

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Zinganything, LLC,)	
1760 Wadsworth Road)	Case No.
Akron, Ohio 44320,)	
)	
and,)	
)	
Brighteye Innovations, LLC,)	
1760 Wadsworth Road)	
Akron, Ohio 44320,)	
)	Judge:
Plaintiffs,)	
)	Magistrate:
v.)	
)	
Cool Gear International, LLC,)	<u>COMPLAINT FOR</u>
10 Cordage Park, #212)	<u>PATENT INFRINGEMENT</u>
Plymouth, Massachusetts 02360,)	
)	(Jury Demand Endorsed Hereon)
Defendant.)	

NOW COME the Plaintiffs, *Zinganything, LLC and Brighteye Innovations, LLC*, and for its
Complaint against the Defendant hereby alleges as follows:

THE PARTIES

1. The Plaintiff, Zinganything, LLC, is a limited liability company organized under the laws of Ohio, and has its principal place of business in Akron, Ohio, County of Summit. The Plaintiff, Brighteye Innovations, LLC, is an Ohio limited liability company with principal offices in Akron.
2. The Defendant, Cool Gear International, LLLC, upon information and belief, is a business entity with its principal place of business located in Massachusetts, which makes, uses, sells,

1 offers for sale, and/or imports infringing products in the United States in this judicial district
2 and elsewhere.

3 **JURISDICTION AND VENUE**

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- 5 3. This is an action for patent infringement. The patent claims arise under the patent laws of the
6 United States, specifically 35 U.S.C. § 281 *et al.*
- 7 4. This Court has federal question subject matter jurisdiction in this matter, at least, pursuant to
8 28 U.S.C. §§ 1331, 1338, and 35 U.S.C. § 281 *et al.* because this action arises under federal
9 law of the United States.
- 10 5. In addition or in the alternative to this Court's federal question jurisdiction, this Court also
11 has subject matter jurisdiction pursuant to diversity of citizenship principles as the parties are
12 from different states and the amount in controversy exceeds \$75,000.
- 13 6. This Court has personal jurisdiction over the Defendant by virtue of their sale of products,
14 transaction of business, and solicitation of business within the State of Ohio, within this
15 judicial district and elsewhere.
- 16 7. Ohio's Long-Arm Statute, RC § 2307.382(A)(1), provides that "A court may exercise
17 personal jurisdiction over a person who acts directly or by an agent, as to a cause of action
18 arising from the person's: (1) Transacting any business in this state." In this case, the
19 Defendant transacts business in this state. The Defendant sell infringing product in this
20 district and elsewhere, including at Walmart.
- 21 8. Ohio's Long-Arm Statute, RC § 2307.382(A)(2), provides that "A court may exercise
22 personal jurisdiction over a person who acts directly or by an agent, as to a cause of action
23 arising from the person's: (2) Contracting to supply services or goods in this state." In this
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1 case, the Defendant contracts to supply goods in this state. The Defendant sells infringing
2 product in this district and elsewhere, including at Walmart.

3 9. Notably, the Defendant sells infringing product over its website,
4 <http://shop.coolgearinc.com/>, which website is an active rather than a passive website,
5 meaning, it permits Ohio users to place orders, to store personal account information, to
6 register a username and password, to access customer service, and to ship products to
7 different states, including Ohio. Websites with similar features have been found to satisfy
8 the ‘purposeful availment’ requirement of the “minimum contacts” analysis satisfying due
9 process. *See, e.g., Solar X Eyewear, LLC v. Bowyer*, 2011 WL 3418306 (N.D. Ohio Aug. 4,
10 2011); *Wood v. I-800-Got-Junk?, LLC*, 2007 WL 895008 (S.D. Ohio March 22, 2007); *V*
11 *Secret Catalogue v. Zdrok*, 2003 WL 22136303 (S.D. Ohio Aug. 29, 2003); *Bath and Body*
12 *Works, Inc. v. Wal-Mart Stores, Inc.*, 2000 WL 1810478 (S.D. Ohio Sept. 12, 2000).

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15 10. Venue is proper in the Northern District of Ohio pursuant to 28 U.S.C. § 1391(b)(2) and/or
16 28 U.S.C. § 1400(b) *et al.* because a substantial part of the events giving rise to the claims
17 occurred in this judicial district, the Defendant is subject to personal jurisdiction in this
18 district, and infringement occurred within this judicial district. Further, the Plaintiff, and its
19 witnesses and evidence, are located in this district. Although venue could lie in many
20 different potential forums, venue is proper here.

21 **FACTUAL ALLEGATIONS**

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23 11. Since its founding, the Plaintiff, Zinganything, has introduced a revolutionary product line
24 and technology designed with the purpose of extracting the essence of all natural ingredients
25 and allowing these flavors to infuse directly into a liquid of choice.
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1 12. The Plaintiff's products include the Citrus Zinger®, Aqua Zinger®, Salad Zinger®, Vodka
2 Zinger®, and Kid Zinger®, among others.

3 13. The Citrus Zinger® was the Plaintiff's first product and is its most successful. The
4 Plaintiff's products are sold worldwide via its website, through distributors, at various
5 retailers, and through large retailers such as Brookstone®.

6 14. The Citrus Zinger® naturally infuses the flavor, aroma, hue, plus the added vitamin,
7 minerals, and nutrients, naturally when using fresh ingredients like fruits/vegetables in the
8 Citrus Zinger®.

9 15. The Citrus Zinger® was developed to make a positive contribution toward improving daily
10 diets – both in the food we eat and the beverages we drink. The Plaintiff strongly believes in
11 the infusion of farm fresh ingredients and strives to create innovative tools to harness this
12 power. The Plaintiff hopes its products can become a driving force in helping the average
13 consumer divert from unhealthy beverage choices.

14 16. With the Citrus Zinger®, users can avoid refined sugars, artificial flavorings, preservatives,
15 and colorings while opting for nutritional hydration utilizing all-natural ingredients.

16 17. The Citrus Zinger® is safe, durable, and eco-friendly, made from Eastman Tritan BPA/EA-
17 free plastics and food-grade safe materials.

18 18. The Plaintiff's Citrus Zinger® has enjoyed considerable success and has been featured on
19 television talk shows, countless industry tradeshow, and various other media outlets.

20 19. Mr. Joshua A. Lefkovitz is the founder and CEO of the Plaintiff corporations.

21 20. On June 3, 2014, United States Utility Patent No. 8,740,116, entitled "Essence Extracting
22 Drinking Vessel" (hereinafter referred to as the '116 patent) duly and legally issued to Joshua
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1 A. Lefkovitz, as inventor, for the aforementioned invention. (A true and accurate copy of the
2 '116 patent as issued is attached hereto as "Exhibit 1.")

3 21. The field of the invention teaches a portable liquid containing essence extractor integrating
4 continuous fluid communication such that there is continuous blending of freshly extracted
5 oils within the container with a separation mechanism between the essence extractor and
6 liquid container that obstructs communication of solids from the extractor while still
7 permitting fluid communication. The Plaintiff's product line, including the Citrus Zinger®,
8 reads on the '116 patent.
9

10 22. The Defendant has sold infringing product in this judicial district in Ohio and elsewhere.
11 (See a true and accurate picture of Defendant's allegedly infringing bottle called "Cool Gear
12 juice it & infuse" attached hereto as "Exhibit 2," and incorporated herein by reference.)

13 23. The Defendant offers for sale its allegedly infringing product over its website at
14 <http://shop.coolgearinc.com/>. (See a .pdf screenshot of Defendant's offer for sale attached
15 hereto as "Exhibit 3," and incorporated herein by reference.)
16

17 24. The Defendant sells its allegedly infringing product widely through the Northern District of
18 Ohio at Walmart stores. The bottle pictured in Ex. 2 was purchased at Walmart in Akron,
19 Ohio.
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21 25. The aforementioned activities of the Defendant have also injured and threaten future and
22 immediate injury to the Plaintiff. More specifically, the Defendant's activities have
23 diminished the Plaintiff's goodwill and caused the Plaintiff to lose sales that it otherwise
24 would have made but for the sales of the Defendant.
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1 26. The Defendant is not authorized in any way to sell their infringing products or to use the
2 intellectual property owned by the Plaintiff.

3 27. The Plaintiff is entitled to an award of damages against Defendant, and is entitled to
4 injunctive relief.

5 28. All rights to the '116 patent, including but not limited to, the right to recover for infringement
6 thereunder, were assigned to the Plaintiff, Brighteye Innovations, LLC, and are public record
7 at: Reel 26821 frame 454, and Reel 25461 frame 483.

9 **CLAIM NO. 1**

10 *(Patent Infringement – 35 U.S.C. § 271 et seq.)*

11 29. The Plaintiff hereby incorporates by reference each statement, whether written above or
12 below, as if each is fully re-written herein.

13 30. The Defendant has been and is currently making, using, offering for sale, selling, and/or
14 importing products that infringe the '116 utility patent. (See an initial Infringement
15 Contention Chart attached hereto as "Exhibit 4," and incorporated herein by reference. This
16 Infringement Contention is preliminary in nature and Plaintiff reserves the right to amend
17 and modify its Infringement Contentions per the Local Patent Rules.)

18 31. The Defendant's conduct is an infringement of the '116 patent, and in violation of 35 U.S.C.
19 § 271 within this judicial district and elsewhere.

20 32. The Defendant has actual knowledge of the Plaintiff's citrus zinger® product because the
21 parties are competitors in the marketplace. These parties both sell product widely throughout
22 the world. They also both attend tradeshow together.

23 33. The Plaintiff further marks its citrus zinger® product and at times relevant has complied with
24 the patent marking statute, 35 USC § 287. See, <http://zinganything.com/ip>.
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1 34. The Defendant will continue to make, use, offer for sale, sell, and import their infringing
2 products unless enjoined by this Court.

3 35. Upon information and belief, the Defendant has been, and is, actively inducing infringement
4 of the '116 patent, by offering for sale and selling their infringing products to dealers at
5 wholesale prices who have, and will continue to, offer them for sale and sell them to end
6 users.
7

8 36. The Defendant's infringement is, and at all times has been, deliberate, willful, with full
9 knowledge of the Plaintiff's rights, and wanton, and as a result, the Plaintiff is entitled to
10 treble damages pursuant to 35 U.S.C. § 284.

11 37. This is an exceptional case within the meaning of 35 U.S.C. § 285, and the award of
12 appropriate attorney's fees is justified.
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14 **PRAYER FOR RELIEF / REQUEST FOR REMEDIES**

15 WHEREFORE, the Plaintiffs pray that this Court enter an Order against the Defendant as
16 follows:

17 A) A preliminary injunction and permanent injunction enjoining the Defendant from making,
18 using, offering for sale, selling, and/or importing any product that infringes upon the '116
19 patent;

20 B) An award of damages adequate to compensate for the patent infringement including lost
21 profits but in no event less than a reasonable royalty, together with interest and costs pursuant
22 to 35 U.S.C. § 284 *et al.*;

23 C) A trebling of patent infringement damages pursuant to 35 U.S.C. § 284 *et al.*;

24 D) Attorney's fees in a patent case pursuant to 35 U.S.C. § 285 *et al.*;
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- 1 E) An accounting for damages resulting from Defendant's intellectual property infringement;
- 2 F) An assessment of interest on the damages so computed;
- 3 G) Judgment against Defendant indemnifying the Plaintiff from any claims brought against the
- 4 Plaintiff for negligence, debts, malpractice, product liability, or other breaches of any duty
- 5 owed by the Defendant to any person who was confused as to some association between the
- 6 Plaintiff and Defendant as alleged in this Complaint;
- 7
- 8 H) Judgment against Defendant for an accounting and monetary award in an amount to be
- 9 determined at trial;
- 10 I) Requiring Defendant to account to the Plaintiff for all sales and purchases that have occurred
- 11 to date, and requiring the Defendant to disgorge any and all profits derived by Defendant for
- 12 selling infringing product;
- 13
- 14 J) Requiring Defendant to provide full disclosure of any and all information relating to its
- 15 supplier or suppliers of infringing product;
- 16 K) Requiring Defendant to provide the location of any and all manufacturing equipment,
- 17 including but not limited to, molds used to manufacture infringing product;
- 18 L) Requiring Defendant to destroy any and all manufacturing equipment used to manufacture
- 19 infringing product or to deliver said equipment to the Plaintiff;
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- 21 M) Ordering a product recall of infringing product for destruction;
- 22 N) Requiring Defendant to file with this Court and serve on the Plaintiff within thirty (30) days
- 23 of this Court's order a report setting forth the manner in which they complied with the order;
- 24 O) Requiring Defendant to provide to Plaintiff all sales records, including but not limited to,
- 25 email, mail, and advertising lists;
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1 P) Damages according to each cause of action herein;

2 Q) Prejudgment interest; and,

3 R) Any such other relief in law or equity that this honorable Court deems just.
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6 **JURY DEMAND**

7 WHEREFORE, the Plaintiffs requests a trial by jury on all issues so triable.
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9 Most Respectfully Submitted,

10 /s/ David A. Welling

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