com

Enquiries:

Cornelia Zeh
Communications & Event Manager
Sulzer Mixpac AG
Tel +41 81 414 70 57,
cornelia.zeh@sulzer.com

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Candy Color Quality Seal and Mixpac's Candy Colors™ with mixing tips overview

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