

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

Viva Healthcare Packaging Ltd., Viva  
Healthcare Packaging (HK) Ltd., and Viva  
Healthcare Packaging (USA) Inc.,

Plaintiffs,

v.

CTL Packaging USA, Inc. and Tuboplast  
Hispania,

Defendants.

CTL Packaging USA, Inc.,

Counterclaim Plaintiff,

v.

Viva Healthcare Packaging Ltd., Viva  
Healthcare Packaging (HK) Ltd., and Viva  
Healthcare Packaging (USA) Inc.,

Counterclaim Defendants.

CASE NO. 13-CV-00569 (MOC) (DSC)

**AMENDED COMPLAINT FOR PATENT  
INFRINGEMENT**

**JURY TRIAL DEMANDED**

Plaintiffs and Counterclaim Defendants Viva Healthcare Packaging Ltd. (“Viva Ltd.”), Viva Healthcare Packaging (HK) Ltd. (“Viva HK”), and Viva Healthcare Packaging (USA) Inc. (“Viva USA,” and collectively “Viva” or “Plaintiffs”) allege against CTL Packaging USA, Inc. (“CTL USA”) and Tuboplast Hispania (collectively, “Tuboplast CTL Defendants”) as follows. Viva bases certain of its allegations in part on the declarations filed by the Tuboplast CTL Defendants during the course of this action, and reserves the right to modify its claims and allegations if those declarations are later revealed to be false or misleading.

**I. JURISDICTION AND VENUE**

1. This is an action for patent infringement arising under the patent laws of the United States of America, Title 35 of the United States Code. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

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2. This Court has personal jurisdiction over CTL USA because it is both incorporated in and has its principle place of business in North Carolina, and CTL USA has conceded to personal jurisdiction in this District. [D.I.19 at 3-5].

3. This Court has personal jurisdiction over Tuboplast Hispania because Tuboplast Hispania has conducted business in this state relating to the sale of products that infringe Viva's patents, and Tuboplast Hispania has conceded to personal jurisdiction in this District. [D.I. 29 at 12, 13.]

4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 (b) and (c).

## II. THE PARTIES

5. Plaintiff Viva Ltd. is a limited liability company organized under the laws of the Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong"). Viva Ltd.'s principal place of business is located at Floor 17, One Island South, No. 2 Heung Yip Road, Wong Chuk Hang, Hong Kong.

6. Plaintiff Viva HK is a limited liability company organized under the laws of Hong Kong. Viva HK's principal place of business is located at Floor 17, One Island South, No. 2 Heung Yip Road, Wong Chuk Hang, Hong Kong.

7. Plaintiff Viva USA is a corporation organized under the laws of the State of California. Viva USA's principal place of business is located at 11355 W. Olympic Blvd., Suite 300, Los Angeles, CA 90064.

8. Defendant CTL USA is a corporation organized under the laws of the State of North Carolina. On information and belief, CTL USA's principal place of business is located at 1055 Gastonia Technology Parkway, Dallas, NC 28034.

9. Defendant Tuboplast Hispania is, on information and belief, an entity organized under the laws of Spain. On information and belief, Tuboplast Hispania's principal place of business is located at Hermanos Lumiere 1, 01510 Minano (Alava), Apartado de Correos. 314, 01080 Vitoria-Gasteiz, Spain.

10. On information and belief the Tuboplast CTL Defendants — CTL USA and Tuboplast Hispania, together with CTL USA's parent company, Nuevatierra— are jointly controlled as part of a privately owned entity known as the CTL TH Packaging Group.

### III. FACTUAL ALLEGATIONS

11. United States Patent No. 6,547,094 (“the '094 Patent”), entitled “Injection Moulding,” was duly and legally issued by the United States Patent and Trademark Office on April 15, 2003. A true and correct copy of the '094 Patent is attached hereto as Exhibit A.

12. United States Patent No. 8,518,318 (“the '318 Patent”), entitled “Methods, Compositions and Blends For Forming Articles Having Improved Environmental Stress Crack Resistance,” was duly and legally issued by the United States Patent and Trademark Office on August 27, 2013. A true and correct copy of the '318 Patent is attached hereto as Exhibit B.

13. Viva Ltd. is the owner of the '094 and '318 Patents (collectively, the “Viva Patents”) by virtue of an assignment and owns all rights and title to Viva Patents, including the right to sue and recover for any and all past infringement.

14. Viva HK is the exclusive licensee of the Viva Patents for the territory including the United States.

15. Viva USA is the exclusive United States distributor of injection-molded tubes manufactured or sold by Viva HK. Viva HK cannot license any other person or entity to practice the Viva Patents in the United States without Viva USA's consent. As a result, Viva USA is an implied exclusive licensee in the United States under the Viva Patents.

16. On information and belief, and in violation of 35 U.S.C. § 271(a), the Tuboplast CTL Defendants were and CTL USA continues to be engaged in importing into the United States and/or making, using, selling and offering to sell in the United States injection-molded tubes (the “Accused Products”). The Accused Products infringe, without limitation, at least claim 9 of the '094 Patent.

17. The Accused Products include, without limitation, the tubes marketed and sold under the brand name EasySupplyTubes, and have been sold to, among others, the company

Zotos International for the packaging for Zotos's AGEbeautiful brand intense hair strengthening treatment.

18. On information and belief, and in violation of 35 U.S.C. § 271(a), CTL USA has and continues to make, use, sell and offer for sale Accused Products in the United States that are made using an infringing process. The process used by CTL USA to manufacture the Accused Products infringes, without limitation, at least claim 1 of the '094 Patent and at least claim 1 of the '318 Patent.

19. On information and belief, and in violation of 35 U.S.C. § 271(b), Tuboplast Hispania has knowingly and with specific intent to do so actively induced CTL USA to make, use, sell, offer for sale and import injection-molded tubes that infringe the '094 Patent and/or are made using an infringing process, despite having actual knowledge that these products and the manufacturing process are both patented and infringing. For example, on information and belief, Tuboplast Hispania has actively induced CTL USA to infringe the '094 Patent by, without limitation: (1) supplying other components or know-how necessary for CTL USA to manufacture injection-molded tubes that infringe the '094 Patent and/or are made using a process that infringes the '094 Patent; (2) otherwise instructing CTL USA to manufacture injection-molded tubes using a process that infringes the '094 Patent; (3) supplying Accused Products to CTL USA for CTL USA to sell or offer to sell in the United States; and/or (4) otherwise inducing CTL USA to make, use, sell, or offer to sell the Accused Products in the United States.

20. On information and belief, Tuboplast Hispania, or an affiliated entity at Tuboplast Hispania's direction, has manufactured Accused Products outside the United States using a process patented in the United States by at least claim 1 of the '094 Patent. On information and belief, and in violation of 35 U.S.C. § 271(g), the Tuboplast CTL Defendants have and CTL USA and continues to, without authority and during the term of the '094 patent, be engaged in importing into the United States, and selling or offering to sell in the United States, Accused Products manufactured by Tuboplast Hispania using said infringing process.

21. The Tuboplast CTL Defendants customize these injection-molded tubes for Zotos International by printing the AGEbeautiful brand name on the tubes during the manufacturing process.

22. The AGEbeautiful brand intense hair strengthening treatment products are sold throughout the United States at retail establishments including, but not limited to, Sally Beauty retail stores.

23. The Tuboplast CTL Defendants have had actual knowledge of the '094 Patent at least as early as August 2011, based on communications with the former owner of the '094 Patent, Zestron Research Pty, regarding the '094 Patent. Nevertheless, on information and belief, the Tuboplast CTL Defendants continued to infringe the '094 Patent and at least CTL USA continues to do so today.

24. The Tuboplast CTL Defendants have had actual knowledge of the '318 Patent from at least as early as September 2012, based on communications with Viva's counsel. Nevertheless, on information and belief, at least CTL USA has continued to infringe the '318 Patent.

## COUNT I

### INFRINGEMENT OF THE '094 PATENT

25. Plaintiffs reallege and incorporate by reference each and every allegation set forth in the preceding paragraphs 1 through 24 as if fully set forth here.

26. Tuboplast Hispania has made, used, sold, offered to sell and/or imported injection-molded tubes that infringe one or more claims of the '094 Patent, in violation of 35 U.S.C. § 271(a).

27. CTL USA has and continues to make, use, sell, offer to sell, and/or import injection-molded tubes that infringe one or more claims of the '094 Patent, in violation of 35 U.S.C. § 271(a).

28. The Tuboplast CTL Defendants have and CTL USA continues to make, use, sell, offer to sell and import into the United States, without authority and during the term of the '094

Patent, injection-molded tubes made using a process patented by and therefore infringing one or more claims of the '094 Patent, in violation of 35 U.S.C. § 271(a) and (g).

29. On information and belief, Tuboplast Hispania has knowingly and with specific intent to do so actively induced CTL USA to make, use, sell, offer for sale and import injection-molded tubes that infringe the '094 Patent and/or are made using an infringing process, despite having actual knowledge that these products and the manufacturing process are both patented and infringing. On information and belief, Tuboplast Hispania has actively induced CTL USA to infringe the '094 Patent by, without limitation: manufacturing, selling, or otherwise supplying injection-molded tubes that infringe one or more claims of the '094 Patent; supplying other components or know-how necessary for CTL USA to manufacture injection-molded tubes that infringe the '094 Patent and/or are made using a process that infringes the '094 Patent; and/or otherwise instructing CTL USA to manufacture injection-molded tubes using a process that infringes the '094 Patent, in violation of 35 U.S.C. § 271(b). Tuboplast Hispania and CTL USA are jointly and severally liable for this induced infringement.

30. As a direct and proximate result of the Tuboplast CTL Defendants' infringement, Plaintiffs have suffered serious injury and damages for which Plaintiffs are entitled to relief.

31. As a direct and proximate result of the Tuboplast CTL Defendants' past and continuing infringement, Plaintiffs have suffered and will continue to suffer serious and irreparable injury with no adequate remedy at law unless the Tuboplast CTL Defendants are enjoined from further infringing the '094 Patent. The Tuboplast CTL Defendants' infringing acts will continue unless enjoined by this Court.

32. The Tuboplast CTL Defendants have and continue to infringe the '094 Patent with full and complete knowledge of the '094 Patent and the applicability of these patents to their products and processes. Thus, the Tuboplast CTL Defendants' infringement of the '094 Patent is willful, deliberate, and in conscious disregard of the Plaintiffs' rights under the '094 Patent, rendering this case exceptional under 35 U.S.C. §285.

## COUNT II

### INFRINGEMENT OF THE '318 PATENT

33. Plaintiffs reallege and incorporate by reference each and every allegation set forth in the preceding paragraphs 1 through 31 as if fully set forth here.

34. CTL USA has and continues to make, use, sell, offer for sale and/or import into the United States, without authority and during the term of the '318 Patent, injection-molded tubes made using a process that infringes one or more claims of the '318 Patent, in violation of 35 U.S.C. § 271(a) and (g).

35. As a direct and proximate result of the CTL USA's infringement, Plaintiffs have suffered serious injury and damages for which Plaintiffs are entitled to relief.

36. As a result of the CTL USA's past and continuing infringement, Plaintiffs have suffered and will continue to suffer serious and irreparable injury with no adequate remedy at law unless the CTL USA is enjoined from further infringing the '318 Patent. CTL USA's infringing acts will continue unless enjoined by this Court.

37. CTL USA has and continues to infringe the '318 Patent with full and complete knowledge of the '318 Patent and the applicability of this patent to their products and processes. Thus, CTL USA's infringement of the '318 Patent is willful, deliberate, and in conscious disregard of the Plaintiffs' rights under the '318 Patent, rendering this case exceptional under 35 U.S.C. §285.

### PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully request that this Court enter judgment in its favor and against the Tuboplast CTL Defendants and grant the following relief:

A. That this Court adjudge and decree that the Tuboplast CTL Defendants have been and continue to infringe or actively induce the infringement of one or more of the '094 and '318 Patents;

B. That the Court adjudge and decree that the Tuboplast CTL Defendants' infringement has been willful and deliberate;

C. That this Court enter an order that the Tuboplast CTL Defendants and their officers, agents, servants, employees, successors, and assigns, and those persons acting in concert with them, be preliminarily and permanently enjoined from infringing or actively inducing others to infringe the '094 and '318 Patents;

D. That this Court award costs and damages, in an amount to be determined at trial, to Plaintiffs to compensate them for the Tuboplast CTL Defendants' unlawful infringement of one or more claims of the '094 and '318 Patents;

E. That this Court award interest on such damages to Plaintiffs;

F. That this Court award enhanced damages to Plaintiffs pursuant to 35 U.S.C. § 284;

G. That this Court determine that this patent infringement case is exceptional and award Plaintiffs their expenses and attorneys' fees incurred in this action pursuant to 35 U.S.C. § 285; and

H. That this Court award such other relief as this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs respectfully request a trial by jury on all issues triable thereby.



Dated: December 20, 2013

By: s/Anthony T. Lathrop

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