

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

PANACEA PRODUCTS CORP.,

Plaintiff,

Case No:

vs.

JUDGE

WAL-MART STORES, INC., an Arkansas  
Corporation,

Defendant.

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ROBERT D. GOLDSTEIN P38298  
**GARAN LUCOW MILLER, P.C.**  
Attorneys for Plaintiff  
8332 Office Park Drive  
Grand Blanc, Michigan 48439  
810-695-3700

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**COMPLAINT FILED PURSUANT TO 28 USC § 1331 AND 1338(a)**

**JURY DEMAND**

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**COMPLAINT FILED PURSUANT TO 28 USC § 1331 AND 1338(a)**

Plaintiff Panacea Products Corp., an Ohio corporation, by and through its attorneys, GARAN LUCOW MILLER, P.C., states in its complaint against Defendant as follows:

**JURISDICTION AND VENUE**

1. The Court has exclusive jurisdiction of this matter under 28 USC §§ 1331 and 1338(a) relating to the claims of patent infringement pursuant to 35 USC §§ 171, 271, 282-285 and 289.

2. That the Court has supplemental jurisdiction of the other claims of plaintiff herein under 28 USC § 1367(a) as they are still related to the infringement claims as to form part of the same case or controversy.

3. This action is also a civil action involving, exclusive of interest and costs, in a sum in excess of \$75,000.00.

4. Venue is proper in this Court pursuant to 28 USC § 1400(b) as the Defendant has committed acts of infringement in this jurisdiction and has a regular established place of business in this jurisdiction.

**PARTIES**

5. Plaintiff Panacea Products Corp., is an Ohio corporation with its principal place of business in Columbus, Ohio.

6. Defendant Wal-Mart Stores, Inc., is an Arkansas corporation with its principal place of business in Bentonville, Arkansas and does systematic and continuous business in the State of Michigan.

**COUNT I - DESIGN PATENT INFRINGEMENT**

7. Paragraphs 1, through 6 are incorporated by reference as if fully set forth and restated herein.

8. On September 2, 2008, United States Patent No. D-576,073 (the "073 patent") was duly and legally issued to Panacea Products Corp. Panacea is the owner of the entire right, title and interest in and to the '073 Patent. A Copy the '073 Patent is attached as Exhibit A.

9. Plaintiff Panacea has complied with the notice provision of the Patent Act by stating the existence of the patent rights of Panacea Products to which it has an exclusive ownership and by giving written notice to Defendant of their infringement of the '073 Design Patent.

10. Defendant has had actual knowledge of the '073 Patent and its infringement of this patent has been and continues to be willful and deliberate to and including selling their infringing basket to retailers which were previously selling the '073 Design Patent basket, despite being placed on notice by way of correspondence directed to Wal-Mart Stores in April 2012. Its distribution and sale of a hanging basket infringes the '073 Design Patent basket of Panacea.

11. Plaintiff has been damaged by Defendant's infringement of the '073 Patent by its distribution/sale of a hanging basket that infringes on Panacea's '073 Patent. Attached are photographs of the infringing hanging basket imported or otherwise distributed by Defendant Wal-Mart Stores and available for sale through retailers.

12. Plaintiff has been damaged by Defendant's infringement of the '073 Patent and will continue to be damaged in the future unless Defendant is permanently enjoined from infringing, inducing the infringement of, and/or contributing to the infringement of, said Patent.

13. Plaintiff is entitled to a judgment that Defendant has infringed upon, inducing

infringement of, and/or contributed to the infringement of the '073 Patent.

14. Plaintiff is entitled to an injunction restraining and enjoining the Defendant and each of defendant's officers, directors, agents, servants, employees, attorneys and all others acting under or through it/them, directly or indirectly, from infringing, inducing the infringement of, and/or contributing to the infringement of the '073 Design Patent.

15. Plaintiff is entitled to a judgment and order requiring Defendant to pay damages under 35 U.S.C. § 284, including treble damages for willful infringement as provided by 35 U.S.C. § 284, with interest and attorney fees.

16. Plaintiff is entitled to a judgment and order requiring Defendant to pay profits as provided by 35 U.S.C. § 285 with interest and attorney fees.

WHEREFORE, Plaintiff prays for:

- a. A judgment that Defendant has infringed upon, induced the infringement of, and/or contributed to the infringement of the '073 Patent;
- b. An injunction restraining and enjoining the Defendant and Defendant's officers, directors, agents, servants, employees, attorneys and all others acting under or through it/them, directly or indirectly, from infringing, inducing the infringement of, and/or contributing to the infringement of the '073 Patent
- c. A judgment and order requiring Defendant to pay damages under 35 U.S.C. § 284, including treble damages for willful infringement as provided by 35 U.S.C. § 284, with interest and attorney fees;
- d. A judgment and order requiring Defendant to pay profits as provided by 35 U.S.C. § 289;

- e. A judgment and order directing Defendant to pay the costs of this action (including all disbursements) and attorney fees as provided by 35 U.S.C. § 285, with interest; and
- f. Such other and further relief as the Court may deem necessary just under the circumstances.

Respectfully submitted,

GARAN LUCOW MILLER, P.C.

DATED: May 10, 2013

/s/ Robert D. Goldstein  
ROBERT D. GOLDSTEIN P-38298  
Attorneys for Plaintiff  
8332 Office Park Drive  
Grand Blanc, Michigan 48439  
810-695-3700

**JURY DEMAND**

Plaintiff, PANACEA PRODUCTS CORP., by and through its attorneys, GARAN LUCOW MILLER, P.C., hereby demand a trial by jury in the above-entitled cause of action.

Respectfully submitted,

GARAN LUCOW MILLER, P.C.

DATED: May 10, 2013

/s/ Robert D. Goldstein  
ROBERT D. GOLDSTEIN P-38298  
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