

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

QUARK DISTRIBUTION, INC.

Plaintiffs

v.

IMPAK CORPORATION.

Defendant.

C.A. No. \_\_\_\_\_

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiff QUARK DISTRIBUTION, INC. (“QUARK”) brings this action against defendant IMPAK CORPORATION (“IMPAK”), and hereby alleges as follows:

**THE PARTIES**

1. QUARK is a corporation organized and existing under the laws of New Jersey and having a place of business at 725 River Road, Suite 213 Edgewater, NJ 07020. QUARK is the owner of a family of patents relating to child resistant packaging, including U.S. Patent Nos. 10,011,403 and 10,011,404 (the “403 Patent” and “404 Patent,” respectively, collectively the “Asserted Patents”), and U.S. Copyright Registration No. TX 8-659-856 (the “856 Registration”).

2. Upon information and belief, IMPAK CORPORATION is a Delaware corporation, having its principle place of business at 13700 S. Broadway Street, Los Angeles, CA 90061. Upon information and belief, IMPAK is a provider of child resistant packaging and sells or offers to sell such packaging throughout the United States.

## **JURISDICTION AND VENUE**

3. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.* and under the Copyright Act of 1976, 17 U.S.C. §101 *et. seq.* This Court therefore has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over IMPAK because IMPAK is formed or incorporated under the laws of the State of Delaware.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b), 1391(c), 1391(d), and 1400(b).

## **FACTS COMMON TO ALL COUNTS**

### *The '403 and '404 Patents*

6. On July 3, 2018, the '403 Patent entitled “Child Resistant Sealing System,” a copy of which is attached hereto as *Exhibit A*, was duly and legally issued by the United States Patent and Trademark Office to Ross Kirsh (“Mr. Kirsh”) as the sole inventor.

7. On July 3, 2018, the '404 Patent also entitled “Child Resistant Sealing System,” a copy of which is attached hereto as *Exhibit B*, was duly and legally issued by the United States Patent and Trademark Office to Mr. Kirsh.

8. On January 7, 2019, the '856 Registration entitled “Instructions for Child-Resistant Package,” a copy of which is attached hereto as *Exhibit C*, was duly and legally registered by the United States Copyright Office to QUARK.

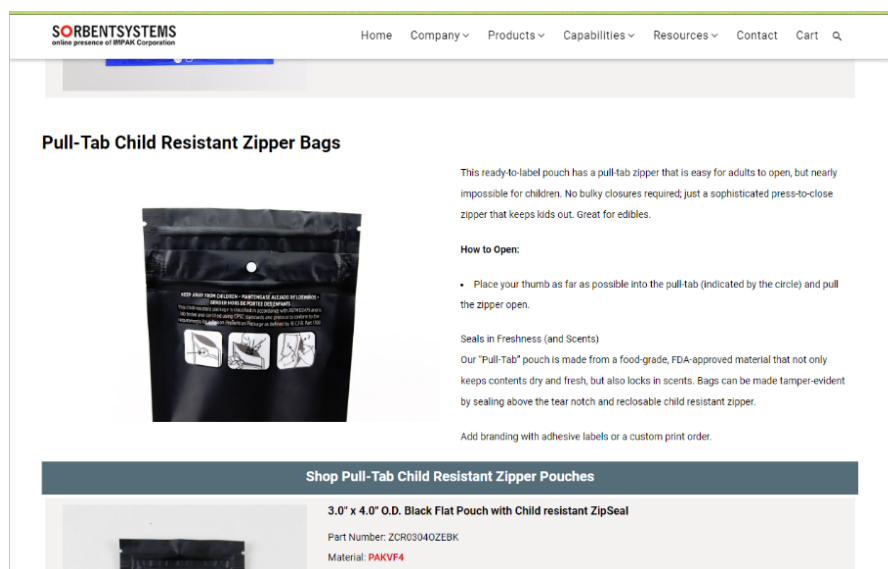
9. The '403 and '404 Patents, and the '856 Registration are owned solely by QUARK.

### *THE IMPAK CHILD RESISTANT BAGS*

10. IMPAK sells and offers for sale a line of flat and stand up Pull-Tab Child Resistant Zipper Bags (the “Accused Products”).

11. IMPAK sells and offers for sale the Accused Product throughout the United States through its website ([www.impakcorporation.com/flexible\\_packaging/child-resistant-pouch](http://www.impakcorporation.com/flexible_packaging/child-resistant-pouch)) and through its related online company website (<https://www.sorbentProduct.com/>) (Fig. A). The Accused Products contain instructions and/or images that are unauthorized copies of those copyrighted by QUARK (the “QUARK Instructions”). Compare Fig. A and Fig. B.

**Fig. A (IMPAK Packaging/Accused Products)**





**Fig. B (QUARK Instructions)**

*IMPAK's Knowledge of the Asserted Patents*

12. On November 20, 2018, QUARK, through its counsel, formally notified IMPAK CEO J. Kevin Cullen, via FedEx letter, that products and/or services made, used, sold, or offered for sale by IMPAK, including the Accused Products, infringed the Asserted Patents.

13. Since becoming aware of the Asserted Patents on or about November 20, 2018, IMPAK continued to make, use, sell, and offer to sell the Accused Products to customers, thereby willfully and knowingly infringing the Asserted Patents.

**COUNT I**

(Infringement of United States Patent No. 10,011,403 by IMPAK)

14. QUARK re-alleges and incorporates by reference the foregoing allegations as though fully set forth here.

15. Upon information and belief, IMPAK has in the past infringed and continues to infringe the '403 Patent, directly and/or by contributory infringement and/or by inducement of

infringement, by making, using, selling and/or offering to sell, in this judicial district, throughout the United States, and elsewhere, the Accused Product, which embodies the patented inventions of the '403 Patent.

16. Pursuant to 35 U.S.C. § 271(a), IMPAK is liable for direct infringement of at least one claim of the '403 Patent, including without limitation claims 1-20 (as shown at least with regard to claim 1 below), by having made, used, offered for sale, or sold the Accused Product and by continuing to make, use, offer for sale, or sell the Accused Product in the United States. Despite having knowledge of the infringement of the '403 Patent as discussed *supra*, IMPAK continues to make, use, sell, offer to sell, and/or import the Accused Product.

17. Specifically, the Accused Product includes a container (bag) having top and bottom ends, and first and second sides, as claimed. The container includes a first layer of sheet material forming the first side of the container and at least a second and third layer of sheet material forming the second side of the container, with these layers attached to a pair of closure strips extending along the opening of the container to form first, second, and third upward extending flaps (tabs), as claimed. *See* Fig. C (showing a first flap on one side and a second and third flap on the opposite side of the bag). The flaps and closure strips are configured such that the container is therewith capable of being opened at the pair of closure strips by pulling the first and second flaps apart, but, when closure strips are engaged with each other, pulling apart any of the flaps other than the first and second flaps prevents or otherwise resists the interlocking strips of the closure strap from being released from each other, as claimed. *See* Fig. C (showing the

opening of the container using the first and second flap, as claimed in at least claim 1 of the '403 Patent).



Fig. C (IMPAK Packaging/Accused Product)

18. Therefore, all of the elements of at least claim 1 of the '403 Patent are embodied in the Accused Product, as are the elements of claims 2-20.

19. Pursuant to 35 U.S.C. § 271(b), IMPAK is liable for inducement of infringement by continuing to knowingly cause or intend to cause the direct infringement of the '403 Patent by users of the Accused Product in the United States, including sellers that use the Accused Product for their packaging needs in accordance with at least claims 1-20 of the '403 Patent.

20. Pursuant to 35 U.S.C. § 271(c), IMPAK is liable for contributory infringement of the '403 Patent by continuing to provide components of the Accused Product that comprise a material component of the inventions embodied in the '403 Patent, are not suitable for any substantial non-infringing use, and are especially made or adapted for use in infringing the '403 Patent by users of the Accused Product, in accordance with claims 1-20 of the '403 Patent, having knowledge that the '403 Patent is being directly infringed by such users.

21. Upon information and belief, IMPAK's infringement of the '403 Patent is willful, deliberate, and intentional by continuing its acts of infringement with knowledge of the '403 Patent and thus acting in reckless disregard of QUARK's patent rights.

22. As a result of IMPAK's acts of infringement of the '403 Patent, QUARK has suffered injury to business and property in an amount to be determined as damages and will continue to suffer damages in the future.

23. Unless an injunction is issued enjoining QUARK and its officers, agents, servants, employees and attorneys, and all those persons in active concert or participation with them from infringing the '403 Patent, QUARK will suffer irreparable injury for which there is no adequate remedy at law.

## **COUNT II**

(Infringement of United States Patent No. 10,011,404 by IMPAK)

24. QUARK re-alleges and incorporates by reference the foregoing allegations as though fully set forth here.

25. Upon information and belief, IMPAK has in the past infringed and continues to infringe the '404 Patent, directly and/or by contributory infringement and/or by inducement of infringement, by making, using, selling and/or offering to sell, in this judicial district, throughout the United States, and elsewhere, the Accused Product, which embodies the patented inventions of the '404 Patent.

26. Pursuant to 35 U.S.C. § 271(a), IMPAK is liable for direct infringement of at least one claim of the '404 Patent, including without limitation claims 1-20 (as shown at least with regard to claim 1 below), by having made, used, offered for sale, or sold the Accused Product and by continuing to make, use, offer for sale, or sell the Accused Product in the United States.

Despite having knowledge of the infringement of the '404 Patent as discussed *supra*, IMPAK continues to make, use, sell, offer to sell, and/or import the Accused Product.

27. Specifically, the Accused Product include container (bag) having top and bottom ends, and first and second sides, as claimed. The container includes a first layer of sheet material forming the first side of the container and at least a second and third layer of sheet material forming the second side of the container, with these layers attached to a pair of closure strips extending along the opening of the container to form first, second, and third upward extending flaps (tabs), as claimed. *See* Fig. C (showing a first flap on one side and a second and third flap on the opposite side of the bag). The flaps and closure strips are configured such that the container is therewith capable of being opened at the pair of closure strips by pulling the first and second flaps apart, but, when closure strips are engaged with each other, pulling apart any of the flaps other than the first and second flaps prevents or otherwise resists the interlocking strips of the closure strap from being released from each other, as claimed. *See* Fig. C (showing the opening of the container using the first and second flap, as claimed in at least claim 1 of the '404 Patent).

28. Therefore, all of the elements of at least claim 1 of the '404 Patent are embodied in the Accused Product, as are the elements of claims 2-20.

29. Pursuant to 35 U.S.C. § 271(b), IMPAK is liable for inducement of infringement by continuing to knowingly cause or intend to cause the direct infringement of the '404 Patent by users of the Accused Product in the United States, including sellers that use the Accused Product for their packaging needs in accordance with at least claims 1-20 of the '404 Patent.

30. Pursuant to 35 U.S.C. § 271(c), IMPAK is liable for contributory infringement of the '403 Patent by continuing to provide components of the Accused Product that comprise a



material component of the inventions embodied in the '403 Patent, are not suitable for any substantial non-infringing use, and are especially made or adapted for use in infringing the '403 Patent, by users of the Accused Product, in accordance with claims 1-20 of the '404 Patent, having knowledge that the '403 Patent is being directly infringed by such users.

31. Upon information and belief, IMPAK's infringement of the '404 Patent is willful, deliberate, and intentional by continuing its acts of infringement with knowledge of the '404 Patent and thus acting in reckless disregard of QUARK's patent rights.

32. As a result of IMPAK's acts of infringement of the '404 Patent, QUARK has suffered injury to business and property in an amount to be determined as damages and will continue to suffer damages in the future.

33. Unless an injunction is issued enjoining QUARK and its officers, agents, servants, employees and attorneys, and all those persons in active concert or participation with them from infringing the '404 Patent, QUARK will suffer irreparable injury for which there is no adequate remedy at law.

### **COUNT III**

#### *(Infringement of Instructions for Child-Resistant Package by IMPAK)*

34. QUARK re-alleges and incorporates by reference the foregoing allegations as though fully set forth here.

35. IMPAK has infringed and continues to infringe the QUARK's Instructions for Child-Resistant Package ('856 Registration) by, among other things, having made, used, offered for sale, or sold the Accused Product and by continuing to make, use, offer for sale, or sell the Accused Product in the United States with instructions that are unauthorized copies of QUARK's copyrighted Instructions.

36. Upon information and belief, Defendants' acts of infringement of the '856 Registration are willful, intentional and purposeful, in disregard of and with indifference to the rights of QUARK as evidenced by, among other things, the outright copying of Quark's instructions and the blatant pattern of ignoring QUARK's and its counsel's communications, and by continuing to engage in the unauthorized use of QUARK's copyrights.

37. As a result of IMPAK's infringement of the Quark's Instructions, QUARK is entitled to the election of its actual damages and profits attributable to IMPAK's infringement pursuant to 17 U.S.C. § 504 (b), including an accounting and a constructive trust, or statutory damages for willful infringement pursuant to 17 U.S.C. § 504(c).

38. As a result of IMPAK's infringement of the '856 Registration, QUARK is further entitled to attorneys' fees and costs pursuant to 17 U.S.C. § 505.

#### **PRAYER FOR RELIEF**

WHEREFORE, QUARK prays for judgment and relief as follows:

A. A declaration that IMPAK has infringed, is infringing, has induced and is inducing, has contributed and is contributing to the infringement of the '403 and '404 Patents;

B. A declaration that IMPAK has infringed and is infringing the QUARK's copyrights in and to its Instructions;

C. An award of damages adequate to compensate QUARK for the infringement of the '403 and '404 Patents, and the QUARK Instructions by IMPAK;

D. A permanent injunction enjoining IMPAK, its officers, agents, servants, employees, affiliates and attorneys, and all those in active concert or participation with them, from further infringing, inducing infringement, and contributing to the infringement of the '403 and '404 Patents, and the '856 Registration without authorization to do so from QUARK;

E. A declaration that IMPAK's infringement of the '403 and '404 Patents, and the '856 Registration is willful, justifying a trebling of the award of damages under 35 U.S.C. § 284 and statutory damages for willful infringement under to 17 U.S.C. §§ 504(c) and 505, or such other enhancement of the award of damages that the Court deems appropriate;

F. An award of pre-judgment and post-judgment interest on the damages caused by reason of IMPAK's infringement of the '403 and '404 Patents, and the '856 Registration;

G. An award of attorney fees, costs, and expenses to QUARK; and

H. A grant to QUARK of such other and further relief as the Court may deem just and proper.

#### **DEMAND FOR JURY TRIAL**

QUARK DISTRIBUTION, INC demands trial by jury on all claims and issues so triable.

DATED: February 4, 2019

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