

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

APTARGROUP, INC.,)	
)	
Plaintiff,)	
)	
vs.)	Civil Action No. _____
)	
LIFEWAY FOODS, INC.,)	JURY TRIAL REQUESTED
)	
Defendant.)	
)	

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff AptarGroup, Inc. (“AptarGroup”) files this Complaint for Patent Infringement against Lifeway Foods, Inc. (“Lifeway”).

The Parties

1. Plaintiff AptarGroup is a Delaware corporation having its principal place of business at 475 West Terra Cotta, Suite E, Crystal Lake, IL 60014. AptarGroup is a manufacturer of spray pumps, dispensing closures and aerosol valves. Among the products offered by AptarGroup is the VersaSpout for liquid products, such as juices and milk drinks. The VersaSpout includes a childsafe overcap, and a straw-like spout for easy drinking or pouring. The VersaSpout includes the AptarGroup silicone valve, known as SimpliSqueeze®, which provides control of product flow through the pressure exerted on the fluid container or suction on the spout. The AptarGroup SimpliSqueeze® dispensing system is recognized throughout the world for its superior flow control and non-drip dispensing.

2. Upon information and belief, Defendant Lifeway is an Illinois corporation having its principal place of business at 6431 West Oakton, Morton Grove, IL 60053. According to Lifeway’s corporate website at www.lifeway.net, Lifeway offers the largest selection of Kefir in

the world. Lifeway's corporate website describes Kefir as a creamy probiotic dairy beverage that is based on whole milk, low-fat or non-fat pasteurized milk. According to its corporate website, Lifeway sells ProbugsTM Organic Whole Milk Kefir for kids with its "easy-to-grip shape and no-spill spout."

Jurisdiction and Venue

3. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code, including 35 U.S.C. §§ 271 and 281-85.
4. Jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331 and 1338.
5. Venue properly lies in this Court under 28 U.S.C. § 1400(b).
6. Defendant is incorporated under the laws of the State of Illinois with its principal place of business in Illinois. Defendant is therefore subject to the personal jurisdiction of this Court.

The Patents In Suit

7. On November 2, 2004, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 6,811,047 ("the '047 patent"), entitled "Closure With Enhanced Removal Capability," to Marge M. Hicks, James W. Hammond, and Alan P. Hickok. The '047 patent was originally assigned to Seaquist Closures Foreign, Inc. ("Seaquist Foreign"). By operation of a merger agreement dated December 31, 2010, Seaquist Foreign was merged into its parent company, AptarGroup. AptarGroup owns all right, title and interest in the '047 patent, and has the right to recover for past and future damages from infringement. A true and correct copy of the '047 patent is attached as Exhibit A.

8. The relevant claims of the '047 patent at issue here relate to a closure for a container. Around the circumference of the closure are recesses, protuberances, and finger-engaging ribs. These features of the closure enable a user to grip the closure comfortably, and

provide leverage allowing a user to easily generate sufficient torque to unscrew and screw the closure. This gripping structure is especially suitable for use with small closures and for users with impaired gripping function, such as elderly users and children.

9. On March 20, 2007, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. RE39,520 (“the ‘520 patent”), entitled “Dispensing Structure Incorporating A Valve-Containing Fitment For Mounting To A Container And A Package With A Dispensing Structure,” to John M. Hess, III, Stuart R. Brown, Joel R. Robinson, and Timothy R. Socier. The ‘520 patent was originally assigned to Seaquist Foreign. By operation of a merger agreement dated December 31, 2010, Seaquist Foreign was merged into its parent company, AptarGroup. AptarGroup owns all right, title and interest in the ‘520 patent, and has the right to recover for past and future damages from infringement. A true and correct copy of the ‘520 patent is attached as Exhibit B.

10. The relevant claims of the ‘520 patent at issue here relate to a package having a collapsible pouch that includes a self-sealing slit-type valve. The self-sealing slit-type valve provides control of product flow through the pressure exerted on the package or suction on a spout.

Count I - Action for Infringement of U. S. Patent No. 6,811,047

11. AptarGroup hereby repeats and realleges the allegations contained in preceding paragraphs 1-10, inclusive, as if fully set forth herein.

12. Lifeway is directly infringing and has directly infringed the ‘047 patent, within this district and elsewhere in the United States, by making, using, selling, and/or offering for sale infringing products, including but not limited to Lifeway’s “ProBugs Organic Whole Milk Kefir Probiotic” (“Probugs”).

13. Lifeway's infringement of the '047 patent has been without the permission, consent, authorization or license of AptarGroup.

14. Lifeway was informed via a letter on December 17, 2012, that its actions constitute infringement one or more claims of the '047 patent.

15. On information and belief, Lifeway supplies its Probugs products to retailers nationwide. According to Lifeway's corporate website, "Lifeway Kefir is available nationwide in major supermarkets and health food stores." The Lifeway website also instructs that, if a customer cannot find Lifeway Kefir at a local store, the customer should ask the local store to carry it.

16. Lifeway induces infringement of one or more of the claims of the '047 patent by direct infringers. Lifeway is aware of the claims of the '047 patent and that a closure made, used, offered for sale and/or sold by the direct infringers constitutes infringement of such claims. On information and belief, in using, purchasing and/or importing closures for incorporation into containers that are eventually sold as Probugs products, Lifeway specifically intends that direct infringers will make, use, offer to sell and/or sell infringing products.

17. Lifeway contributorily infringes one or more of the claims of the '047 patent. Lifeway uses, purchases and/or imports closures for incorporation into containers that are eventually sold as Probugs products. The closures used, purchased and/or imported by Lifeway are not a staple article or commodity of commerce suitable for substantial non-infringing use. On information and belief, Lifeway specifically intends that the direct infringers will make, use, offer to sell and/or sell infringing product.

18. Lifeway's infringement of the '047 patent has been and continues to be willful, deliberate and/or objectively reckless, making this an exceptional case justifying the assessment

of treble damages pursuant to 35 U.S.C. § 284 and the award of attorney fees pursuant to 35 U.S.C. § 285.

19. AptarGroup has been damaged by such infringement and will continue to be damaged by such infringement unless Lifeway is enjoined from infringing by this Court.

Count II - Action for Infringement of U. S. Patent No. RE39,520

20. AptarGroup hereby repeats and realleges the allegations contained in preceding paragraphs 1-10, inclusive, as if fully set forth herein.

21. Lifeway is directly infringing and has directly infringed the '520 patent, within this district and elsewhere in the United States, by making, using, selling, and/or offering for sale infringing products, including but not limited to Lifeway's "ProBugs Organic Whole Milk Kefir Probiotic" ("Probugs").

22. Lifeway's infringement of the '520 patent has been without the permission, consent, authorization or license of AptarGroup.

23. Lifeway was informed via a letter on December 17, 2012, that its actions constitute infringement one or more claims of the '520 patent.

24. On information and belief, Lifeway supplies its Probugs products to retailers nationwide. According to Lifeway's corporate website, "Lifeway Kefir is available nationwide in major supermarkets and health food stores." The Lifeway website also instructs that, if a customer cannot find Lifeway Kefir at a local store, the customer should ask the local store to carry it.

25. Lifeway induces infringement of one or more of the claims of the '520 patent by direct infringers. Lifeway is aware of the claims of the '520 patent and that a fitment and valve in a package made, used, offered for sale and/or sold by the direct infringers constitutes infringement of such claims. On information and belief, in using, purchasing and/or importing a

fitment and valve combination for incorporation into packages that are eventually sold as Probugs products, Lifeway specifically intends that direct infringers will make, use, offer to sell and/or sell infringing products.

26. Lifeway contributorily infringes one or more of the claims of the '520 patent. Lifeway uses, purchases and/or imports a combination fitment and valve for incorporation into packages that are eventually sold as Probugs products. The combination fitments and valves used, purchased and/or imported by Lifeway are not a staple article or commodity of commerce suitable for substantial non-infringing use. On information and belief, Lifeway specifically intends that the direct infringers will make, use, offer to sell and/or sell infringing product.

27. Lifeway's infringement of the '520 patent has been and continues to be willful, deliberate and/or objectively reckless, making this an exceptional case justifying the assessment of treble damages pursuant to 35 U.S.C. § 284 and the award of attorney fees pursuant to 35 U.S.C. § 285.

28. AptarGroup has been damaged by such infringement and will continue to be damaged by such infringement unless Lifeway is enjoined from infringing by this Court.

Demand For Jury Trial

AptarGroup requests a jury trial of any and all issues triable of right by jury.

Prayer For Relief

WHEREFORE, AptarGroup respectfully requests the following relief:

- a. the entry of judgment that awards to AptarGroup damages incurred by reason of Lifeway's acts of infringement, including increased damages for willfulness up to three times the amount;
- b. award to AptarGroup its costs and expenses of this suit, including reasonable attorney fees for bringing and prosecuting this action;
- c. permanently enjoin Lifeway and its officers, employees, agents, subsidiaries, affiliates and all persons in active concert or participation with it from further acts of infringement of the '047 and '520 patents;
- d. the award of such other and further relief as the Court deems just and proper.

Respectfully Submitted,

/s/ Hugh A. Abrams _____

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**Attorneys for Plaintiff
AptarGroup, Inc.**

Dated: June 3, 2013