

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

**POLY-AMERICA, L.P.,**

**Plaintiff**

**v.**

**API INDUSTRIES, INC.**

**Defendant.**

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**Civil Action No. \_\_\_\_\_**

**JURY TRIAL DEMANDED**

**POLY-AMERICA, L.P.’S ORIGINAL COMPLAINT**

Plaintiff Poly-America, L.P. complains of Defendant API Industries, Inc., and alleges as follows:

**THE PARTIES**

1. Poly-America, L.P. (“Poly-America”) is a limited partnership duly organized and existing under the laws of the State of Texas.

2. API Industries, Inc. (“Aluf Plastics”) is a corporation duly organized and existing under the laws of the State of New Jersey, having its principal place of business at 2 Glenshaw Street, Orangeburg, New York, 10962. According to the most recent filings with the State of New Jersey, Division of Revenue and Enterprise Services, Business Records Service, API Industries, Inc. may be served through its registered agent: Edward Lawner, c/o Base Plastics, 560 Sylvan Avenue, Englewood Cliffs, NJ 07632.

3. API Industries, Inc. conducts business throughout the United States including this district. API Industries, Inc. conducts business under the assumed name Aluf Plastics.

## **JURISDICTION AND VENUE**

4. The court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*

5. Venue is proper in this federal district pursuant to 28 U.S.C. §§ 1391(b)(2), 1391(c)(2), and 1400(b) in that Aluf Plastics has done business in this District, has committed acts of infringement in this District, and continues to commit acts of infringement in this District, entitling Poly-America to relief.

## **INFRINGEMENT OF U.S. DESIGN PATENT NO. D569,719 S**

6. On May 27, 2008, United States Design Patent No. D569,719 S (“the ‘719 Patent”) was duly and legally issued for a patentable design entitled “Product Container.” Poly-America, L.P. is the assignee of the ‘719 Patent, owning all rights, title, and interest in and to the ‘719 Patent. A true and correct copy of the ‘719 patent is attached hereto as Exhibit A.

7. Aluf Plastics has infringed and continues to infringe the ‘719 Patent by Aluf Plastics’s manufacture, use, sale, importation, and/or offer for sale of products, namely trash bags, packaged within a product container including the patented design as described and claimed in the ‘719 Patent. Aluf Plastics has applied the patented design, or a colorable imitation thereof, to articles of manufacture for the purpose of sale. Aluf Plastics is liable for infringement of the ‘719 Patent pursuant to 35 U.S.C. § 271.

8. Aluf Plastics is the manufacturer of certain trash bags including, but not limited to, kitchen drawstring bags sold in Home Depot stores and shown in Exhibit B (“the infringing product container”). Pursuant to the ordinary observer test, the infringing product containers are virtually identical in design to the product container described and claimed in the ‘719 Patent.

9. Aluf Plastics's acts of infringement have caused, and will continue to cause, damage to Poly-America, and Poly-America is entitled to recover from Aluf Plastics the damages as a result of Aluf Plastics's wrongful acts in an amount subject to proof at trial, but no less than a reasonable royalty as provided by 35 U.S.C. § 284. Alternatively, Poly-America is entitled to recover from Aluf Plastics all profits received by Aluf Plastics for articles of manufacture on which the patentable design, or a colorable imitation thereof, has been applied as provided by 35 U.S.C. § 289.

10. Aluf Plastics's infringement of the exclusive rights of Poly-America under the '719 Patent will continue to damage Poly-America, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

#### **JURY DEMAND**

11. Poly-America demands a trial by jury on all issues.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Poly-America, L.P. requests entry of judgment in its favor and against Aluf Plastics as follows:

- a. Declaration that Aluf Plastics has infringed United States Design Patent No. D569,719 S;
- b. Permanently enjoining Aluf Plastics, and its respective officers, agents, employees, from further infringement of United States Design Patent No. D569,719 S;
- c. Awarding damages arising out of Aluf Plastics's infringement of United States Design Patent No. D569,719 S together with prejudgment and post-judgment interest, in an amount according to proof;
- d. For such other costs and further relief as the Court may deem just and proper.

Dated: April 17, 2013

Respectfully submitted,

FARNAN LLP

/s/ Brian E. Farnan

Brian E. Farnan (Bar No. 4089)  
919 North Market Street, 12th Floor  
Wilmington, Delaware 19801  
302-777-0300  
302-777-0301  
bfarnan@farnanlaw.com

Of Counsel:

Erica W. Harris  
SUSMAN GODFREY L.L.P.  
1000 Louisiana Street, Suite 5100  
Houston, Texas 77002  
Telephone: (713) 651-9366  
Facsimile: (713) 654-6666  
eharris@susmangodfrey.com

ATTORNEYS FOR PLAINTIFF  
POLY-AMERICA, L.P.