

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

**BEVERAGE PACKAGING
SOLUTIONS LLC,**

Plaintiff,

v.

**PEPSICO, INC., and
BOTTLING GROUP, LLC d/b/a
PEPSI BEVERAGES COMPANY,**

Defendants.

Civil Action No. 4:19-CV-00003-ALM

PATENT CASE

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Beverage Packaging Solutions LLC (“BPS” or “Plaintiff”) files this First Amended Complaint against PepsiCo, Inc. (“Pepsi”) and Bottling Group, LLC d/b/a Pepsi Beverages Company (“Pepsi Beverages Company”) (collectively “Defendants”) for infringement of U.S. Patent Nos. 9,926,121 (“the ’121 patent”) and 10,232,999 (“the ’999 patent”) (collectively “the patents-in-suit” or “asserted patents”).

THE PARTIES

1. Plaintiff is a Texas limited liability company with its principal place of business located at 836 Diamond Street, Laguna Beach, California 92651.

2. Defendant Pepsi is a North Carolina corporation with a principal place of business located at 5600 Headquarters Drive, Plano, Texas 75024.

3. Defendant Pepsi Beverages Company is a Delaware limited liability company. On information and belief, Pepsi Beverages Company has a principal place of business located at 5600 Headquarters Drive, Plano, Texas 75024. In addition, Pepsi Beverages Company has a place of business located at 1211 TX-155, Winona, Texas 75792.

JURISDICTION AND VENUE

4. Plaintiff brings this action for patent infringement under the patent laws of the United States, namely 35 U.S.C. §§ 271, 281, and 284-285, among others. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a), and 1367.

5. Defendants are subject to this Court's specific and general personal jurisdiction pursuant to due process, due at least to their substantial business in this State and judicial district, including: (a) committing acts of infringement in this judicial district as described herein; (b) having a regular and established place of business in this judicial district; and (c) regularly conducting or soliciting business, engaging in other persistent conduct, and/or deriving substantial revenue from goods and products sold and services provided to Texas residents.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1400(b). On information and belief, Defendants have committed acts of infringement in this judicial district and has regular and established places of business in this district. In particular, Defendants have a regular and established place of business at 5600 Headquarters Drive, Plano, Texas 75024, which is located in Collin County and in this judicial district. In addition, Defendant Pepsi Beverages Company has a regular and established place of business at 1211 TX-155, Winona, Texas 75792, which is located in Smith County and in this judicial district.

COUNT I - INFRINGEMENT OF U.S. PATENT NO. 9,926,121

7. Plaintiff incorporates paragraphs 1 through 6 herein by reference.

8. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ 271, *et seq.*

9. Plaintiff is the exclusive licensee of the '121 patent, entitled "Container for Providing Easy Access to Beverage Cans," with all substantial rights to the '121 patent including

the exclusive right to enforce, sue, and recover damages for past and future infringement. A copy of the '121 patent is attached as Exhibit 1.

10. The '121 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

DIRECT INFRINGEMENT (35 U.S.C. § 271(a))

11. Defendants have, and continue to, directly infringe one or more claims of the '121 patent in this judicial district and elsewhere in Texas and the United States.

12. In particular, Defendants have, and continue to, infringe at least claims 20, 21, 22, 23, 25, 26, 27, and 28 of the '121 patent by, among other things, making, using, offering for sale, selling and/or importing infringing products including, but not limited to, its 12-can fridge packs.

13. Attached hereto as Exhibit 2, and incorporated herein by reference, is a claim chart detailing how the accused products infringe the '121 patent.

14. Defendant is liable for these infringements of the '121 patent pursuant to 35 U.S.C. § 271.

15. Plaintiff has been damaged as a result of Defendants' infringing conduct described in this Count. Defendants are, thus, liable to Plaintiff in an amount that adequately compensates Plaintiff for Defendants' infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

COUNT II- INFRINGEMENT OF U.S. PATENT NO. 10,232,999

16. Plaintiff incorporates paragraphs 1 through 15 herein by reference.

17. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ 271, *et seq.*

18. Plaintiff is the exclusive licensee of the '999 patent, entitled "Container for Providing Easy Access to Beverage Cans," with all substantial rights to the '999 patent including the exclusive right to enforce, sue, and recover damages for past and future infringement. A copy of the '999 patent is attached as Exhibit 3.

19. The '999 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

DIRECT INFRINGEMENT (35 U.S.C. § 271(a))

20. Defendants have, and continue to, directly infringe one or more claims of the '999 patent in this judicial district and elsewhere in Texas and the United States.

21. In particular, Defendants have, and continue to, infringe at least claims 1-11 and 14-22 of the '999 patent by, among other things, making, using, offering for sale, selling and/or importing infringing products including, but not limited to, its 12-can fridge packs.

22. Attached hereto as Exhibit 4, and incorporated herein by reference, is a claim chart detailing how the accused products infringe the '999 patent.

23. Defendant is liable for these infringements of the '999 patent pursuant to 35 U.S.C. § 271.

24. Plaintiff has been damaged as a result of Defendants' infringing conduct described in this Count. Defendants are, thus, liable to Plaintiff in an amount that adequately compensates Plaintiff for Defendants' infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

JURY DEMAND

Plaintiff requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

Plaintiff asks that the Court find in its favor and against Defendants and that the Court grant Plaintiff the following relief:

- a. Judgment that one or more claims of the '121 patent and/or the '999 patent have been infringed, either literally and/or under the doctrine of equivalents, by Defendants;
- b. Judgment that Defendants account for and pay to Plaintiff all damages and costs incurred by Plaintiff because of Defendants' infringing activities and other conduct complained of herein;
- c. Judgment that Defendants account for and pay to Plaintiff a reasonable, ongoing, post judgment royalty because of Defendants' infringing activities and other conduct complained of herein;
- d. That Plaintiff be granted pre-judgment and post judgment interest on the damages caused by Defendants' infringing activities and other conduct complained of herein; and
- e. That Plaintiff be granted such other and further relief as the Court may deem just and proper under the circumstances.

DATED: April 4, 2019

Respectfully submitted,

/s/ Timothy E. Grochocinski

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COUNSEL FOR PLAINTIFF

BEVERAGE PACKAGING

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served on all counsel of record via the Court's CM/ECF system on April 4, 2019.

/s/ Timothy E. Grochocinski