

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

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**STEUBEN FOODS, INC.,**

*Plaintiff,*

v.

**JASPER PRODUCTS, LLC,**

*Defendant.*

**FIRST AMENDED  
COMPLAINT**

Civ. No. 13-cv-1118-EAW-JJM

**JURY TRIAL DEMANDED**

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The plaintiff, Steuben Foods, Inc. (“Steuben”), by its attorneys, Oblon, McClelland, Maier & Neustadt, L.L.P. and Barclay Damon, LLP, for its First Amended Complaint against the defendant, Jasper Products, LLC (“Jasper”), alleges as follows:

**NATURE OF ACTION**

1. This is an action brought pursuant to the Patent Laws of the United States of America, 35 U.S.C. § 100 *et seq.*, for infringement of United States Patents.

**PARTIES**

2. Plaintiff Steuben is a New York corporation, which maintains a place of business at 1150 Maple Road in Elma, New York 14059.

3. Upon information and belief, Jasper is a Missouri limited liability company, which maintains a place of business at 3877 E. 27<sup>th</sup> Street Joplin, Missouri 64804.

4. Upon information and belief, Jasper is registered to do business in New York.

**JURISDICTION AND VENUE**

5. This Court possesses subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a).

6. This Court possesses personal jurisdiction over Jasper in that Jasper is registered to do, is doing, and has done business in New York, including within this District. Additionally, Jasper contracts to supply goods or services throughout New York, including within this District.

7. Alternatively, this Court possesses personal jurisdiction over Jasper in that Jasper has committed tortious acts in New York.

8. Alternatively, this Court possesses personal jurisdiction over Jasper in that Jasper has committed acts of patent infringement outside of New York, which caused injury within the State, and it:

- a) regularly does or solicits business in New York;
- b) derives substantial revenue from goods used or consumed, or services rendered, in New York; or
- c) expects or should reasonably expect its acts of patent infringement to have consequences in New York, and it derives substantial revenue from interstate or international commerce.

9. Venue is proper in the United States District Court for the Western District of New York under 28 U.S.C. §§ 1391(b), 1391(c) and/or 1400(b).

### **FACTUAL BACKGROUND**

#### **A. STEUBEN'S PATENTS**

10. On September 20, 2005, the U.S. Patent and Trademark Office (the "PTO") issued U.S. Patent No. 6,945,013, entitled, "Method And Apparatus For Aseptic Packaging" ("013 Patent"). The '013 Patent, a copy of which is annexed as Exhibit A, is fully incorporated into this Complaint by reference.

11. The '013 Patent is valid and subsisting, and Steuben is the exclusive owner of all rights, title and interests in the '013 Patent, including the right to sue for infringement of the '013 Patent.

12. On March 25, 2003, the PTO issued U.S. Patent No. 6,536,188, entitled, "Method And Apparatus For Aseptic Packaging" ("188 Patent"). The '188 Patent, a copy of which is annexed as Exhibit B, is fully incorporated into this Complaint by reference.

13. The '188 Patent is valid and subsisting, and Steuben is the exclusive owner of all rights, title and interests in the '188 Patent, including the right to sue for infringement of the '188 Patent.

14. On November 19, 2002, the PTO issued U.S. Patent No. 6,481,468, entitled, "Apparatus And Method For Providing Container Filling In An Aseptic Processing Apparatus" ("468 Patent"). The '468 Patent, a copy of which is annexed as Exhibit C, is fully incorporated into this Complaint by reference.

15. The '468 Patent is valid and subsisting, and Steuben is the exclusive owner of all rights, title, and interests in the '468 Patent, including the right to sue for infringement of the '468 Patent.

16. On November 5, 2002, the PTO issued U.S. Patent No. 6,475,435, entitled, "Apparatus And Method For Providing Sterilization Zones In An Aseptic Packaging Sterilization Tunnel" ("435 Patent"). The '435 Patent, a copy of which is annexed as Exhibit D, is fully incorporated into this Complaint by reference.

17. The '435 Patent is valid and subsisting, and Steuben is the exclusive owner of all rights, title and interests in the '435 Patent, including the right to sue for infringement of the '435 Patent.

18. On April 3, 2001, the PTO issued U.S. Patent No. 6,209,591, entitled, “Apparatus and Method for Providing Container Filling In An Aseptic Processing Apparatus” (“‘591 Patent”). The ‘591 Patent, a copy of which is annexed as Exhibit E, is fully incorporated into this Complaint by reference.

19. The ‘591 Patent is valid and subsisting, and Steuben is the exclusive owner of all rights, title and interests in the ‘591 Patent, including the right to sue for infringement of the ‘591 Patent.

20. The ‘013 Patent, ‘188 Patent, ‘468 Patent, ‘435 Patent and ‘591 Patent are collectively referred to below as the “Patents in Suit.”

## **B. INFRINGEMENT BY JASPER**

21. In contravention of 35 U.S.C. § 271, Jasper has infringed the Patents in Suit by using certain low-acid aseptic bottle filling machines embodying claims of the Patents in Suit (each an “Infringing Machine” and collectively the “Infringing Machines”), without authorization or license from Steuben Foods. Without limitation, the Infringing Machines include the “Unibloc” or “ECOSpin” system manufactured by GEA Procomac S.p.A. (“GEA”) and/or an entity or entities affiliated with GEA, including without limitation the “Fillstar” bottle filling machine constituting a component thereof (the “Procomac System”), as well as the TetraPlast LFA-20 bottle filler manufactured by Tetra Pak, Inc. and/or an affiliated entity (the “LFA Filler”).

22. Upon information and belief, Jasper purchased a Procomac System from GEA and/or an affiliate thereof.

23. Upon information and belief, Jasper installed the Procomac System at Jasper’s manufacturing facility in Joplin, Missouri.

24. Upon information and belief, Jasper purchased at least one LFA Filler from Tetra Pak, Inc. and/or an affiliate thereof.

25. Upon information and belief, Jasper installed at least one LFA Filler at Jasper's manufacturing facility in Joplin, Missouri.

26. Upon information and belief, Jasper has used, is using, and/or will use the Infringing Machines to aseptically fill containers such as bottles or jars with aseptically sterilized foodstuffs in violation of the Patents in Suit as set forth herein.

27. Upon information and belief, Jasper manufactures products including aseptically filled bottles containing aseptically sterilized foodstuffs for consumer package goods companies pursuant to a contract or other agreement.

**C. NOTICE TO JASPER OF THE PATENTS IN SUIT**

28. Jasper has had actual notice of the Patents in Suit since at least August, 2013. On or about August 2, 2013, Steuben sent a letter to Jasper that placed Jasper on formal notice of the existence of the Patents in Suit and informed it of Steuben's assertion that its use of the Infringing Machines infringes the Patents in Suit.

29. Having actual and direct notice of the Patents in Suit, Jasper has knowingly and willfully infringed, and continues to infringe, the Patents in Suit in blatant disregard of Steuben's rights, title and interests in the Patents in Suit.

**CAUSES OF ACTION**

**FIRST CAUSE OF ACTION  
(Infringement of U.S. Patent No. 6,945,013)**

30. Steuben repeats and realleges each of the allegations contained in paragraphs 1 through 29 as if fully set forth here.

31. Jasper has infringed, and continues to infringe, the '013 Patent by, without authorization or approval from Steuben, using the Infringing Machines.

32. Jasper has had actual and direct notice of the '013 Patent since at least August 2, 2013.

33. Despite being actually and directly on notice of the '013 Patent, and Steuben's rights, title and interests therein, Jasper has continued using the Infringing Machines without authority or license from Steuben.

34. Jasper is liable for direct infringement of the '013 Patent.

35. Jasper's infringement of the '013 Patent has irreparably injured and damaged Steuben, making Jasper liable for an amount of damages to be determined at trial, and Jasper will cause Steuben further irreparable injury and damage in the future unless Jasper is enjoined from further infringement.

36. Steuben is entitled to recovery of treble damages, attorneys' fees, and costs from Jasper in that Jasper's infringement of the '013 Patent has been willful, deliberate, and intentional.

**SECOND CAUSE OF ACTION**  
**(Infringement of U.S. Patent No. 6,536,188)**

37. Steuben repeats and realleges each of the allegations contained in paragraphs 1 through 36 as if fully set forth here.

38. Jasper has infringed, and continues to infringes, at least claim 19 of the '188 Patent by, without authorization or approval from Steuben, using the Infringing Machines.

39. Jasper has had actual and direct notice of the '188 Patent since at least August 2, 2013.

40. Despite being actually and directly on notice of the '188 Patent, and Steuben's rights, title and interests therein, Jasper has continued using the Infringing Machines without authority or license from Steuben.

41. Jasper is liable for direct infringement of the '188 Patent.

42. Jasper's infringement of the '188 Patent has irreparably injured and damaged Steuben, making Jasper liable for an amount of damages to be determined at trial, and Jasper will cause Steuben further irreparable injury and damage in the future unless Jasper is enjoined from further infringement.

43. Steuben is entitled to recovery of treble damages, attorneys' fees, and costs from Jasper in that Jasper's infringement of the '188 Patent has been willful, deliberate, and intentional.

**THIRD CAUSE OF ACTION**  
**(Infringement of U.S. Patent No. 6,481,468)**

44. Steuben repeats and realleges each of the allegations contained in paragraphs 1 through 43 as if fully set forth here.

45. Jasper has infringed, and continues to infringe, the '468 Patent by, without authorization or approval from Steuben, using the Procomac System.

46. Jasper has had actual and direct notice of the '468 Patent since at least August 2, 2013.

47. Despite being actually and directly on notice of the '468 Patent, and Steuben's rights, title and interests therein, Jasper has continued using the Procomac System without authority or license from Steuben.

48. Jasper is liable for direct infringement of the '468 Patent.

49. Jasper's infringement of the '468 Patent has irreparably injured and damaged Steuben, making Jasper liable for an amount of damages to be determined at trial, and Jasper will cause Steuben further irreparable injury and damage in the future unless Jasper is enjoined from further infringement.

50. Steuben is entitled to recovery of treble damages, attorneys' fees, and costs from Jasper in that Jasper's infringement of the '468 Patent has been willful, deliberate, and intentional.

**FOURTH CAUSE OF ACTION**  
**(Infringement of U.S. Patent No. 6,475,435)**

51. Steuben repeats and realleges each of the allegations contained in paragraphs 1 through 50 as if fully set forth here.

52. Jasper, has infringed, and continues to infringe, at least claim 1 of the '435 Patent by, without authorization or approval from Steuben, using the Infringing Machines.

53. Jasper has had actual and direct notice of the '435 Patent since at August 2, 2013.

54. Despite being actually and directly on notice of the '435 Patent, and Steuben's rights, title and interests therein, Jasper has continued using the Infringing Machines without authority or license from Steuben.

55. Jasper is liable for direct infringement of the '435 Patent.

56. Jasper's infringement of the '435 Patent has irreparably injured and damaged Steuben, making Jasper liable for an amount of damages to be determined at trial, and Jasper will cause Steuben further irreparable injury and damage in the future unless Jasper is enjoined from further infringement.

57. Steuben is entitled to recovery of treble damages, attorneys' fees, and costs from Jasper in that Jasper's infringement of the '435 Patent has been willful, deliberate, and intentional.

**FIFTH CAUSE OF ACTION**  
**(Infringement of U.S. Patent No. 6,209,591)**

58. Steuben repeats and realleges each of the allegations contained in paragraphs 1 through 57 as if fully set forth here.

59. Jasper, has infringed, and continues to infringe, the '591 Patent by, without authorization or approval from Steuben, using the Procomac System.

60. Jasper has had actual and direct notice of the '591 Patent since at least August 2, 2013.



61. Despite being actually and directly on notice of the '591 Patent, and Steuben's rights, title and interests therein, Jasper has continued using the Procomac System without authority or license from Steuben.

62. Jasper is liable for direct infringement of the '591 Patent.

63. Jasper's infringement of the '591 Patent has irreparably injured and damaged Steuben, making Jasper liable for an amount of damages to be determined at trial, and Jasper will cause Steuben further irreparable injury and damage in the future unless Jasper is enjoined from further infringement.

64. Steuben is entitled to recovery of treble damages, attorneys' fees, and costs from Jasper in that Jasper's infringement of the '591 Patent has been willful, deliberate, and intentional.

#### **REQUEST FOR RELIEF**

**WHEREFORE**, Steuben respectfully requests that this Court enter judgment against Jasper, and in favor of Steuben, including the following relief:

1. A judgment that U.S. Patent Nos. 6,945,013, 6,536,188, 6,481,468, 6,475,435 and 6,209,591 are valid and enforceable;
2. A judgment declaring that Jasper has infringed the '013 Patent;
3. A judgment declaring that Jasper has infringed the '188 Patent;
4. A judgment declaring that Jasper has infringed the '468 Patent;
5. A judgment declaring that Jasper has infringed the '435 Patent;
6. A judgment declaring that Jasper has infringed the '591 Patent;
7. An injunction permanently enjoining Jasper, and its agents, employees, officers, directors, attorneys, successors, and assigns, and all persons in active concert and/or participation with each or any of them, from further infringing the Patents in Suit in accordance with 35 U.S.C. § 283;

8. An accounting of the profits derived by Jasper as a result of its infringement of the Patents in Suit and an assessment of the damages suffered by Steuben Foods;
9. An award of damages to Steuben adequate to compensate it for Jasper's infringement of the Patents in Suit;
10. A determination that Jasper's infringement of the Patents in Suit has been willful, deliberate, and/or intentional;
11. An award of treble damages for Jasper's willful, deliberate, and/or intentional infringement of the Patents in Suit;
12. An award of interest on the amount of damages found, including pre-judgment and post-judgment interest;
13. A determination that this is an exceptional case pursuant to 35 U.S.C. § 285, thereby entitling Steuben to an award of its costs, expenses, and attorneys' fees incurred in prosecuting this action; and
14. Such further relief that this Court deems proper.

**JURY DEMAND**

Steuben Foods demands a trial by jury on all issues so triable.

**DATED:** April 19, 2016

**BARCLAY DAMON, LLP**

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**CERTIFICATE OF SERVICE**

I, Joseph L. Stanganelli, counsel for plaintiff Steuben Foods, Inc., in the above-captioned matter, hereby certify that on April 19, 2016, I caused the foregoing document to be served electronically on all counsel of record in this matter.

/s/ Joseph L. Stanganelli