

1 UNITED STATES COURT OF APPEALS  
2 FOR THE SECOND CIRCUIT  
3

4 SUMMARY ORDER

5  
6 THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL  
7 REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO  
8 THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION  
9 OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS  
10 CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF  
11 COLLATERAL ESTOPPEL OR RES JUDICATA.  
12

13 At a stated term of the United States Court of Appeals  
14 for the Second Circuit, held at the Thurgood Marshall United  
15 States Courthouse, at Foley Square, in the City of New York,  
16 on the 29<sup>th</sup> day of March, two thousand and six.  
17

18  
19 PRESENT: HON. DENNIS JACOBS,  
20 HON. PIERRE N. LEVAL,  
21 Circuit Judges,  
22 HON. JED S. RAKOFF,<sup>1</sup>  
23 District Judge.  
24

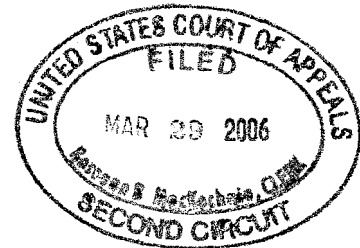
25 -----X  
26 METRON TECHNOLOGY DISTRIBUTION  
27 CORPORATION,  
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29 Movant,

30  
31 TOKYO ELECTRON ARIZONA, LLC,  
32

33 Plaintiff-Counterclaim-  
34 Defendant-Appellee,  
35

36 -v.-



05-2522-CV

37  
38 DISCREET INDUSTRIES CORPORATION and  
39 OVADIA MERON,  
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<sup>1</sup> The Honorable Jed S. Rakoff, United States District Judge for the Southern District of New York, sitting by designation.

1  
2 Defendants-Counterclaimants-  
3 Appellants,  
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5 HUMMEL MACHINE AND TOOL COMPANY,  
6 EDWARD EVANS, EASTERN MANUFACTURING  
7 SERVICES, INC., NEW HORIZON MACHINE  
8 COMPANY, doing business as Tirrena  
9 Tech or ASI, GILBERT PRECISION MACHINE  
10 and JOHN AND JANE DOE 1-30,  
11

12 Defendants.  
13

14 - - - - -X  
15

16 **APPEARING FOR APPELLANTS:** OLEG RIVKIN, Fox Horan &  
17 Camerini LLP, New York New York,  
18 for Discreet Industries  
19 Corporation and Ovadia Meron.  
20

21  
22 **APPEARING FOR APPELLEE:** EDGAR H. HAUG, Frommer Lawrence  
23 & Haug LLP (Kevin Murphy and  
24 David A. Zwally, of counsel),  
25 New York, New York, for Tokyo  
26 Electron Arizona, LLC.  
27

28  
29 Appeal from the United States District Court for the  
30 Eastern District of New York (Hurley, J.).  
31

32 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED**  
33 **AND DECREED** that the judgment of the district court be  
34 **AFFIRMED.**  
35

36 Tokyo Electron Arizona, LLC and Ovadia Meron  
37 ("defendants") appeal from a judgment, entered in the United  
38 States District Court for the Eastern District of New York  
39 (Hurley, J.), following a jury verdict--and numerous post-  
40 trial motions to set aside the verdict--in favor of  
41 plaintiff Tokyo Electron Arizona ("TAZ") on its claims of  
42 misappropriation, conversion, tortious interference with  
43 contract, and unfair competition under both the Lanham Act

1 and New York State law. (TAZ lost on its RICO claim and  
2 withdrew its unjust enrichment claim from the jury's  
3 consideration.) The jury verdict sheet adds up to \$6.3  
4 million in compensatory damages, \$3.6 million in punitive  
5 damages, and \$1.5 million in attorneys' fees. At base, this  
6 case concerns defendants' theft and use of TAZ's trade  
7 secrets for the production of replacement parts for the  
8 "Eclipse" machine, which is used to manufacture  
9 semiconductors.

10  
11 (1) As to whether the jury awarded duplicative damages,  
12 defendants have waived any argument regarding the jury  
13 instruction or verdict sheet given their failure to raise  
14 this issue in their requests to charge or at the charging  
15 conference, or to lodge a timely objection, or to request  
16 that the court poll the jury. See Rule 51, Fed. R. Civ. P.;  
17 Lavoie v. Pacific Press & Shear Co., 975 F.2d 48, 54-55 (2d  
18 Cir. 1992).

19  
20 (2) The court did not abuse its discretion in issuing a  
21 permanent injunction as to all 266 parts of the Eclipse  
22 machine to prevent any future misappropriation of TAZ's  
23 trade secrets by defendants. Rondeau v. Mosinee Paper  
24 Corp., 422 U.S. 49, 62 (1975); Knox v. Salinas, 193 F.3d  
25 123, 128-29 (2d Cir. 1999) (per curiam).

26  
27 (3) The court correctly denied defendants' post-verdict  
28 motion for judgment as a matter of law on TAZ's unfair  
29 competition claims: TAZ presented evidence of actual  
30 customer confusion. See Resource Developers, Inc. v. Statue  
31 of Liberty--Ellis Island Found., Inc., 926 F.2d 134, 139 (2d  
32 Cir. 1991) (Lanham Act); WWW Pharm. Co., Inc. v. Gillette  
33 Co., 984 F.2d 567, 576 (2d Cir. 1993) (New York law).

34  
35 (4) The court correctly denied defendants' post-verdict  
36 motion for judgment as a matter of law on TAZ's claim based  
37 on tortious interference with contractual relations: TAZ  
38 presented evidence sufficient to support the judgment,  
39 including defendants' knowledge of the existence of a non-  
40 disclosure agreement between TAZ and one of its suppliers.  
41 See Albert v. Loksen, 239 F.3d 256, 274 (2d Cir. 2001).

1 (5) TAZ was entitled to lost profit damages sustained  
2 after September 18, 2003 because § 12.1 of the asset  
3 purchase agreement among TAZ, Tokyo Electron Limited (TAZ's  
4 parent company), and Metron reserved TAZ the right to such  
5 damages.

6  
7 (6) As the "prevailing party" in this suit, TAZ was  
8 entitled to attorneys' fees under the Lanham Act. 15 U.S.C.  
9 § 1117(a).

10  
11 (7) The court correctly upheld the jury's punitive  
12 damage award because defendants adduced no evidence or  
13 argument demonstrating that that award was excessive or  
14 beyond the defendants' ability to pay. See Smith v.  
15 Lightning Bolt Prods., Inc., 861 F.2d 363, 373 (2d Cir.  
16 1988); see also BMW of N. Am. v. Gore, 517 U.S. 559, 574-75  
17 (1996).

18  
19 We have reviewed defendants' remaining arguments and  
20 find them all to be without merit. For the foregoing  
21 reasons, the judgment of the district court is hereby  
22 **AFFIRMED.**

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24  
25 FOR THE COURT:  
26 ROSEANN B. MACKECHNIE, CLERK

27 By:

28   
29 \_\_\_\_\_  
30 Lucille Carr, Deputy Clerk