

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

LESLIE FRIEND,)	Civil Action
)	
Plaintiff,)	
)	
v.)	
)	
KEYSTONE PRETZELS and LAUREL)	<u>Electronically Filed</u>
HILL FOODS, INC.,)	
)	
Defendants.)	JURY TRIAL DEMANDED

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Leslie Friend (hereinafter, “Ms. Friend”), by and through her undersigned counsel, hereby alleges the following against Defendants Laurel Hill Foods, Inc. and Keystone Pretzels (hereinafter, “Laurel Hill” and “Keystone”):

THE PARTIES

1. Ms. Friend, an individual, is a citizen of the United States residing in Pittsburgh, PA.
2. Upon information and belief, Laurel Hill is a Massachusetts corporation having its principal place of business located at 71 Hampden Road, Suite 100, Mansfield, MA 02048.
3. Upon information and belief, Keystone is a Pennsylvania business with its principal place of business located at 124 West Airport Road, Lititz, PA 17543.

JURISDICTION AND VENUE

4. Ms. Friend brings this action under the Patent Laws of the United States, Title 35 of the United States Code. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and § 1338.

5. Ms. Friend is the owner of all right, title, and interest in United States Patent No. D423,184 (“the ’184 Patent”). A true and correct copy of the ’184 Patent is attached hereto as Exhibit A.

6. Upon information and belief, Keystone regularly conducts business in this district, at least by its website, <http://www.keystonepretzels.com/order-our-pretzels/>, which is accessible over the Internet all over the United States, including in this judicial district, and does not purport to preclude potential customers within this judicial district from obtaining its products or services.

7. Laurel Hill advertises its “Pretzel Chips” products via its website at <http://laurelhillfoods.com/pretzel-chips/>, which is accessible over the Internet all over the United States, including in this judicial district, and does not purport to preclude potential customers within this judicial district from obtaining any Laurel Hill products or services.

8. Laurel Hill, at its website, <http://laurelhillfoods.com/buy-our-chips/#>, directs consumers to an Amazon.com website from which the Pretzel Chips products may be purchased. The Amazon.com website is accessible over the Internet all over the United States, including in this judicial district, and does not purport to preclude potential customers within this judicial district from obtaining any Laurel Hill products or services.

9. Laurel Hill, at <http://laurelhillfoods.com/buy-our-chips/#>, informs consumers of a selection of retail establishments selling Laurel Hill products. Of the selected retail establishments listed at <http://laurelhillfoods.com/buy-our-chips/#>, at least Whole Foods Market regularly conducts business in this judicial district.

10. Upon information and belief, the Pretzel Chips products have been offered for sale and/or sold in this district.

11. Venue is proper pursuant to 28 U.S.C. § 1391 and § 1400.

SUMMARY OF THE FACTS

12. The '184 Patent claims an ornamental design for a pretzel resembling a peace symbol.

13. Upon information and belief, Keystone makes, sells, and offers to sell pretzel products. Upon information and belief, Keystone makes and sells to Laurel Hill the Pretzel Chips for Laurel Hill to, in turn, sell and offer for sale.

14. The shape of Laurel Hill's Pretzel Chips resembles a peace symbol. True and correct copies of pages from Laurel Hill's website showing Laurel Hill's Pretzel Chips are attached hereto as Exhibit B.

15. Upon information and belief, Keystone continues to make, offer for sale, and sell Pretzel Chips to Laurel Hill, and Laurel Hill continues to sell and offer for sale its Pretzel Chips.

**COUNT I:
INFRINGEMENT OF THE '184 PATENT**

16. Ms. Friend repeats and re-alleges each an every averment contained in paragraphs 1-15 hereof as if fully set forth herein.

17. Keystone has infringed the '184 Patent at least by making, selling, and offering to sell, and by inducing, aiding, and abetting, actively inducing, and encouraging and contributing to others' sales and offers to sell at least the following pretzel products: (1) Everything Laurel Hill Pretzel Chips, (2) Sea Salt Laurel Hill Pretzel Chips, and (3) Honey Multigrain Laurel Hill Pretzel Chips. Keystone received notice of the '184 Patent at least as early as April 11, 2013.

18. Laurel Hill has infringed the '184 Patent at least by selling and offering to sell, and by inducing, aiding, and abetting, actively inducing, and encouraging and contributing to others' sales, offers to sell, and use of at least the following pretzel products: (1) Everything

Laurel Hill Pretzel Chips, (2) Sea Salt Laurel Hill Pretzel Chips, and (3) Honey Multigrain Laurel Hill Pretzel Chips. Laurel Hill received notice of the '184 Patent at least as early as April 10, 2013.

19. Keystone's and Laurel Hill's infringement has injured Ms. Friend, and Ms. Friend is entitled to recover damages adequate to compensate for the infringement that has occurred. Ms. Friend is entitled to recover at least a reasonable royalty pursuant to 35 U.S.C. § 284. Additionally and alternatively, Ms. Friend is entitled to recover Keystone and Laurel Hill's total profit attributable to the infringing pretzel products pursuant to 35 U.S.C. § 289.

20. Upon information and belief, Keystone and Laurel Hill have been infringing the '184 Patent since at least the 2011 time frame. Keystone and Laurel Hill have infringed the '184 Patent with knowledge of the patent and without legal justification or excuse at least since April 11, 2013 and April 10, 2013, respectively. Keystone and Laurel Hill's infringement from these times forward has been and is willful.

21. Ms. Friend has been injured and is being injured by Keystone and Laurel Hill's infringement of the '184 Patent, and Ms. Friend will continue to suffer irreparable harm unless Keystone and Laurel Hill's infringement of the '184 Patent is enjoined by this Court.

WHEREFORE, Ms. Friend respectfully requests judgment be entered against Keystone and Laurel Hill as follows:

A. An award of damages adequate to compensate Ms. Friend for the infringement, in the form of at least a reasonable royalty, and/or Keystone and Laurel Hill's total profit together with prejudgment interest from the date the infringement began;

B. Any damages permitted in the Court's equitable discretion, including increased damages for willful infringement under 35 U.S.C. § 284;

C. A finding that this case is exceptional and an award to Ms. Friend of her attorneys' fees and expenses as provided by 35 U.S.C. § 285;

D. An injunction permanently enjoining Keystone and Laurel Hill, and all persons in active concert or participation with Keystone and Laurel Hill, from further acts of infringement of the '184 Patent; and

E. Such other and further relief as this court deems proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, ms. Friend hereby demands a trial by jury of all issues triable by jury.

Respectfully submitted,

Dated: July 17, 2013

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