

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TEXAS
3 MARSHALL DIVISION
4

5 Arthur J. Emanuele, III, an individual,
6 Plaintiff,
7 v.
8 MillerCoors, LLC, a Delaware limited
9 liability company, Ball Metal Beverage
10 Container Corporation, a Colorado
11 corporation,
12 Defendants.

CAUSE NO. 2:13-CV-00703

JURY TRIAL DEMANDED

13 **SECOND AMENDED COMPLAINT FOR DAMAGES AND INJUNCTIVE**
14 **RELIEF IN ACTION FOR PATENT INFRINGEMENT**

15 COMES NOW, Plaintiff Arthur J. Emanuele, III, and files his Second Amended
16 Complaint for Damages and Injunctive Relief in Action for Patent Infringement against
17 Defendants MillerCoors, LLC, and Ball Metal Beverage Container Corporation, and in support
18 thereof alleges, as follows:

19 **PARTIES**

20 1. Plaintiff Arthur J. Emanuele, III, is, and at all times material herein was, an
21 individual residing in the State of Arizona.

22 2. Plaintiff is informed and believes, and based thereon alleges, that Defendant
23 MillerCoors, LLC is, and at all times material herein was, a limited liability company organized
24 and existing under the laws of the State of Delaware, with its principal place of business located
25 in Chicago, Illinois.

26 3. Plaintiff is informed and believes, and based thereon alleges, that Defendant Ball
27 Metal Beverage Container Corporation (“Ball”) is, and at all times material herein was, a
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1 corporation organized and existing under the laws of the State of Colorado, with its principal
2 place of business located in Westminster, Colorado.

3 **JURISDICTION AND VENUE**

4 4. This is an action for violation of the patent laws of the United States, 35 U.S.C.
5 §§1, *et seq.* Pursuant to 28 U.S.C. §§1331 and 1338, this Court has original jurisdiction over the
6 subject matter of the herein action.

7 5. This Court has personal jurisdiction over Defendants in that each Defendant
8 transacts business in this District and/or has committed acts within this District giving rise to this
9 action.

10 6. Venue is proper in this District pursuant to 28 U.S.C. §§1391 and 1400(b) in that
11 Defendants each do business in this District, have committed acts of infringement in this District,
12 and continue to commit acts of infringement in this District, entitling Plaintiff to the relief sought
13 herein.

14 **FIRST CLAIM FOR RELIEF**

15 **Infringement of Patent No. 8,397,935 B2**

16 7. On March 19, 2013, U.S. Patent No. 8,397,935 B2 was duly and legally issued for
17 an invention entitled “Vent Opening Mechanism” (hereinafter the “’935 Patent”). Plaintiff is,
18 and at all times material herein was, the owner of the ’935 Patent. Plaintiff is a co-filer and
19 owner of the ’935 Patent. A true and correct copy of the ’935 Patent is attached hereto as **Exhibit**
20 **“A”** and incorporated herein by this reference.

21 8. Each Defendant has infringed, and continues to infringe, the ’935 Patent by its
22 manufacture, use, distribution, import, sale and/or offer for sale of the Miller Lite and Miller
23 Genuine Draft “Punch Top Can” products and other products, and by its contributing to and
24 inducement of others to manufacture, use, distribute, sell and/or offer for sale infringing
25 products. Each Defendant’s infringing acts will continue unless enjoined by this Court. Each
26 Defendant is liable for infringement of the ’935 Patent pursuant to 35 U.S.C. §271.

27 9. Plaintiff is informed and believes, and based thereon alleges, that each
28 Defendant’s infringement and/or continued infringement of the ’935 Patent, whether direct,

1 contributory, and/or by inducement, has been, and continues to be, knowingly, willful, and/or
2 objectively reckless. More specifically, the Defendants' knowledge of the invention and willful
3 infringement is evidenced by the following:

- 4 a. In April 2010, Plaintiff entered into an agreement with an agent in the beverage
5 industry, which agent works directly with Newlogic, an engineering and
6 feasibility study firm in the industry. After Newlogic signed a nondisclosure and
7 confidentiality agreement with Plaintiff, Plaintiff disclosed the subject invention
8 and marketing plan for the beer industry. Defendant MillerCoors is, and was at
9 all relevant times, a Newlogic client. Plaintiff is informed and believes, and
10 thereon alleges, that Newlogic disclosed Plaintiff's invention and marketing plan
11 for the beer industry to Defendant MillerCoors.
- 12 b. In June 2010, Plaintiff approached Defendant Ball, the company that provides the
13 canning for Defendant MillerCoors's infringing products, and disclosed Plaintiff's
14 invention and marketing plan for the beer industry. While Defendant Ball
15 initially requested additional information, its representatives later stated that the
16 invention does not fit with their business plans.
- 17 c. In August 2010, Plaintiff provided Defendant MillerCoors with a PowerPoint
18 presentation showing the invention and marketing plan for the beer industry.
- 19 d. In June 2011, Plaintiff again submitted the invention to Defendant Ball.
20 Defendant Ball requested additional information relating to the invention and
21 marketing plan, which was then provided to it by email. The same day it received
22 the information, Defendant Ball stated that the invention does not fit with its
23 business focus at the time.
- 24 e. In May 2012, immediately after Defendant MillerCoors announced its infringing
25 product, which was manufactured by Defendant Ball, Plaintiff contacted Andy
26 England of Defendant MillerCoors, informing him that Defendant MillerCoors is
27 infringing Plaintiff's patent. Mr. England hung up the phone without responding.
- 28 f. In April 2013, Plaintiff's counsel sent a cease and desist letter to Defendant

1 MillerCoors’s corporate counsel, Karen Ripley, enclosing a copy of the issued
2 patent, again making Defendant MillerCoors aware of its infringement.

3 10. Defendants’ acts of infringement, as set forth herein, have caused, and continue to
4 cause, damage to Plaintiff, and Plaintiff is entitled to recover from Defendants’ wrongful acts in
5 an amount subject to proof at trial. Defendants’ infringement of the '935 Patent will continue to
6 damage Plaintiff, causing him irreparable harm for which there is no adequate remedy at law,
7 unless enjoined by this Court. Considering the balance of hardships between Plaintiff and
8 Defendants, a permanent injunction is warranted. The public interest will not be disserved by
9 entry of such an injunction. In fact, use of the '935 Patent without enjoining Defendants from
10 infringing the '935 Patent will inevitably cause consumer confusion.

11 **SECOND CLAIM FOR RELIEF**

12 **Infringement of Patent No. 8,573,432 B2**

13 1. On November 5, 2013, U.S. Patent No. 8,573,432 B2 was duly and legally issued
14 for an invention entitled “Vent Opening Mechanism” (hereinafter the “'432 Patent”). Plaintiff is,
15 and at all times material herein was, the owner of the '432 Patent. Plaintiff is a co-filer and
16 owner of the '432 Patent. A true and correct copy of the '432 Patent is attached hereto as **Exhibit**
17 **“B”** and incorporated herein by this reference.

18 2. Each Defendant has infringed, and continues to infringe, the '432 Patent by its
19 manufacture, use, distribution, import, sale and/or offer for sale of the Miller Lite and Miller
20 Genuine Draft “Punch Top Can” products and other products, and by its contributing to and
21 inducement of others to manufacture, use, distribute, sell and/or offer for sale infringing
22 products. Each Defendant’s infringing acts will continue unless enjoined by this Court. Each
23 Defendant is liable for infringement of the '432 Patent pursuant to 35 U.S.C. §271.

24 3. Plaintiff is informed and believes, and based thereon alleges, that each
25 Defendant’s infringement and/or continued infringement of the '432 Patent, whether direct,
26 contributory, and/or by inducement, has been, and continues to be, knowingly, willful, and/or
27 objectively reckless. More specifically, the Defendants’ knowledge of the invention and willful
28 infringement is evidenced by the following:

- a. In April 2010, Plaintiff entered into an agreement with an agent in the beverage industry, which agent works directly with Newlogic, an engineering and feasibility study firm in the industry. After Newlogic signed a nondisclosure and confidentiality agreement with Plaintiff, Plaintiff disclosed the subject invention and marketing plan for the beer industry. Defendant MillerCoors is, and was at all relevant times, a Newlogic client. Plaintiff is informed and believes, and thereon alleges, that Newlogic disclosed Plaintiff's invention and marketing plan for the beer industry to Defendant MillerCoors.
- b. In June 2010, Plaintiff approached Defendant Ball, the company that provides the canning for Defendant MillerCoors's infringing products, and disclosed Plaintiff's invention and marketing plan for the beer industry. While Defendant Ball initially requested additional information, its representatives later stated that the invention does not fit with their business plans.
- c. In August 2010, Plaintiff provided Defendant MillerCoors with a PowerPoint presentation showing the invention and marketing plan for the beer industry.
- d. In June 2011, Plaintiff again submitted the invention to Defendant Ball. Defendant Ball requested additional information relating to the invention and marketing plan, which was then provided to it by email. The same day it received the information, Defendant Ball stated that the invention does not fit with its business focus at the time.
- e. In May 2012, immediately after Defendant MillerCoors announced its infringing product, which was manufactured by Defendant Ball, Plaintiff contacted Andy England of Defendant MillerCoors, informing him that Defendant MillerCoors is infringing Plaintiff's patent. Mr. England hung up the phone without responding.
- f. In April 2013, Plaintiff's counsel sent a cease and desist letter to Defendant MillerCoors's corporate counsel, Karen Ripley, enclosing a copy of the issued patent, again making Defendant MillerCoors aware of its infringement.

4. Defendants' acts of infringement, as set forth herein, have caused, and continue to

1 cause, damage to Plaintiff, and Plaintiff is entitled to recover from Defendants' wrongful acts in
2 an amount subject to proof at trial. Defendants' infringement of the '432 Patent will continue to
3 damage Plaintiff, causing him irreparable harm for which there is no adequate remedy at law,
4 unless enjoined by this Court. Considering the balance of hardships between Plaintiff and
5 Defendants, a permanent injunction is warranted. The public interest will not be disserved by
6 entry of such an injunction. In fact, use of the '432 Patent without enjoining Defendants from
7 infringing the '432 Patent will inevitably cause consumer confusion.

8 **JURY DEMAND**

9 Plaintiff demands a trial by jury on all issues so triable.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff Arthur J. Emanuele, III, respectfully requests entry of judgment
12 in his favor and against each Defendant, including the following:

- 13 1. For a finding that each Defendant has infringed the '935 Patent and the '432 Patent;
- 14 2. For a permanent injunction enjoining each Defendant and their subsidiaries, joint
15 venturers, agents, servants, officers, directors, and employees, and all persons acting
16 under, in concert with, or for Defendants from further infringement, contributory
17 infringement and/or inducing infringement of the '935 Patent and the '432 Patent;
- 18 3. For an award of damages arising out of Defendants' infringement of the '935 Patent
19 and the '432 Patent, adequate to compensate Plaintiff for the infringing act(s), but in
20 no event less than a reasonable royalty for the use made of the inventions of the
21 Patent as provided in 35 U.S.C. §284;
- 22 4. For an award of treble damages pursuant to 35 U.S.C. §284;
- 23 5. For a finding that this case is an exceptional case, and for an award of reasonable
24 attorney's fees to Plaintiff pursuant to 35 U.S.C. §285 and/or as otherwise permitted
25 by law;
- 26 6. For an award of pre-judgment and post-judgment interest in amounts according to
27 proof at trial;
- 28 7. For costs of suit incurred herein; and

1 8. For such other and further relief as the Court deems just and proper.

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3 Dated: January 10, 2014

OMNI LAW GROUP, LLP

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