

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

WHIRLPOOL CORPORATION,

Plaintiff,

v.

CRAFT APPLIANCES, INC. and
BRIAN CRAFT,

Defendants.

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Civil Action No. 2:16-cv-084

COMPLAINT FOR PATENT INFRINGEMENT

COMES NOW Plaintiff Whirlpool Corporation (“Whirlpool”), and for its Complaint for Patent Infringement of United States Patent No. 7,000,894 (‘894 Patent) against Craft Appliances, Inc. and Brian Craft states as follows:

PARTIES

1. Plaintiff Whirlpool is a corporation organized and existing under the laws of the state of Delaware with a principal place of business at 2000 North M-63, Benton Harbor, Michigan.

2. Defendant Craft Appliances, Inc. (hereinafter “Craft”) is a corporation organized and existing under the laws of the state of Indiana. It was incorporated by William D. Craft, and is assigned Control No. 2002122000518 by the Indiana Secretary of State. Its principal place of business is 100 N. Perry Street, Attica, Indiana.

3. Defendant Brian Craft is a citizen and resident of the state of Indiana. He is employed by Craft and is responsible for the sales of appliances and appliance parts for the

company, including replacement water filters for refrigerators. Brian Craft also personally participated in procuring the accused infringing products imported into the United States and selling and/or offering for sale the accused infringing products for Craft.

JURISDICTION, VENUE & FURTHER ALLEGATIONS

4. The action arises under the patent laws of the United States, Title 35 United States Code. The jurisdiction of this Court is proper under Title 35 U.S.C. § 271, *et seq.* and Title 28 U.S.C. §§ 1331, 1332, and 1338.

5. Craft is a retail seller of replacement water filters for refrigerators.

6. Craft, by the direct and purposeful actions of Brian Craft, has offered for sale and sold throughout the United States Whirlpool-compatible replacement water filters that infringe United States Patent No. 7,000,894.

7. On ebay.com, Craft operates a retail storefront named “Small Town Appliances” by which it offers for sale and sells replacement water filters for refrigerators, including infringing replacement water filters. Brian Craft operates Small Town Appliances on behalf of Craft.

8. ebay.com states that it has one hundred, fifty-nine million (159,000,000) active buyers (<https://www.ebayinc.com/stories/news/infographic-the-business-of-ebay>) and, further, that it is a “Top 10 Global Retail Brand” having experienced “291 App Downloads” so as to electronically reach its customer base (<https://www.ebayinc.com/our-company/who-we-are>).

9. In July of 2013, eBay, Inc. reported that its sales within the US market reached \$7.3 billion for the 2nd quarter of the year. Internet Retailer, *eBay’s U.S. sales climb 16% in Q2*, (July 17, 2013) (<https://www.internetretailer.com/2013/07/17/ebaysussalesclimb16q2>).

10. In April of 2014, eBay, Inc. reported worldwide sales of \$20.195 billion for the 1st quarter of the year, of which 41% (\$8.28 billion) were sales made within the United States. Internet Retailer, *eBay's U.S. marketplace sales rise 2% in Q1* (April 22, 2015) (<https://www.internetretailer.com/2015/04/22/ebays-us-marketplace-sales-rise-2-q1>)

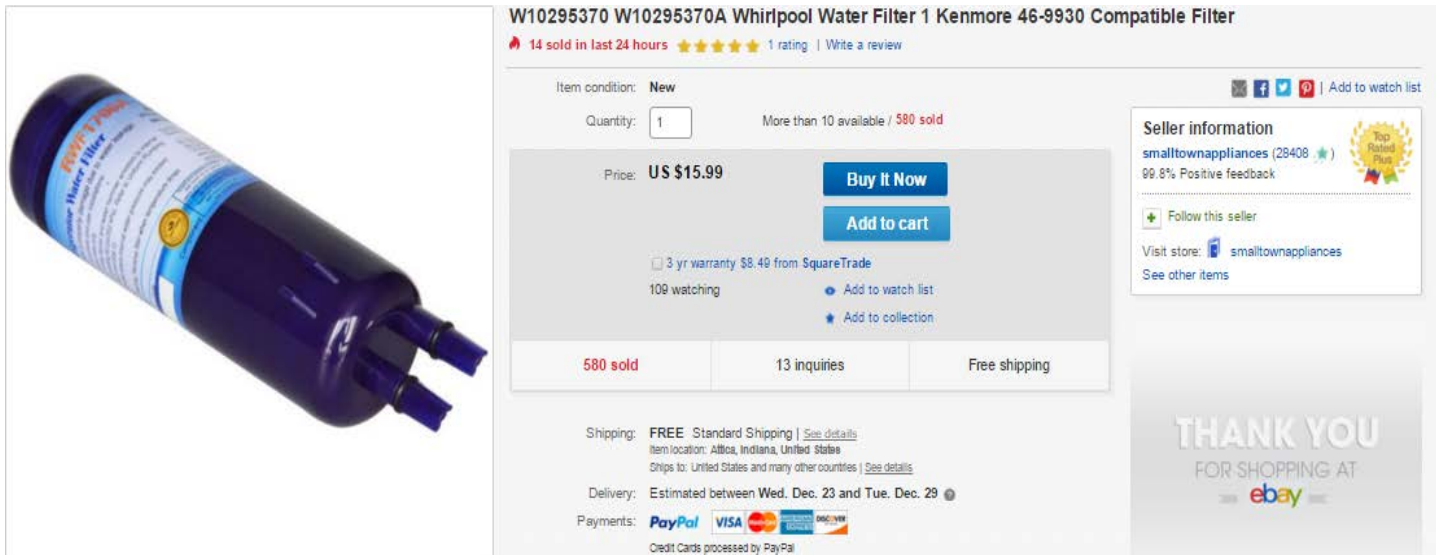
11. For the 2014 financial year, eBay, Inc. reported to the United States Security and Exchange Commission that it derived revenues of \$8,495,000,000 from its United States sales alone. *eBay, Inc., Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the fiscal year ended December 31, 2014 (Form 10K), page F-19.*

12. Craft, and Brian Craft, purposefully selected the forum of ebay.com to sell replacement water filters, including infringing filters, so as to reach a large number of prospective customers within the United States and within Texas, including the Eastern District of Texas.

13. The ebay.com advertising by Craft includes the offer for sale and actual sales of Model No. RFC0800A, which is a copy of the Whirlpool "Filter 3" patented product. An additional replacement water filter which is a copy of the Whirlpool Filter 3 patented product is also offered under the Model No. RFW0800A. The screen capture of Craft's advertising of the RFC0800A on ebay.com from December 14, 2015 set forth below shows the offer for sale of the infringing filter. Further, the below screen capture of the advertisement for sale of RFC0800A filters specifically demonstrates the actual sale of infringing filter in the notation - "3 sold in last hour":

The screenshot shows an eBay product page for a water filter. On the left is a photograph of a blue and black cylindrical filter. To the right of the photo, the product title is "4396841 4396710 46-9030 Whirlpool PUR Kenmore Compatible Filter By ICE PURE". Below the title, it says "3 sold in last hour" with a star rating and "29 ratings". The item condition is "New". The quantity is set to "1", with a note "More than 10 available / 1,454 sold". The price is "US \$20.99". There are buttons for "Buy It Now", "Add to cart", "Add to watch list", and "Add to collection". A summary box shows "Delivery by Dec 24", "1,454 sold", and "35 inquiries". Shipping is "FREE Expedited Shipping" from "Attica, Indiana, United States". Delivery is "Estimated between d. Dec. 18 and Sat. Dec. 18". Payments are accepted via "PayPal", "VISA", "MasterCard", and "Discover". A seller information box shows "smalltownappliances (28137)" with "99.8% Positive feedback" and a "Top Rated Plus" badge. A "THANK YOU" message is visible at the bottom right.

14. Craft has further advertised for sale and sold through ebay.com water filters bearing Model No. RWC1700A, which is a copy of the Whirlpool “Filter 1” patented product. An additional replacement water filter which is a copy of the Whirlpool Filter 1 patented product is also offered under the Model No. RFC1700A. A screen capture of Craft’s advertising of the filter, shows the offer for sale and, further demonstrates the actual sale of the infringing filter in the notation - The screen capture of Craft’s advertising of the RWC1700A on ebay.com from December 19, 2015 set forth below shows the offer for sale of infringing replacement water filters. Further, the below screen capture of the advertisement for sale of RWC1700A filters specifically demonstrates the actual sale of infringing filter in the notation - “14 sold in last 24 hours”:



15. Recently published advertising materials show that Craft continues to offer for sale infringing products. Craft’s advertising for the RFC0800A filter by way of its Small Town Appliances storefront on ebay.com, dated January 18, 2016, is appended as Exhibit B. Craft’s advertising for the RWF1700A filter by way of its Small Town Appliances storefront on ebay.com, dated January 18, 2016, is appended as Exhibit C.

16. On or about May 10, 2015, Brian Craft, on behalf of Craft Appliance and for purposes of retail resale, purchased 1,000 RFC0800A water filters from Tianjin Tianchuang Best Pure Environmental Science and Technology Co. Ltd. of China, the exporter of replacement water filters made in China by Tianjin Jinghai Yunda Industry and Trade Co., Ltd. a/k/a Yunda Industry and Trade Co. d/b/a Yunda Filter Co. (Yunda). A copy of the spreadsheet documenting the purchase is appended as Exhibit D.

17. On December 16, 2015, Craft fulfilled an order placed through ebay.com by Christa Hicks on behalf of Melissa R. Smith, both of whom reside within the Eastern District of Texas, for a “Whirlpool Water Filter 1 Kenmore 46-9930 Compatible Filter” (RWF1700A).

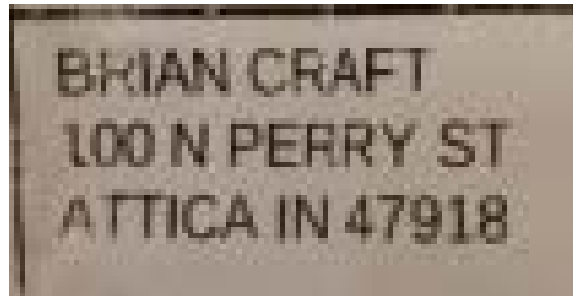
Appended as Exhibit E is a copy of the Order Confirmation received by Ms. Hicks from ebay.com for this order.

18. In fulfilling the order for the “Whirlpool Water Filter 1 Kenmore 46-9930 Compatible Filter”, Craft delivered a RWF1700A replacement water filter via USPS First-Class mail delivered on or about December 22, 2015, which filter was infringing at least Claim 1 and Claim 4 of the ‘894 Patent. A copy of the shipping label on the mailed package delivering the RWF1700A filter as received from Craft is appended as Exhibit F, and photographs of the RWF1700A filter delivered are appended as Exhibit G.

19. On December 16, 2015, Craft fulfilled an order placed through ebay.com by Christa Hicks on behalf of Melissa R. Smith, both of whom reside within the Eastern District of Texas, for a “4396841 4396710 46-9030 Whirlpool PUR Kenmore Compatible Filter” which is a Whirlpool Filter 3 design (RFC0800A). Appended as Exhibit H is a copy of the Order Confirmation received by Ms. Hicks from ebay.com for this order.

20. In fulfilling the order for the “4396841 4396710 46-9030 Whirlpool PUR Kenmore Compatible Filter”, Craft delivered a RFC0800A replacement water filter via USPS First-Class mail delivered on or about December 22, 2015, which filter was infringing at least Claim 1 and Claim 4 of the ‘894 Patent. A copy of the shipping label on the mailed package delivering the RFC0800A filter as received from Craft is appended as Exhibit I, and photographs of the RFC0800A filter delivered are appended as Exhibit J.

21. The RFC0800A and RWF1700A filters received on or about December 22, 2015 in fulfillment of the above described orders by ebay.com were each delivered in separate envelopes, both having a shipping label showing the following return address (Exhibits F & I):



22. Craft, through the direct efforts and actions of Brian Craft, continues to offer for sale and to sell infringing replacement water filters by way of its ebay.com storefront, Small Town Appliances. Craft's ebay.com advertising (Exhibits B and C) show that it has sold at least 3,467 infringing filters.

23. Further, Craft, through the direct efforts and actions of Brian Craft, has offered for sale and sold, and continues to offer for sale Whirlpool-compatible refrigerator water filters that infringe the '894 Patent to residents and citizens of Texas who reside within this district.

24. The Court has personal jurisdiction over Craft and Brian Craft because both have purposefully directed advertising throughout the United States and into Texas, including the Eastern District of Texas; both have continuously offered for sale and sold infringing filters via the Small Town Appliance storefront on the internet; and both have offered for sale and sold the infringing products to customers in the state of Texas, including the Eastern District of Texas, thereby harming Whirlpool by offering to sell and/or selling infringing products in this district.

25. Venue is proper in this district pursuant to Title 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b) because both Craft and Brian Craft have committed acts of infringement in this judicial district.

COUNT I
Infringement of U.S. Patent No. 7,000,894

26. Whirlpool restates and incorporates by reference paragraphs 1 through 25 as if fully stated herein.

27. On February 21, 2006, the United States Patent and Trademark Office (“USPTO”) duly and legally issued United States Patent No. 7,000,894 (“the ‘894 Patent”) entitled “Fluidic Cartridges and End Pieces Thereof.” On March 3, 2014, the USPTO issued an ex parte reexamination certificate for the ‘894 Patent. Appended as Exhibit A is a true and correct copy of the ‘894 Patent, inclusive of the ex parte reexamination certificate.

28. Whirlpool is the owner by assignment of the entire right, title and interest in and to the ‘894 Patent, including the right to sue and recover past, present, and future damages for infringement.

29. Whirlpool manufactures products that practice the ‘894 Patent, including Whirlpool “Filter 1” and “Filter 3” refrigerator water filters, and marks such products with the ‘894 Patent.

30. The validity and enforceability of the ‘894 Patent has been recognized and acknowledged in Consent Judgments entered by this Court in the patent infringement cases captioned: *Whirlpool Corporation v. Air 1 Supply, Inc.*, Civil Action No. 2:15-cv-1640-JRG (Document 6); *Whirlpool Corporation v. Global Parts Supply, LLC d/b/a Pandora’s OEM Appliance Parts*, Civil Action No. 2:15-cv-1563-JRG (Document 7); *Whirlpool Corporation v. JJ Wholesale Group Inc. d/b/a Bob’s Filters and Joseph Spira*, Civil Action No. 2:15-cv-1565-JRG (Document 11); and *Whirlpool Corporation v. Zipras, Inc.*, Civil Action No. 2:cv-01636-JRG (Document 7).

31. Craft, through the direct efforts and purposeful actions of Brian Craft, has been infringing the '894 Patent by importing, offering for sale and/or selling water filters covered by at least claims 1 and 4 of the '894 Patent.

32. Neither Craft, nor Brian Craft, had permission, authority, or license from Whirlpool to engage in the infringing offer for sale and actual sale of infringing products. Further acts of infringement, unless enjoined by this Court, will continue to damage Whirlpool and cause irreparable harm to Whirlpool.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Whirlpool respectfully requests the following relief:

- a. That the Court enter a judgment that Craft and Brian Craft have infringed the '894 Patent;
- b. That the Court enter a judgment that the '894 Patent is not invalid;
- c. That the Court enter a judgment that the '894 Patent is enforceable;
- d. That the Court enter a permanent injunction preventing Brian Craft, individually, Craft, and Craft's respective officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and those in active concert or participation with any of them, from engaging in infringing activities with respect to the '894 Patent;
- e. That the Court award damages for the infringement to which Whirlpool is entitled;
- f. That the Court award interest on the damages; and
- g. For any and all such other relief as this Court may deem appropriate.

Dated: January 27, 2016

Respectfully submitted,

By: /s/ Melissa R. Smith

Melissa R. Smith (TX State Bar No. 24001351)

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WHIRLPOOL CORPORATION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who have consented to electronic service, on January 27, 2016.

/s/ Melissa Smith

Melissa Smith