

IN THE UNITED STATES DISTRICT COURT  
FOR THE STATE OF SOUTH CAROLINA  
GREENVILLE DIVISION

Basic Concepts, Inc.,	)	Case No. 8:15-cv-00570-BHH
	)	
Plaintiff,	)	
	)	
v.	)	
	)	<b>AMENDED COMPLAINT</b>
ENPAC, LLC, POLYFLEX, L.L.C., and	)	
BLACK DIAMOND ECO SOLUTIONS,	)	
LLC	)	
	)	
Defendants.	)	

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Plaintiff Basic Concepts, Inc., complaining of the defendants ENPAC, LLC and PolyFlex, L.L.C. and Black Diamond ECO Solutions, Inc., would respectfully show unto the Court:

**JURISDICTION AND PARTIES**

1. This action arises out of the patent laws of the United States, more particularly 35 U.S.C. §§ 271 and 281. Jurisdiction is appropriate pursuant to 28 U.S.C. §1338, and venue is proper pursuant to 28 U.S.C. §§ 1400(a) and 1391(b), as the defendants are subject to personal jurisdiction in the State of South Carolina.

2. Plaintiff Basic Concepts, Inc. (“Basic”) is a corporation organized pursuant to the laws of the State of South Carolina with a principal place of business in Anderson County, South Carolina. Basic is the assignee and owner of United States Patent No. 5,762,233 (the “233 Patent”), a copy of which is attached as an Exhibit to this Amended Complaint.

3. Upon information and belief, ENPAC, LLC (“ENPAC”) is a limited liability company organized pursuant to the laws of the State of Ohio with a principal place of business in Eastlake, Ohio.

4. Upon information and belief, PolyFlex, L.L.C. (“PolyFlex”) is a limited liability company organized pursuant to the laws of the State of Ohio with a principal place of business in Eastlake, Ohio.

5. Upon information and belief, Black Diamond ECO Solutions, LLC (“Black Diamond”) is a limited liability company organized pursuant to the laws of the state of Ohio with a principal place of business in Eastlake, Ohio.

6. Upon information and belief, ENPAC, PolyFlex and Black Diamond are owned by some or all of the same principals, and collectively refer to themselves as the ENPAC Group.

7. Each of the defendants, ENPAC, PolyFlex and Black Diamond, manufactures or causes to be manufactured, sells, offers to sell, uses, and/or imports spill containments that infringe the ‘233 Patent within the United States, including within this judicial district.

8. Among other means of distribution, such products are sold and distributed through Grainger Industrial Supply, a well-known distributor of industrial supplies, equipment, tools and materials with three locations in South Carolina (including one within this judicial district).

**FOR A FIRST CAUSE OF ACTION**  
**(Infringement of U.S. Patent No. 5,762,233)**

9. The allegations of paragraphs 1-8 of this Amended Complaint are restated and reiterated as if fully set forth herein.

10. On June 9, 1998, U.S. Patent No. 5,762,233 was duly and legally issued to Edward W. Van Romer for the invention of a foldable spill container. From the issue date until January 14, 2014, Mr. Romer was the owner of the ‘233 Patent and the majority shareholder of Basic Concepts, Inc.

11. On or about January 14, 2014, the '233 Patent was assigned by Mr. Van Romer to Plaintiff Basic Concepts, Inc. Basic has owned the '233 Patent, which remains in effect, at all times following such assignment.

12. From the issue date of the '233 Patent through January 14, 2014, Mr. Van Romer exclusively licensed Basic to make, use, sell and offer to sell products embodying the claims of the '233 Patent. Mr. Van Romer did not otherwise license any of his rights under the '233 Patent. Since becoming the assignee of the '233 Patent, Basic has not licensed any of its rights under the '233 Patent to any person or entity.

13. Mr. Van Romer and plaintiff Basic have complied with the statutory requirement of placing notice of the '233 Patent on all products that are manufactured, sold or offered for sale embodying claims of the '233 Patent, and Basic has expressly given each of the defendants written notice of plaintiff's rights in the '233 Patent and defendants' infringements of such Patent.

14. The '233 Patent was previously construed by this Court in *Edward Van Romer and Basic Concepts, Inc. v. Interstate Products, Inc.*, Civil Action No. 6:06-2867-HFF, in which action the '233 Patent was found to be valid and infringed.

15. Each of the defendants ENPAC, PolyFlex, and Black Diamond manufactures, causes to be manufactured, offers for sale and/or sells spill containment devices that infringe the '233 Patent, either literally or under the doctrine of equivalents. Such infringing devices include, but are not limited to the ENPAC-branded "Stinger Yellow Jacket," "Stinger Snap-Up" and "Stinger Snap-Foam" containment devices, such infringing products being referred to herein as the "Infringing Products." The Infringing Products include each and every limitation of at least independent Claim 1 and dependent claims 2, 3, 4, 7, 8 and 9 of the '233 Patent, either literally

or under the doctrine of equivalents. By way of summary only, with respect to Claim 1 the Infringing Products are spill containments, foldable for transportation and storage, comprising the following or their equivalents:

- (a) a foldable ground sheeting having a floor section;
- (b) a foldable, generally upstanding retaining wall integrally connected to the floor section;
- (c) said retaining wall having a generally upstanding configuration for containing spilled material in cooperation with the floor section;
- (d) a plurality of foldable side braces connected to the wall sheeting;
- (e) said braces having a bracing position for maintaining the wall in an upstanding position;
- (f) said braces including a generally vertical rigid leg carried by the retaining wall, a generally horizontal leg generally parallel to the ground sheeting in the bracing position, an inclined rigid leg extending between the upper portion of the retaining wall and the horizontal leg when in the upstanding configuration, and a hinge at the intersection of the inclined leg and horizontal leg which allows said legs to pivot relative to one another;
- (g) a brace fixture affixing the hinge at a fixed distance from the retaining wall when the brace is in the bracing position and the retaining wall is in an upstanding position to contain spilled material.

16. The defendants' infringing activities will continue unless and until enjoined by this Court.

17. The defendants' infringement of the '233 Patent has damaged and continues to damage the plaintiff, in the form of lost sales, lost profits, diminution of market potential and diminution in asset values. Such damages are immediate, irreparable, and not susceptible of adequate compensation through the award of monetary damages.

18. Plaintiff is entitled to collect damages from each of the defendants pursuant to 35 U.S.C. §284, together with its attorneys' fees pursuant to 35 U.S.C. §285. Plaintiff is further entitled to a trebling of damages in view of defendants' willful and deliberate infringement, pursuant to 35 U.S.C. §284.

19. Plaintiff is further entitled to an order of permanent injunctive relief, preventing each of the defendants from continuing or undertaking further infringing activities throughout the remaining term of the '233 Patent.

WHEREFORE, having fully pled, plaintiff prays for an order of this Court:

1. Granting plaintiff judgment on its First Cause of Action; and
2. Permanently enjoining each defendant from continued infringement of the '233 Patent, pursuant to 35 U.S.C. §283; and
3. Assessing damages against each defendant pursuant to 35 U.S.C. §284, based on infringement of the '233 Patent; and
4. Assessing interest, costs, and attorneys' fees against each defendant pursuant to 35 U.S.C. §285; and

5. For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

s/Natalma M. McKnew

Natalma M. McKnew, Fed. ID #186  
Smith Moore Leatherwood LLP  
2 West Washington Street, Suite 1100 (29601)  
P.O. Box 87  
Greenville, SC 29602  
Telephone: (864) 751-7600  
Facsimile: (864) 751-7800  
Email: [tami.mcknew@smithmoorelaw.com](mailto:tami.mcknew@smithmoorelaw.com)

Dated: April 9, 2015

Attorneys for Plaintiff Basic Concepts, Inc.