

# Superior Court of California

## County of Orange



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17 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

18 **COUNTY OF ORANGE**

30-2012-00598934-CU-BC-CJC

Judge John C. Gastelum

19 DESERT BEACH, LLC, a Texas limited  
20 liability company,

21 Plaintiff,

22 v.

23 NOTTAGE DESIGN PTY LTD, an Australian  
24 proprietary limited company; CRAIG  
25 NOTTAGE, an individual; TRIANGLE  
26 BILLIARDS, INC. D/B/A TRIANGLE  
27 BILLIARDS AND BARSTOOLS, a California  
28 Corporation; JOE FISCELLA, an individual,  
and DOES 1-40,

Defendants.

Case No.:

**COMPLAINT FOR:**

1. **BREACH OF CONTRACT**
2. **FRAUD**
3. **NEGLIGENT MISREPRESENTATION**
4. **CONSPIRACY**
5. **BREACH OF WARRANTY**
6. **DECEPTIVE TRADE PRACTICES/FALSE ADVERTISING IN VIOLATION OF CAL. BUS. PROF. CODE §§17500 et seq.**

**DEMAND FOR JURY TRIAL**

[Unlimited Civil Action]

Judge:

Dept.:

1 Plaintiff DESERT BEACH, LLC (“Desert Beach” or “Plaintiff”) files this Complaint against  
2 Defendants NOTTAGE DESIGN PTY LTD (“Nottage Design”), CRAIG NOTTAGE (“Craig”),  
3 TRIANGLE BILLIARDS, INC., d/b/a/ TRIANGLE BILLIARDS AND BARSTOOLS (“Triangle”),  
4 JOE FISCILLA (“Fiscilla”), and DOES 1-40, inclusive, and each of them as follows:

5 **FACTUAL ALLEGATIONS**

6 1. This case concerns Defendants’ false and misleading advertising, insufficient  
7 disclosures, production and sale to Plaintiff of a defective pool table, and the ensuing campaign by the  
8 Defendants to cover their tracks once the jig was up.

9 2. Defendants sold Plaintiff a custom designed glass top pool table—which Nottage  
10 Design unabashedly referred to as “the ultimate pool table”—for the premium price of \$73,000, with  
11 absolutely no mention whatsoever of the critical fact that the glass table top could not withstand  
12 ordinary use with a standard set of pool balls.

13 3. The transparent glass table top of Nottage Design’s tables is coated with a proprietary  
14 playing surface called “Vitrik,” which Defendants described as a highly durable surface that allows  
15 standard size pool balls to roll silently at or near an identical rate to traditional felt covered slate pool  
16 tables. In reality, the “Vitrik” playing surface is a highly delicate surface that easily scuffs and  
17 scratches (essentially destroying the table surface) with the use of any standard pool ball, which  
18 Plaintiff unfortunately learned the hard way when a set of standard pool balls destroyed its table.

19 4. When Plaintiff informed Defendants of the severe damage to its table, rather than live  
20 up to its guaranties and warranties, Nottage Design engaged in a brazen and shameless attempt to  
21 cover its tracks, **changing its website after the fact to add new warnings regarding the use of other**  
22 **balls and misrepresenting to Plaintiff that the warnings had always been there.** See Exhibit G  
23 (Email dated August 15, 2012, where founder and principal Craig Nottage stated “[w]e already have it  
24 on the site’s FAQ ... I’m not sure what else we can do.”). In fact, Nottage Design (after Plaintiff  
25 informed Nottage Design of the severe damage to its table) added new warnings to the website’s  
26 Frequently Asked Questions (“FAQ”) page that were not there before, like “[w]e utilize a custom finish  
27 on our ball set that is compatible with the Vitrik surface, please only use these balls.” See Exhibits A-  
28

1 5, B-4 & C-10 (blackline showing changes made to FAQ on or after August 10, 2012); Exhibits A-1,  
2 B-1 & C-9 (FAQ page after changes were made).

3 5. Plaintiff, however, has caught Defendants red handed, carefully documenting (through  
4 multiple different sources<sup>1</sup>) the Nottage Design website as it existed before and after Nottage Design  
5 covered its tracks with new warnings. *See* Exhibits A-5, B-4 & C-10 (blackline); *compare* Exhibits A-  
6 2, B-2, C-2, C-3, C-7 & C-8 (various versions of FAQ pages before changes were made) *with* Exhibits  
7 A-1, B-1 & C-9 (FAQ page after changes were made). Exhibits C-2, C-3, and C-7 (the FAQ page as  
8 of August 9, 2012), and Exhibits A-5, B-4 & C-10 (the blackline between the August 9, 2012 and  
9 August 20, 2012 versions of the FAQ page), clearly show that the warnings did **not** previously exist  
10 and that Nottage Design's attempts to hide its error have failed.

11 6. Additionally, Nottage Design's new changes are revealed by the Nottage Design FAQ  
12 page that was separately posted on Triangle Billiards' website. *See* Exhibits C-7 & C-8  
13 (<http://www.tribilliards.com/nottage-faq/>). Plaintiff's internal representative printed that FAQ page on  
14 both August 9 and August 22, 2012. There were no warnings regarding ball use on either version, but  
15 more importantly, **there were no changes between the two versions. In other words, Nottage**  
16 **Design either forgot or was unable to cover its tracks on Triangle Billiard's separate webpage.**  
17 *See id.* **Obviously, Defendants believe the information about using only its pool balls is material**  
18 **to the decision to purchase a table, which is why it took steps to stop hiding that information**  
19 **from potential purchasers and instead update its website to include the new warning.**

20 7. At the time Plaintiff researched and negotiated its purchase, Defendants never once  
21 mentioned, orally or in writing, that its tables could only be used with the balls Nottage Design ships

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22 <sup>1</sup> There can be no question that Nottage Design has only recently updated its website, after it learned of the damage to  
23 Plaintiff's table. On August 9, 2012, before the changes were made, one of Plaintiff's internal representatives mirrored the  
24 entire website and made PDF screen shot printouts of the FAQ (two different versions), Terms and Conditions, and  
25 Customer and General Support pages, among others. *See* Exhibits C-1 through C-7. None of the pages of Nottage  
26 Design's website, as of August 9, warned of using standard pool balls on the table; rather, as noted above, they touted its  
27 durability and standard ball use. *See, e.g.,* Exhibits C-2 & C-3. Then, after it became clear that Nottage Design had added  
28 new warnings, two additional internal representatives of Plaintiff captured the Google cache pre-change version of the FAQ  
page (dated August 10, 2012) and the live post-change version of the FAQ page (as of August 18, 2012) for comparison.  
*See* Exhibit A-4 (two videos comparing versions and highlighting changes); *compare* Exhibits A-2 & B-2 (cached versions  
of FAQ pages before changes were made) *with* Exhibits A-1 & B-1 (FAQ page after changes were made). Plaintiff further  
verified the changes with two external third-party expert consultants who likewise captured the Google cache pre-change  
and live post-change versions of the FAQ page to confirm that the changes were made. *See* Exhibit I (Declaration of Lance  
Sloves); Exhibit J (Declaration of R. Lance Fogarty).

1 with its tables. There were absolutely no warnings whatsoever on the Defendants’ website or other  
2 marketing materials against using other balls. Instead, Defendants repeatedly touted the glass top’s  
3 “highly durable” Vitrik surface and highlighted that the balls and cues were “standard,” for example  
4 stating on the website that:

5 a. “The [Vitrik] surface is inherently scratch-resistant so **scratching**  
6 **through normal usage does not occur**. The only way in which it can be  
7 damaged during game play is by striking the cue into it very hard with the cue  
8 steeply inclined. This can leave a light visual mark.... Any marking is  
9 superficial ....” (See Exhibit C-2 (Frequently Asked Questions dated June 3,  
10 2012, available at <http://dl.dropbox.com/u/50982982/FAQ.pdf>)) (emphasis  
11 added); and

12 b. The Vitrik surface is “highly durable and will give years of service.  
13 Considerable testing has failed to tear it – even trick shots.” (See Exhibit C-2).

14 8. The website further advertised that Nottage Design’s tables function as normal pool  
15 tables, with normal cues, balls, and other equipment, stating that “[t]he standard size 2.25” balls roll at  
16 a similar speed and its size and pocket dimensions meet international standards,” and that “[b]oth balls  
17 and cues are standard....” See Exhibit C-2.

18 9. None of the Defendants ever advised Plaintiff prior to Plaintiff’s purchase of the table  
19 that the use of other balls could damage the table.

20 10. In fact, Joe Fiscella, the principal of Triangle Billiards (Nottage Design’s dealer, agent  
21 and installer for the table) **twice** tried to sell Plaintiff a set of balls for the table not made by Nottage  
22 with absolutely no warning that those balls could destroy the table. See Exhibit F (Email dated June  
23 13, 2012, stating “I can get you good balls” in response to Plaintiff’s request for accessories). Nottage  
24 Design’s own dealer, agent and installer, therefore, either did not know of the risks associated with a  
25 standard set of balls or willfully failed to advise Plaintiff of those risks.

26 11. Reassured by and in reliance upon the foregoing facts and Defendants’ three-year full  
27 warranty covering defects in materials and workmanship, see Exhibit C-4, Plaintiff ordered a custom  
28

1 designed G-1 pool table from Nottage Design through its dealer and agent Triangle Billiards. *See*  
2 Exhibit D (Contract over Email dated April 3, 2012).

3 12. Unfortunately, Plaintiff's reliance on the foregoing representations and warranties was  
4 misplaced. A standard set of pool balls (the kind that might be found in any pool hall on any pool  
5 table) were used on the table, and these standard balls badly scuffed, scratched, and damaged—  
6 essentially destroyed—the table's surface. *See* <http://youtu.be/96RktIFb50A> (video showing use of  
7 standard pool balls damaging table); Exhibits E-2 & E-3 (photographs showing scuffs and scratches  
8 caused by standard pool balls).

9 13. Defendants only ever alluded to these risks **after** the transaction was completed by  
10 including a thin sealed envelope in a stack of shipping papers for the table, which had an  
11 inconspicuous bullet point vaguely noting that the balls shipped by Nottage Design were specially  
12 made for use with the table. There were no warnings on the installed table, no warnings on Nottage  
13 Design's website, no warnings from Nottage Design's dealer, agent and installer (Triangle Billards),  
14 and no warnings anywhere else about using standard pool balls other than this thin sealed envelope  
15 that was part of a stack of shipping papers only delivered after the purchase. Hiding such a material  
16 warning in an inconspicuous bullet point on a sheet of paper in a thin sealed envelope placed among a  
17 stack of shipping papers after the purchase was made is completely absurd—a fact which Nottage  
18 Design has implicitly acknowledged through its recent actions to cover its tracks by posting new  
19 warnings on its website about using other balls.

20 14. Not only have Defendants engaged in a substantial campaign of cover-up, but to add  
21 insult to injury, Nottage Design and its founder and principal Craig Nottage have been  
22 unaccommodating and nonresponsive in Plaintiff's attempts to have Defendants live up to their  
23 bargain and provide warranty service. In response to Plaintiff's recent attempt to have Defendants  
24 make good on the warranty to repair or replace the damaged table top, Craig stated that he was trying  
25 to figure out how to polish the table by trying "a number of polishing solutions" and noted that the  
26 Vitrik is "a difficult material to polish," *see* Exhibit H (Email from Craig Nottage dated August 1,  
27 2012), which, of course, contrasts with and blatantly contradicts the pre-purchase statements on his  
28 website that scratching "does not occur," but if it does it is "superficial" and can easily be polished out

1 with Nottage Design’s recommended polish. Compare Exhibit H (“[Vitrik]’s a difficult material to  
2 polish”) with Exhibit C-2 (“The [Vitrik] surface is inherently scratch-resistant so **scratching through**  
3 **normal usage does not occur**. The only way in which it can be damaged during game play is by  
4 striking the cue into it very hard with the cue steeply inclined. This can leave a light visual mark....  
5 Any marking is superficial ....”) (emphasis added) and Exhibit C-4 (“Minor marks can generally be  
6 polished out of our transparent Vitrik surface with our recommended polish”).

7 15. To date Defendants have refused to replace the damaged surface of Plaintiff’s table.

8 16. Accordingly, all of the Defendants’ pre-purchase representations concerning the quality  
9 and durability of its tables, as well as its warranties and other promises, appear to be false. As further  
10 described below, Plaintiff seeks relief based on Defendants’ breaches of contract and warranty and  
11 false misrepresentations, each of which were, upon information and belief, knowing and/or intentional,  
12 entitling Plaintiff to punitive damages. Defendants’ wrongful actions have caused Plaintiff to incur  
13 over \$219,000 in damages.

14 **THE PARTIES**

15 17. Plaintiff Desert Beach is, and was at all times relevant herein, a Texas limited liability  
16 company with its principal office located in Tarrant County, Texas. The incident described herein and  
17 the underlying statements were made in the County of Orange, State of California.

18 18. Defendant Nottage Design is, and was at all times relevant herein, an Australian  
19 proprietary limited company engaged in business in California.

20 19. Defendant Craig Nottage is, and was at all times relevant herein, an Australia resident  
21 engaged in business in California.

22 20. Defendant Triangle is, and was at all times relevant herein, a California Corporation  
23 with its principal place of business in the City of Orange, Orange County, California

24 21. Defendant Joe Fiscella is Triangle’s President, and was at all times relevant herein, a  
25 California resident engaged in business in the City of Orange, and residing, on information and belief,  
26 in the County of Orange, California.

27 22. DOES 1 through 40, inclusive, are sued under such fictitious names because the true  
28 names and capacities, whether individual, corporate, partnership or otherwise, are presently unknown

1 to Plaintiff. When the true names and capacities of DOES 1 through 40, or any of them, are  
2 ascertained, Plaintiff will seek leave to amend this pleading to reflect accurately such real names and  
3 capacities. Plaintiff is informed and believes and upon such information and belief alleges that each of  
4 the fictitiously named defendants are responsible in some manner for the occurrences alleged in this  
5 Complaint and that Plaintiff's damages as alleged in this Complaint were proximately caused by their  
6 conduct.

7 23. Whenever and wherever reference is made to individuals who are not named as  
8 defendants in this action, but were employees/agents of defendants, or any of them herein, such  
9 individuals at all times acted on behalf of defendants named in this action within the scope of their  
10 respective employments and agencies.

11 24. Whenever and wherever reference is made in this Complaint to any conduct of  
12 defendants, or any of them, such allegations or references shall also be deemed to mean the conduct of  
13 each defendant, acting individually, jointly and severally.

14 25. Plaintiff is informed and believes, and on the basis of that information and belief  
15 alleges, that at all times mentioned in this complaint, defendants were the agents and employees of  
16 their codefendants, and in doing the things alleged in this complaint were acting within the course and  
17 scope of that agency and employment.

18 **JURISDICTION AND VENUE**

19 26. This Court has jurisdiction over of Defendant Nottage Design because it is a company  
20 that was, on information and belief and at all relevant times, doing business in Orange County.

21 27. This Court has jurisdiction over Defendant Craig because he was, on information and  
22 belief and at all relevant times, doing business in Orange County.

23 28. This Court has jurisdiction over of Defendant Triangle because it is a California  
24 corporation doing business in Orange County.

25 29. This Court has jurisdiction over Defendant Fiscella because at all relevant times he was  
26 doing business in Orange County, and, on information and belief, he is a resident of Orange County.

27 30. This Court has jurisdiction over this matter because the damages and other relief sought  
28 exceed the jurisdictional minimum.







- 1 a. The Vitrik surface of the table was “highly durable and will give years of  
2 service”;
- 3 b. The Vitrik surface is “inherently scratch-resistant so scratching through  
4 normal usage does not occur”;
- 5 c. Any marking to the Vitrik surface is superficial;
- 6 d. Marking to the Vitrik surface can easily be polished out;
- 7 e. The Nottage Design table functions as a normal table that can be used with  
8 standard pool balls and cues; and
- 9 f. Nottage Design is committed to its customers’ satisfaction with its  
10 products.

11 43. Defendants made these representations in the course of their business or in a transaction  
12 in which they had a pecuniary interest.

13 44. Defendants did not exercise reasonable care or competence in obtaining or  
14 communicating the information contained in these false representations. Desert Beach justifiably  
15 relied upon these material representations by Defendants.

16 45. This negligent misrepresentation proximately caused the actual damages suffered by  
17 Desert Beach. Desert Beach is entitled to recover from Defendants, jointly and severally, its actual  
18 damages, the amount of which to be proven at trial, pre- and post- judgment interest, and punitive  
19 damages.

20 **FOURTH CAUSE OF ACTION**

21 **Conspiracy**

22 **(Against All Defendants)**

23 46. Desert Beach repeats and re-alleges the allegations set forth in all preceding paragraphs  
24 of this Complaint, as if fully set forth herein.

25 47. Defendants were members of a combination of two or more persons, the object of  
26 which was to commit each of the wrongs set forth herein. Defendants had a meeting of the minds with  
27 respect to their purposes or courses of action. Defendants committed unlawful, overt acts to further the  
28 object or course of action set forth in more detail above.



1 use with standard pool equipment, the pool table would not accomplish the ordinary purposes for  
2 which it was manufactured and intended to be used.

3 54. Further, at the time of contracting, Nottage Design and Triangle knew of the particular  
4 purpose—ordinary residential use—for which the pool table was required and that Desert Beach was  
5 relying on their skill or judgment to furnish a table suitable for such use.

6 55. In late July 2012, by email and otherwise, Desert Beach notified Nottage Design and  
7 Triangle of their breaches of warranty.

8 56. Such breaches of warranty proximately caused actual damages suffered by Desert  
9 Beach. Desert Beach is entitled to recover from Nottage Design and Triangle its actual, incidental, and  
10 consequential damages, the amount of which to be proven at trial, and pre- and post- judgment interest.

11 **SIXTH CAUSE OF ACTION**

12 **Deceptive Trade Practices/False Advertising in Violation of**

13 **Cal. Bus. Prof. Code §§ 17500 *et seq.***

14 **(Against Nottage Design and Triangle)**

15 57. Desert Beach repeats and re-alleges the allegations set forth in all preceding paragraphs  
16 of this Complaint, as if fully set forth herein.

17 58. At all times herein mentioned, Defendants advertised, promoted, marketed, labeled, and  
18 distributed the Nottage Design G-1 Pool Table and similar goods throughout California, the United  
19 States, and the world. Desert Beach sought and acquired goods from Defendants as described herein.

20 59. Defendants' advertising, promotion, marketing, and labeling were false and/or  
21 misleading and likely to deceive the public concerning the quality, durability, and other characteristics  
22 of Defendants' goods.

23 60. In making and disseminating the statements herein alleged, and similar statements made  
24 on information and belief, Defendants knew, or by the exercise of reasonable care should have known,  
25 that the statements were untrue or misleading and so acted in violation of Business and Professions  
26 Code § 17500.

27 61. Pursuant to Business and Professions Code § 17535, this Court should make such orders  
28 or judgments as necessary for restitution to be made to Plaintiff.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

- 3 1. For compensatory damages for the purchase price of the Nottage Design G-1 Pool  
4 Table, equipment, and related costs.
- 5 2. For consequential damages, including lost opportunities and other special and  
6 general damages in an amount to be proven at the time of trial.
- 7 3. For restitution including an order disgorging profits obtained by Defendants for  
8 the wrongful acts alleged herein.
- 9 4. For prejudgment interest at the legal rate of recovery.
- 10 5. For punitive damages as allowed under applicable law in an amount deemed  
11 sufficient to punish Defendants, and each of them.
- 12 6. For attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 or  
13 other legal basis as may be proven.
- 14 7. For costs of suit incurred herein;
- 15 8. For such other and further relief as the Court deems just and proper.
- 16

17 Dated: September 18, 2012.

**HUNTINGTON LEGAL SOLUTIONS**

18 By: 

19 Zachary Bulthuis, Esq.  
20 Attorneys for Plaintiff

**WICK PHILLIPS GOULD & MARTIN LLP**

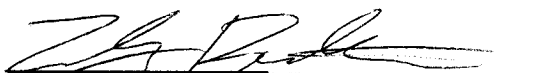
21  
22 Brant C. Martin, Esq.  
23 Attorneys for Plaintiff  
24 (*pro hac vice pending*)  
25  
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**JURY DEMAND**

Plaintiff hereby demands a trial by jury.

Dated: September 18, 2012.

**HUNTINGTON LEGAL SOLUTIONS**

By:   
Zachary Bulthuis, Esq.  
Attorneys for Plaintiff

**WICK PHILLIPS GOULD & MARTIN LLP**

Brant C. Martin, Esq.  
Attorneys for Plaintiff  
*(pro hac vice pending)*

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