

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

OLIVE SHADE LLC,

Plaintiff,

v.

KIT CHECK, INC.,

Defendant.

C.A. No.

TRIAL BY JURY DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

COMES NOW, Plaintiff Olive Shade LLC, (“Olive Shade”), through the undersigned attorneys, and respectfully alleges, states, and prays as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement under the Patent Laws of the United States, Title 35 United States Code (“U.S.C.”) to prevent and enjoin defendant Kit Check, Inc., (“Defendant” or “Kit Check”), from infringing and profiting from, in an illegal and unauthorized manner and without authorization and/or of the consent from Olive Shade, United States Patent No. 6,861,954 (the “’954 Patent”) (the “Patent-In-Suit”) pursuant to 35 U.S.C. § 271, and to recover damages, attorney’s fees, and costs.

THE PARTIES

2. Plaintiff Olive Shade is a corporation organized under the laws of Texas having a mailing address at 15922 Eldorado Pkwy., Suite 500-1501, Frisco, TX 75035.

3. On information and belief, Defendant is a company organized under the laws of the state of Delaware having a principal place of business at 1875 Connecticut Ave. NW #300, Washington, DC 20009. Upon information and belief, Defendant may be served with process at Corporation Service Company, 251 Little Falls Drive, Wilmington, DE 19808.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because the action arises under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*

5. This Court has personal jurisdiction over Defendant by virtue of its systematic and continuous contacts with this jurisdiction, including residing in Delaware, as well as because of the injury to Olive Shade, and the cause of action Olive Shade has risen, as alleged herein.

6. Defendant is subject to this Court's personal jurisdiction pursuant to due process and/or the Delaware Long-Arm Statute, *Del Code. Ann. Tit. 3, §3104*, due to at least its substantial business in this forum, including: (i) at least a portion of the infringement alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Delaware.

7. Defendant has conducted and does conduct business within the state of Delaware, including the geographic region within the District of Delaware, directly or through intermediaries, or offers and advertises (including through the use of interactive web pages with promotional material) products or services, or uses services or products in Delaware, including this judicial district, in a manner that infringes the Patent-In-Suit.

8. Venue lies in this District under 28 U.S.C. § 1400(b) because Defendant resides in this District.

THE PATENT-IN-SUIT

9. On July 25, 2000, the United States Patent and Trademark Office (“USPTO”) duly and legally issued the ’954 Patent, entitled “Method and Apparatus for Peer-To-Peer Communication” after a full and fair examination.

10. Olive Shade is presently the owner of the patent and possesses all right, title and interest in and to the ’954 Patent. Olive Shade owns all rights of recovery under the ’954 Patent, including the exclusive right to recover for past infringement. The ’954 Patent is valid and enforceable. A copy of the ’954 Patent is attached hereto as Exhibit A.

11. The ’954 Patent contains three independent claims and sixteen dependent claims.

12. The ’954 patent discloses, *inter alia*, a system and method for tracking and associating a group of medical products with a group location based on a group radio frequency identification device signal.

DESCRIPTION OF THE ACCUSED INSTRUMENTALITIES

13. Defendant’s accused products, including but not limited to the “Kit Check automated medication tray management system” inventory management solution (hereinafter “Accused Product”), comprise a first unit of a medical product (e.g., a single unit of a medical product) including a first unit radio frequency identification (“RF ID”) device (e.g., an RF ID tag attached to a single unit of a medical product), the first unit RF ID device uniquely identifying the medical product and the first unit (e.g., a Kit Check RFID tag in an item inside the medical tray or kit identifies a unique specific medical product and a serial number of a unit of the medical product)).¹

¹ <https://kitcheck.com/kit-check/tags/>, last visited December 24, 2018.

Detail Tags



Detail tags are printed with specifics of each medication, so you can compare the information on the tags against the manufacturer label, and create printed, beyond-use dating for refrigerated goods. Detailed tags can either be applied in-house or by a third-party repackager (see below).

Basic Tags



Basic tags have no identifiable information on them other than the basic medication name and lot number, so there is no need for a printer. Basic tags are applied in-house. Basic tags are just as safe as the detailed tags, and save a step in your workflow.

14. The Accused Product comprises a second unit of the medical product (e.g., a second unit of a medical product) having a second unit RF ID device (e.g., an RF ID tag attached to single unit of a medical product), the second unit RF ID device uniquely identifying the medical product and the second unit (e.g., a Kit Check RFID tag in an item inside the medical tray or kit identifies a unique specific medical product and a serial number of a unit of the medication product).

15. The Accused Product comprises packaging (e.g., a hospital pharmacy kit) combining the first unit and the second unit into a group (e.g., the medical product units are kept in a hospital pharmacy kit), the packaging (e.g., the hospital pharmacy kit) having a group RF ID device (e.g., an RFID tag attached to the hospital pharmacy kit), the group RF ID device (e.g., an RFID tag attached to the hospital pharmacy kit) uniquely identifying the medical product, the first unit and the second unit (e.g., the RFID tag for a pharmacy kit will identify the kit itself and the units of each product within said kit). For example, tagged medical/surgical

items are stored in boxes that are also tagged. The tag in the box identifies the medical/surgical items that are stored inside.²

Embedded in each seal is a Kit Check RFID tag. Kit Check's cloud-based software solution automatically reads the tags and associates them by serial number with the appropriate kit. This eliminates today's practice of manually recording seal serial numbers for each kit and creates a detailed audit trail for State Board of Pharmacy and Joint Commission inspections.



16. The Accused Product includes the elements described in paragraphs 13-15 which are covered by at least claim 9 of the '954 patent.

COUNT I
(DIRECT INFRINGEMENT OF THE '954 PATENT)

17. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1-16.

18. Defendant, at least during internal testing of the Accused Product, has directly infringed and continues to directly infringe at least claim 9 of the '954 patent by using the Accused Product, as described above, without authority in the United States, and will continue to do so unless enjoined by this Court. As a direct and proximate result of Defendant's direct infringement of the '954 patent, Plaintiff has been and continues to be damaged.

19. Defendant has had knowledge of its infringement of the '954 Patent at least as of the service of the present complaint.

20. By engaging in the conduct described herein, Defendant has injured Olive Shade and is thus liable for infringement of the '954 Patent, pursuant to 35 U.S.C. § 271.

² <https://kitcheck.com/2014/10/kit-check-announces-rfid-seal-tags-in-collaboration-with-health-care-logistics-for-hospital-pharmacy-kit-safety/>, last visited December 24, 2018.

21. Defendant has committed these acts of infringement without license or authorization.

22. To the extent that facts learned in discovery show that Defendant's infringement of the '954 Patent is or has been willful, Olive Shade reserves the right to request such a finding at the time of trial.

23. As a result of Defendant's infringement of the '954 Patent, Olive Shade has suffered harm and monetary damages and is entitled to a monetary judgment in an amount adequate to compensate for Defendant's past infringement, together with interests and costs.

24. Olive Shade will continue to suffer harm and damages in the future unless Defendant's infringing activities are enjoined by this Court. As such, Olive Shade is entitled to compensation for any continuing or future infringement up until the date that Defendant is finally and permanently enjoined from further infringement.

COUNT II
(INDIRECT INFRINGEMENT OF THE '954 PATENT)

25. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1 to 24.

26. In violation of 35 U.S.C. § 271, Defendant is now, and has been indirectly infringing the '954 patent.

27. Defendant has had knowledge of infringement of the '954 patent at least as of the service of the present complaint.

28. Defendant has indirectly infringed and continues to indirectly infringe at least claim 9 of the '954 patent by actively inducing its respective customers, users, and/or licensees to directly infringe by using the Accused product. Defendant engaged or will have engaged in such inducement having knowledge of the '954 patent. Furthermore, Defendant knew or should

have known that its action would induce direct infringement by others and intended that its actions would induce direct infringement by others. For example, Defendant sells, offers to sell and advertises the Accused Product through websites or digital distribution platforms that are available in Delaware, specifically intending that its customers use it. Furthermore, Defendant's customers' use of the Accused Product is facilitated by the invention described in the '954 patent. As a direct and proximate result of Defendant's indirect infringement by inducement of the '954 patent, Plaintiff has been and continues to be damaged.

29. By engaging in the conduct described herein, Defendant has injured Olive Shade and is thus liable for infringement of the '954 patent, pursuant to 35 U.S.C. § 271.

30. Defendant has committed these acts of infringement without license or authorization.

31. As a result of Defendant's infringement of the '954 patent, Olive Shade has suffered monetary damages and is entitled to a monetary judgment in an amount adequate to compensate for Defendant's past infringement, together with interests and costs. Olive Shade will continue to suffer damages in the future unless Defendant's infringing activities are enjoined by this Court. As such, Olive Shade is entitled to compensation for any continuing and/or future infringement up until the date that Defendant is finally and permanently enjoined from further infringement.

DEMAND FOR JURY TRIAL

32. Olive Shade demands a trial by jury of any and all causes of action.

PRAYER FOR RELIEF

WHEREFORE, Olive Shade prays for the following relief:

33. That Defendant be adjudged to have directly infringed the Patents-In-Suit either literally or under the doctrine of equivalents;

34. An accounting of all infringing sales including, but not limited to, those sales not presented at trial;

35. That Defendant, its officers, directors, agents, servants, employees, attorneys, affiliates, divisions, branches, parents, and those persons in active concert or participation with any of them, be permanently restrained and enjoined from directly infringing the 'Patents-In-Suit;

36. An award of damages pursuant to 35 U.S.C. §284 sufficient to compensate Olive Shade for the Defendant's past infringement and any continuing or future infringement up until the date that Defendant is finally and permanently enjoined from further infringement, including compensatory damages;

37. An assessment of pre-judgment and post-judgment interest and costs against Defendant, together with an award of such interest and costs, in accordance with 35 U.S.C. §284; and

38. That Olive Shade have such other and further relief as this Court may deem just and proper.

Dated: December 28, 2018

Respectfully Submitted,

DEVLIN LAW FIRM LLC

/s/ Timothy Devlin

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**ATTORNEYS FOR PLAINTIFF
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