

July 2020

Recent Final Decision against Two Counterfeiters in Germany

Sulzer Mixpac continues to enforce its rights



Sulzer Mixpac Ltd (SULZER) 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 clients, SULZER will continue to take legal steps against all such copies.

With its ruling back in 2010, the Cologne District Court decided many years ago that the mixing tips forming the basis of our complaint represent unfair copies of the mixing tips of Sulzer Mixpac Ltd and result in an avoidable deception with respect to the commercial origin (Court ref.: 33 O 306/09). This decision was also then confirmed in the second instance by the Cologne Higher Regional Court with its 2011 ruling (Court ref.: 6 U 189/10).

SULZER has continued to successfully enforce these rights over the years in many dozens of court actions against, or out-of-court settlements with, slavish 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.

Despite these measures, further unfair slavish copies of the mixing tips were discovered and action was taken. For example, in Germany, during the International Dental Show (IDS) 2019 a total of six preliminary injunctions due to unfair competition were obtained from the Cologne District Court against various providers of slavish copies of SULZER's mixing tips by which inter alia the offering, advertising and marketing of these copied mixing tips for the dental sector were prohibited. In addition, SULZER is active in taking downs infringing ads on on-line marketplaces, such as eBay, AliExpress, Made-in-China and Alibaba based on SULZER's trademark rights. In 2019 alone, 776 listings have been enforced on-line to-date against 427 sellers.

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In 2018 SULZER had become aware that Delian Technology & Trading Beijing Co. Ltd. (“DELIAN”) and CDM Center of Excellence Ltd (“CDM”), both of Beijing, China were selling counterfeit copies of SULZER’s mixing tips in Germany and that DELIAN was selling counterfeit copies of SULZER’s dental mixing tips, cartridge caps and intra-oral tips in the US. SULZER filed suit in the U.S. District Court for the Southern District of New York during the 2018 Greater New York Dental Meeting and obtained a Consent Judgment and Permanent Injunction in *Sulzer Mixpac AG v. Delian Technology & Trading Beijing Co., Ltd.* The Judgment prohibits DELIAN’s use of SULZER’s Candy Colors™ on dental mixing tips, cartridge caps and intra-oral tips, as SULZER has numerous U.S. Trademark Registrations for its Candy Colors™ (teal, blue, purple, yellow, pink and brown) for dental mixing tips, cartridge caps and intra-oral tips.

In Germany, SULZER filed a main action and received a default judgement from the district court Cologne (31 O 118/18), dated 26.07.2018 ordering DELIAN and CDM to cease and desist from offering and selling slavish imitations of SULZER’s mixing tips and to pay SULZER reimbursable statutory fees (cost decision from 22.10.2018). Upon protest filed by DELIAN and CDM, the default judgement was confirmed by the district court Cologne (31 O 118/18) with a first instance judgement dated 26.05.2020, which has now become a final binding decision.

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 slavish copies of SULZER’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. SULZER 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.



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ABOUT SULZER MIXPAC Ltd

With more than 1000 employees, Sulzer Mixpac Ltd is a world leading manufacturer and supplier of cartridge-based metering, mixing and dispensing systems and disposable mixers for reactive multi-component materials.

As part of the Sulzer group, Sulzer Mixpac Ltd 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, Germany, Poland and China.

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

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About Sulzer:

Sulzer's core strengths are flow control and applicators. We specialize in pumping solutions and services for rotating equipment, as well as separation, mixing and application technology. Our customers benefit from a network of over 180 production and service sites around the world. Sulzer has been headquartered in Winterthur, Switzerland, since 1834. In 2019, we achieved sales of about CHF 3.7 billion with around 16'500 employees. Our shares are traded on the SIX Swiss Exchange (SIX: SUN). www.sulzer.com

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