

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
EASTERN DIVISION**

PLASTIPAK PACKAGING, INC.,

Plaintiff,

v.

Ice River Springs Water Co. Inc. and
Ice River Springs USA, Inc.

Defendants.

Civil Action No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR WILLFUL PATENT INFRINGEMENT

Plastipak Packaging, Inc. (“Plastipak”) brings this action for willful patent infringement against Ice River Springs Water Co. Inc. and Ice River Springs USA, Inc. (collectively, “Ice River”). On April 12, 2019, Plastipak wrote to Ice River, explaining how Ice River’s products infringed Plastipak’s patents. (Letter attached as **Exhibit 11**.) Plastipak asked Ice River to cease and desist its infringement and invited Ice River to either purchase Plastipak’s practicing products or suggest some other business arrangement with Plastipak. To date, Ice River has provided no substantive response to Plastipak’s letter.

Accordingly, Plastipak brings this action for willful patent infringement to stop Ice River’s unlawful manufacture and sale of infringing products and to recover its damages. Plastipak alleges as follows:

SUMMARY OF DISPUTE

1. Through at least its manufacture, use, and sale of plastic water bottles and preforms, Ice River has infringed and continues to infringe ten Plastipak U.S. patents: U.S. Patent Nos. 8,857,637; 9,033,168; 9,139,326; 9,403,310; 9,522,759; 9,738,409; 9,850,019; 10,023,345; 10,214,312; and 10,266,299. These patents are directed to light-weighting, a practice that reduces the amount of plastic used in plastic bottles.

2. On information and belief, Ice River produces Ice River Springs-brand and private label bottled water at facilities in Massachusetts, Indiana, Pennsylvania, and Florida.

3. On information and belief, the image below shows infringing water bottles being manufactured at Ice River's facility in Massachusetts:



4. On information and belief, the manufacturing methods used at Ice River's facilities infringe the asserted method claims of the asserted patents, and the millions of plastic bottles produced each day at these facilities infringe the asserted apparatus claims of the asserted patents.

5. Plastipak brings this action to obtain declaratory and injunctive relief relating to Ice River's willful infringement of Plastipak's intellectual property rights, and to recover its damages.

THE PARTIES

6. Plaintiff Plastipak Packaging, Inc. is a Delaware corporation having a principal place of business at 41605 Ann Arbor Road, Plymouth, Michigan 48170.

7. Plastipak is one of the world's leading companies in the business of inventing, developing, manufacturing, and selling containers and packaging for consumer products, including bottled water and other beverages.

8. Since the company was founded in 1967, Plastipak has grown by continuously inventing innovative plastic containers for consumer products. Plastipak is a leading innovator in the industry, surpassing 500 U.S. patents awarded for its technological advances.

9. Today, Plastipak produces over 20 billion plastic preforms and containers annually.

10. Defendant Ice River Springs Water Co. Inc. is a Canadian corporation having a principal place of business at 485387 Sideroad 30, Dufferin County Road 11, Shelburne, Ontario, Canada, L9V 3N5.

11. Defendant Ice River Springs USA, Inc. is a Delaware corporation having a principal place of business at 100 Ceramic Tile Drive, Morganton, North Carolina, 28655-6772. On information and belief, Ice River Springs USA, Inc. is a subsidiary of Ice River Springs Water Co. Inc.

12. On information and belief, Ice River Springs Water Co. Inc. and Ice River Springs USA, Inc. have, individually and collectively, committed direct and indirect acts of infringement of the Asserted Patents. The allegations recited herein against “Ice River” are directed against Ice River Springs Water Co. Inc. and Ice River Springs USA, Inc. both individually and collectively.

13. Ice River supplies bottled water to general retailers, grocery store chains, convenience store chains, direct delivery, online sales entities, and wholesale customers in this District and throughout the United States.

14. Ice River also manufactures in this District the plastic containers used for its bottled water, including, on information and belief, the plastic preforms used to produce the containers, and the plastic closures for sealing the containers.

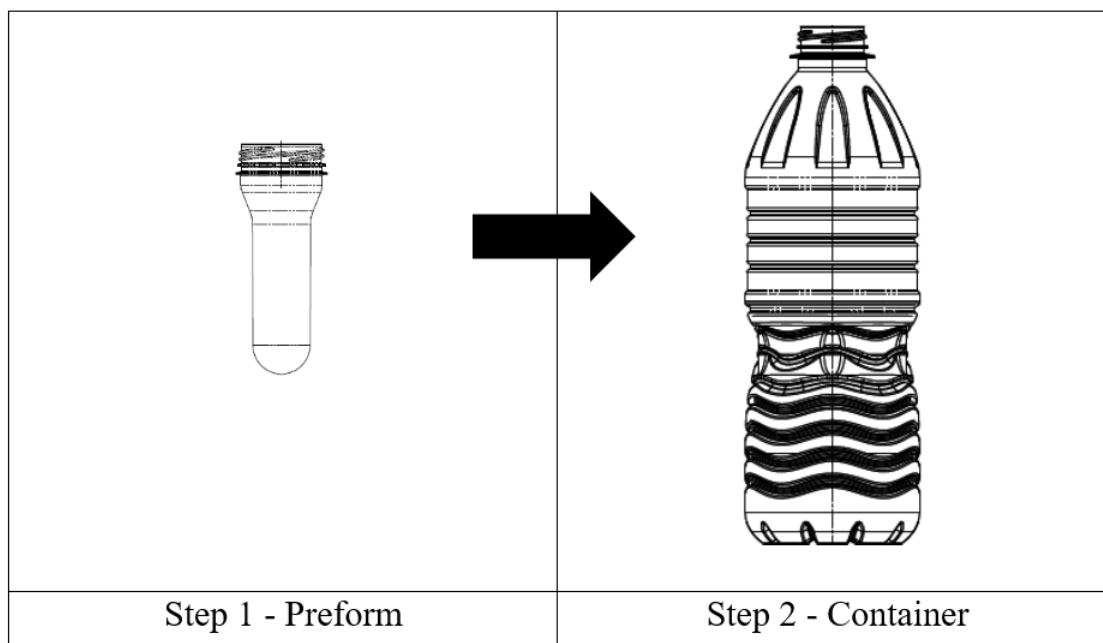
BACKGROUND

Producing Plastic Bottles

15. Containers for bottled water are typically made from PET (polyethylene terephthalate), a thermoplastic material, but may also be made from other polymers, including without limitation polyethylene and polypropylene. The first step in manufacturing a PET bottle typically involves converting PET resin into a preform, a work-in-process product for the final plastic container. A preform may be produced through injection molding, compression molding or other known methods.

16. Plastipak is a leading manufacturer of preforms with a wide range of innovative preform designs for plastic containers.

17. The images below show an example of a preform manufactured by Plastipak and a final 500-ml water bottle manufactured using the preform:



18. In the injection molding process, the neck of a preform is molded into the desired shape of the opening for the final container.

19. The structural features of the neck are referred to as the neck finish, which can include threads to retain a cap, a tamper-evident formation, and a support flange.

20. An example neck finish is shown below:



21. The body of a preform is molded as a preliminary product. The preform is then stretched and blow molded at high temperature into the desired shape of the final container.

22. These manufacturing operations are typically performed using high-speed automated machinery that converts the PET resin into preforms and forms the final bottles, fills the bottles with the desired beverage, and seals the bottles with a closure. These operations may be done in multiple steps and/or at different locations.

Plastipak's Novel Approach to Lightweight Plastic Bottles

23. In the course of its research and development, Plastipak discovered that plastic bottles could be produced with a lighter neck finish that still retained functional threads, a tamper-evident formation, and a support flange.

24. On March 6, 2006, Plastipak filed its first patent application with the United States Patent & Trademark Office (PTO) for inventions related to its lightweight neck finish technology.

25. On September 13, 2007, the PTO published Plastipak's application for its innovative lightweight neck finish as U.S. Publication No. 2007/0210026. The publication disclosed, *inter alia*, a plastic container with a "support flange with an upper and lower surface, a tamper-evident formation, and a dispensing opening at the top of the neck portion," wherein "the vertical distance from the top of the dispensing opening to the lower surface of the support flange is 0.580 inches or less." The publication also disclosed that "for a 500 ml version of a container made in accordance with an embodiment of the invention, the total weight of the preform and

unfilled weight of a container produced from such a preform may be 11 grams or less, and for some embodiments may be 10 grams or less.”

26. Plastipak’s innovations in lightweight bottles significantly reduce raw material consumption.

27. Plastipak’s lightweighting invention results in significant raw material cost savings.

28. Plastipak’s lightweighting invention also allows for a reduced cap size to fit the reduced weight bottle necks.

29. Plastipak’s innovations also provide savings in energy and other utilities necessary to manufacture and convey its products.

30. Plastipak’s innovations also provide processing efficiencies that provide savings throughout the manufacturing process.

31. Plastipak’s innovations allow for a reduced carbon footprint, conservation of resources, and competitive advantage.

THE ASSERTED PLASTIPAK PATENTS

32. The PTO has awarded Plastipak multiple patents for its lightweight neck finish technology, including U.S. Patent Nos. 8,857,637 (“the ’637 patent”), 9,033,168 (“the ’168 patent”), 9,139,326 (“the ’326 patent”), 9,403,310 (“the ’310 patent”), 9,522,759 (“the ’759 patent”), 9,738,409 (“the ’409 patent”), 9,850,019

(“the ’019 patent”), 10,023,345 (“the ’345 patent”), 10,214,312 (“the ’312 patent”), and 10,266,299 (“the ’299 patent”) (collectively, “the Asserted Patents”).

33. Plastipak is the assignee of the ’637 patent and is the owner of all right, title, and interest in the ’637 patent, entitled “Lightweight Plastic Container and Preform,” which was duly and properly issued by the U.S. Patent and Trademark Office on October 14, 2014. A true and correct copy of the ’637 patent is attached hereto as **Exhibit 1**.

34. Plastipak is the assignee of the ’168 patent and is the owner of all right, title, and interest in the ’168 patent, entitled “Lightweight Plastic Container and Preform,” which was duly and properly issued by the U.S. Patent and Trademark Office on May 19, 2015. A true and correct copy of the ’168 patent is attached hereto as **Exhibit 2**.

35. Plastipak is the assignee of the ’326 patent and is the owner of all right, title, and interest in the ’326 patent, entitled “Lightweight Plastic Container and Preform,” which was duly and properly issued by the U.S. Patent and Trademark Office on September 22, 2015. A true and correct copy of the ’326 patent is attached hereto as **Exhibit 3**.

36. Plastipak is the assignee of the ’310 patent and is the owner of all right, title, and interest in the ’310 patent, entitled “Lightweight Plastic Container and Preform,” which was duly and properly issued by the U.S. Patent and Trademark

Office on August 2, 2016. A true and correct copy of the '310 patent is attached hereto as **Exhibit 4**.

37. Plastipak is the assignee of the '759 patent and is the owner of all right, title, and interest in the '759 patent, entitled "Lightweight Plastic Container and Preform," which was duly and properly issued by the U.S. Patent and Trademark Office on December 20, 2016. A true and correct copy of the '759 patent is attached hereto as **Exhibit 5**.

38. Plastipak is the assignee of the '409 patent and is the owner of all right, title, and interest in the '409 patent, entitled "Lightweight Plastic Container and Preform," which was duly and properly issued by the U.S. Patent and Trademark Office on August 22, 2017. A true and correct copy of the '409 patent is attached hereto as **Exhibit 6**.

39. Plastipak is the assignee of the '019 patent and is the owner of all right, title, and interest in the '019 patent, entitled "Lightweight Plastic Container and Preform," which was duly and properly issued by the U.S. Patent and Trademark Office on December 26, 2017. A true and correct copy of the '019 patent is attached hereto as **Exhibit 7**.

40. Plastipak is the assignee of the '345 patent and is the owner of all right, title, and interest in the '345 patent, entitled "Lightweight Plastic Container and Preform," which was duly and properly issued by the U.S. Patent and Trademark

Office on July 17, 2018. A true and correct copy of the '345 patent is attached hereto as **Exhibit 8**.

41. Plastipak is the assignee of the '312 patent and is the owner of all right, title, and interest in the '312 patent, entitled "Lightweight Plastic Container and Preform," which was duly and properly issued by the U.S. Patent and Trademark Office on February 26, 2019. A true and correct copy of the '312 patent is attached hereto as **Exhibit 9**.

42. Plastipak is the assignee of the '299 patent and is the owner of all right, title, and interest in the '299 patent, entitled "Lightweight Plastic Container and Preform," which was duly and properly issued by the U.S. Patent and Trademark Office on April 23, 2019. A true and correct copy of the '299 patent is attached hereto as **Exhibit 10**.

ICE RIVER AND THE ACCUSED PRODUCTS

43. Ice River manufactures preforms and containers for store brand, private label, and Ice River Springs-brand bottled water ("the Accused Products") that infringe one or more claims of the '637 patent, the '168 patent, the '326 patent, the '310 patent, the '759 patent, the '409 patent, the '019 patent, the '345 patent, the '312 patent, and the '299 patent. For example, Ice River's 16.9 oz (500 ml) bottled water products, and the preforms used to manufacture each product, all use Plastipak's patented lightweight neck finish technology.

44. Examples of Ice River's 16.9 oz bottled water products are shown below:



45. The neck finish for Ice River's 16.9 oz bottled water products (shown below) has threads, a tamper-evident formation, and a support flange.



46. The height from the top of the opening to the bottom of the support flange for Ice River's 16.9 oz bottled water products (and the preforms for each product) is approximately 0.455 inches.

47. The weight of the neck portion of Ice River's 16.9 oz bottled water products (and the preforms for each product) is approximately 1.85 grams.

48. Ice River's 16.9 oz bottled water products (and the preforms used to make each product) are comprised of polyethylene terephthalate (PET), including recycled polyethylene terephthalate (RPET).

49. Ice River advertises the benefits of using Plastipak's lightweight finish innovation. According to its website, "Ice River Springs is already a North American leader in light-weighting – currently producing a 500ml bottle with one of the lowest amounts of plastic in the industry. . . . Together with the company's proprietary cap design, the 500ml bottle and cap combined weighs less than 10 grams." <https://web.archive.org/web/20150702165949/https://iceriversprings.com/market-development-success-story/>. In addition, Ice River's sustainability manager, Crystal Howe, is quoted in a Recycling Today article as touting the lightness of Ice River's products: "Our bottles are 8.5 grams, so they're quite lightweight." <https://www.recyclingtoday.com/article/ice-river-springs-blue-mountain-plastics-profile/>.

JURISDICTION AND VENUE

50. This action for patent infringement arises under the laws of the United States, Title 35 of the United States Code, 35 U.S.C. § 1 *et seq.*

51. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

52. This Court has at least specific personal jurisdiction over Ice River pursuant to due process and the Massachusetts Long Arm Statute, due at least to its continuous business contacts and infringing activities in the Commonwealth of Massachusetts and in this District.

53. Ice River has transacted and continues to transact business within this District, including by advertising, offering for sale, and selling infringing products within this District and the Commonwealth.

54. For example, Ice River sells at least its 16.9 oz bottled water products to national chain retailers with stores in this District, which in turn sell the bottled water to consumers in this District.

55. Ice River has a regular and established place of business in this District. For example, Ice River operates a manufacturing and bottling operation at 1505 West Housatonic Street, Pittsfield, MA 01201, pictured below.



56. On information and belief, Ice River has hired and continues to hire residents of the Commonwealth to work at this facility.

57. On information and belief, production at this facility began in the fall of 2008.

58. On information and belief, this facility has three production lines, each with a manufacturing capacity of up to 1,400 bottles per minute, which provides a capacity of over 6 million water bottles per day and 2 billion water bottles per year.

59. Ice River has committed acts of infringement in this District. For example, on information and belief, the manufacturing methods used at its Massachusetts facility infringe the asserted method claims of the asserted patents, and the millions of plastic preforms and bottles produced each day at this facility infringe the asserted apparatus claims of the asserted patents.

60. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b).

ICE RIVER'S WILLFUL INFRINGEMENT

61. On April 12, 2019, Plastipak sent a letter to the President of Ice River (**Exhibit 11**), enclosing Plastipak's patents and a claim chart illustrating how Ice River was infringing Plastipak's patents. The letter requested that Ice River cease and desist its infringement and invited Ice River to either purchase Plastipak's practicing products or suggest some other business arrangement for resolving the matter.

62. Ice River has not substantively responded to Plastipak's letter or otherwise explained why it does not infringe Plastipak's patents.

63. Ice River continues to manufacture and sell preforms and bottles that infringe Plastipak's patents.

COUNT I - INFRINGEMENT OF THE '637 PATENT

64. Plastipak hereby incorporates by reference its allegations contained in paragraphs 1 through 63 of this complaint as though fully set forth herein.

65. Ice River has directly infringed and continues to directly infringe various method claims of the '637 patent, including at least claims 29-30 and 32-34, under 35 U.S.C. § 271(a) by making the Accused Products in the United States using each step of the claimed methods.

66. Ice River has made and continues to make at least its 16.9 oz bottled water products by forming a container using a preform having a dispensing opening, a tamper-evident formation, a support flange with a lower surface, and a lower portion below the support flange, where the vertical distance from the dispensing opening to the lower surface of the support flange, including threads and the tamper-evident formation, is 0.580 inches or less, and the lower portion has an initial axial length, which on information and belief is stretched three times during blow molding.

67. Ice River has made and continues to make at least its 16.9 oz bottled water products using a preform with a dispensing opening that is at least 22 mm.

68. Ice River has made and continues to make at least its 16.9 oz bottled water products by blow-molding preforms.

69. Ice River has made and continues to make at least its 16.9 oz bottled water products by filling the containers with water at one or more locations substantially adjacent to where the containers for those products are formed.

70. To the extent Ice River has induced others to manufacture the Accused Products after it learned of the '637 patent, Ice River has induced infringement of various method claims of the '637 patent, including at least claims 29-30 and 32-34, under 35 U.S.C. § 271(b).

71. Ice River does not have a license or permission to use the '637 patent.

72. Ice River has been willfully infringing the '637 patent since at least the time it received Plastipak's April 12, 2019, letter.

73. Ice River's behavior is an egregious case of willful misconduct. Ice River has known of the '637 patent and Plastipak's allegation that Ice River infringes the patent since at least its receipt of Plastipak's April 12, 2019, letter. On information and belief, Ice River has no good faith defense to Plastipak's infringement allegations, and refused to meet to discuss a business resolution. Instead, Ice River has deliberately and wantonly continued its infringement.

74. As a result of Ice River's infringement of the '637 patent, Plastipak has suffered and will continue to suffer damages, in an amount not yet determined, of at least a reasonable royalty.

COUNT II - INFRINGEMENT OF THE '168 PATENT

75. Plastipak hereby incorporates by reference its allegations contained in paragraphs 1 through 74 of this complaint as though fully set forth herein.

76. Ice River has directly infringed and continues to directly infringe at least claims 1-2, 4-5, 7-8, 11-13, 16-17, 22-23, and 26-30 of the '168 patent under 35 U.S.C. § 271(a) by making, using, offering to sell and/or selling the Accused Products in the United States.

77. For at least Ice River's 16.9 oz bottled water products, each product has a plastic blow molded container with a hollow body portion including a lower

supporting base portion; a sidewall portion extending upwardly from the base portion; and a neck portion extending upwardly from the sidewall portion, wherein the neck portion has a support flange with an upper and lower surface, threads, a tamper-evident formation having a lower surface, and a dispensing opening having a top.

78. For at least Ice River's 16.9 oz bottled water products, the dispensing opening has an inner diameter that is at least 22 mm and less than 29 mm.

79. For at least Ice River's 16.9 oz bottled water products, the vertical distance from the top of the dispensing opening to the lower surface of the support flange, including threads and the tamper-evident formation, is less than 0.500 inches.

80. For at least Ice River's 16.9 oz bottled water products, each product has a tamper-evident formation comprising a bead.

81. For at least Ice River's 16.9 oz bottled water products, the vertical distance from a furthest outwardly radially-extending portion of the lower surface of the tamper-evident formation to the upper surface of the support flange at the same outward radial distance is 0.10 inches or less.

82. For at least Ice River's 16.9 oz bottled water products, the vertical distance from a furthest outwardly radially-extending portion of a lower surface of the tamper-evident formation to the lower surface of the support flange at the same outward radial distance is 0.20 inches or less.

83. For at least Ice River's 16.9 oz bottled water products, the vertical distance from the top of the dispensing opening to the upper surface of the support flange is 0.50 inches or less.

84. For at least Ice River's 16.9 oz bottled water products, the radially extending length of the support flange is 0.17 inches or less.

85. For at least Ice River's 16.9 oz bottled water products, the weight of the neck portion is 2.3 grams or less.

86. For at least Ice River's 16.9 oz bottled water products, each product has a shoulder portion extending upwardly and inwardly from the sidewall portion to the neck portion.

87. On information and belief, the ratio of the height of the center of gravity to the container height for at least Ice River's 16.9 oz bottled water products is less than 0.53.

88. For at least Ice River's 16.9 oz bottled water products, the container is comprised of polyethylene terephthalate (PET).

89. To the extent Ice River has continued to sell or induced others to manufacture, use, import, offer to sell and/or sell the Accused Products after it learned of the '168 patent, Ice River has induced infringement of the '168 patent under 35 U.S.C. § 271(b), including by selling the Accused Products in the United States for subsequent use or re-sale by Ice River's customers, and by providing those

customers with marketing material and/or product packaging intended to promote subsequent use and re-sale.

90. Ice River does not have a license or permission to use the '168 patent.

91. Ice River has been willfully infringing the '168 patent since at least the time it received Plastipak's April 12, 2019, letter.

92. Ice River's behavior is an egregious case of willful misconduct. Ice River has known of the '168 patent and Plastipak's allegation that Ice River infringed the patent since at least its receipt of Plastipak's April 12, 2019, letter. On information and belief, Ice River has no good faith defense to Plastipak's infringement allegations, and refused to meet to discuss a business resolution. Instead, Ice River has deliberately and wantonly continued its infringement.

93. As a result of Ice River's infringement of the '168 patent, Plastipak has suffered and will continue to suffer damages, in an amount not yet determined, of at least a reasonable royalty.

COUNT III –INFRINGEMENT OF THE '326 PATENT

94. Plastipak hereby incorporates by reference its allegations contained in paragraphs 1 through 93 of this complaint as though fully set forth herein.

95. Ice River has directly infringed and continues to directly infringe at least claims 1, 3-6, 8-13, and 17-23 of the '326 patent under 35 U.S.C. § 271(a) by

making, using, offering to sell and/or selling the Accused Products in the United States.

96. For at least Ice River's 16.9 oz bottled water products, each product has a plastic blow molded container with a hollow body portion including a lower supporting base portion and a sidewall portion extending upwardly from the base portion; a neck portion extending upwardly from the sidewall portion; a dispensing opening at the top of the neck portion; multiple-lead threads positioned below the dispensing opening; a tamper-evident formation positioned below the threads; and a support flange with an upper and lower surface positioned below the tamper-evident formation.

97. For at least Ice River's 16.9 oz bottled water products, the weight of the neck portion from the lower surface of the support flange to a top of the dispensing opening is 2.3 grams or less.

98. For at least Ice River's 16.9 oz bottled water products, the vertical distance from the top of the dispensing opening to the lower surface of the support flange, including threads and the tamper-evident formation, is 0.500 inches or less.

99. For at least Ice River's 16.9 oz bottled water products, the container is formed of a material comprising polyethylene terephthalate (PET).

100. For at least Ice River's 16.9 oz bottled water products, the container is formed of a material comprising recycled material.

101. For at least Ice River's 16.9 oz bottled water products, the dispensing opening has an inner diameter that is at least 22 mm and less than 29 mm.

102. For at least Ice River's 16.9 oz bottled water products, each product has a tamper-evident formation comprising a bead.

103. On information and belief, for at least Ice River's 16.9 oz bottled water products, the ratio of the height of the center of gravity to the container height is less than 0.57.

104. For at least Ice River's 16.9 oz bottled water products, the vertical distance from a furthest outwardly radially-extending portion of the lower surface of the tamper-evident formation to the upper surface of the support flange at the same outward radial distance is 0.10 inches or less.

105. For at least Ice River's 16.9 oz bottled water products, the vertical distance from a furthest outwardly radially-extending portion of a lower surface of the tamper-evident formation to the lower surface of the support flange at the same outward radial distance is 0.20 inches or less.

106. For at least Ice River's 16.9 oz bottled water products, each container is formed of a material that is bi-axially oriented.

107. For at least Ice River's 16.9 oz bottled water products, the combined weight of the neck portion and the hollow body portion is 10 grams or less.

108. For at least Ice River's 16.9 oz bottled water products, the vertical distance from the top of the dispensing opening to the upper surface of the support flange is 0.50 inches or less.

109. For at least Ice River's 16.9 oz bottled water products, the radially extending length of the support flange is 0.17 inches or less.

110. For at least Ice River's 16.9 oz bottled water products, the outside diameter of the support flange is greater than 22 mm and less than or equal to 39.2 mm.

111. For at least Ice River's 16.9 oz bottled water products, each product has a transparent body portion.

112. For at least Ice River's 16.9 oz bottled water products, each product has a tamper-evident formation that is vertically spaced from the threads.

113. To the extent Ice River has continued to sell or induced others to manufacture, use, import, offer to sell and/or sell the Accused Products after it learned of the '326 patent, Ice River has induced infringement of the '326 patent under 35 U.S.C. § 271(b), including by selling the Accused Products in the United States for subsequent use or re-sale by Ice River's customers and by providing those customers with marketing material and/or product packaging intended to promote subsequent use and re-sale.

114. Ice River does not have a license or permission to use the '326 patent.

115. Ice River has been willfully infringing the '326 patent since at least the time it received Plastipak's April 12, 2019, letter.

116. Ice River's behavior is an egregious case of willful misconduct. Ice River has known of the '326 patent and Plastipak's allegation that Ice River infringes the patent since at least its receipt of Plastipak's April 12, 2019, letter. On information and belief, Ice River has no good faith defense to Plastipak's infringement allegations, and refused to meet to discuss a business resolution. Instead, Ice River has deliberately and wantonly continued its infringement.

117. As a result of Ice River's infringement of the '326 patent, Plastipak has suffered and will continue to suffer damages, in an amount not yet determined, of at least a reasonable royalty.

COUNT IV – INFRINGEMENT OF THE '310 PATENT

118. Plastipak hereby incorporates by reference its allegations contained in paragraphs 1 through 117 of this complaint as though fully set forth herein.

119. Ice River has directly infringed and continues to directly infringe at least claims 1, 3-9, and 13-19 of the '310 patent under 35 U.S.C. § 271(a) by making, using, offering to sell, and/or selling the Accused Products in the United States.

120. For Ice River's preforms for at least its 16.9 oz bottled water products, each preform has a hollow body portion, including a closed bottom portion and a lower portion extending upwardly from the bottom portion; a neck portion extending

upwardly from the lower portion, the neck portion including a dispensing opening positioned at the top of the neck portion, multiple-lead threads positioned below the dispensing opening, a tamper-evident formation positioned below the threads, and a support flange positioned below the tamper-evident formation, the support flange having an upper surface and a lower surface.

121. For Ice River's preforms for at least its 16.9 oz bottled water products, the weight of the neck portion from the lower surface of the support flange to a top of the dispensing opening is 2.3 grams or less.

122. For Ice River's preforms for at least its 16.9 oz bottled water products, the vertical distance from the top of the dispensing opening to the lower surface of the support flange, including the threads and the tamper-evident formation, is 0.500 inches or less.

123. The preforms for at least Ice River's 16.9 oz bottled water products are comprised of polyethylene terephthalate (PET).

124. Ice River's preforms for at least its 16.9 oz bottled water products are formed of a material comprising recycled material.

125. The preforms for at least Ice River's 16.9 oz bottled water products have a dispensing opening with an inner diameter between 22 mm and 29 mm.

126. The preforms for at least Ice River's 16.9 oz bottled water products have a tamper-evident formation comprising a bead.

127. For Ice River's preforms for at least its 16.9 oz bottled water products, the vertical distance from a furthest outwardly radially-extending portion of a lower surface of the tamper-evident formation to the upper surface of the support flange at the same outward radial distance is 0.10 inches or less.

128. For at least Ice River's 16.9 oz bottled water products, the vertical distance from a furthest outwardly radially-extending portion of a lower surface of the tamper-evident formation to the lower surface of the support flange at the same outward radial distance is 0.20 inches or less.

129. For Ice River's preforms for at least its 16.9 oz bottled water products, the combined weight of the neck portion, the closed bottom portion and the lower portion is 10 grams or less.

130. For Ice River's preforms for at least its 16.9 oz bottled water products, an outside diameter of the support flange is greater than 22 mm and less than or equal to 39.2 mm.

131. For Ice River's preforms for at least its 16.9 oz bottled water products, the radially extending length of the support flange is 0.17 inches or less.

132. Ice River's preforms for at least its 16.9 oz bottled water products have a transparent body portion.

133. Ice River's preforms for at least its 16.9 oz bottled water products have a tamper-evident formation that is vertically spaced from the threads.

134. To the extent Ice River has induced others to manufacture, use, import, offer to sell and/or sell the Accused Products after it learned of the '310 patent, Ice River has induced infringement of the '310 patent under 35 U.S.C. § 271(b).

135. Ice River does not have a license or permission to use the '310 patent.

136. Ice River has been willfully infringing the '310 patent since at least the time it received Plastipak's April 12, 2019, letter.

137. Ice River's behavior is an egregious case of willful misconduct. Ice River has known of the '310 patent and Plastipak's allegation that Ice River infringes the patent since at least its receipt of Plastipak's April 12, 2019, letter. On information and belief, Ice River has no good faith defense to Plastipak's infringement allegations, and refused to meet to discuss a business resolution. Instead, Ice River has deliberately and wantonly continued its infringement.

138. As a result of Ice River's infringement of the '310 patent, Plastipak has suffered and will continue to suffer damages, in an amount not yet determined, of at least a reasonable royalty.

COUNT V – INFRINGEMENT OF THE '759 PATENT

139. Plastipak hereby incorporates by reference its allegations contained in paragraphs 1 through 138 of this complaint as though fully set forth herein.

140. Ice River has directly infringed and continues to directly infringe at least claims 1-2, 4-5, 7-16, 18, and 20-30 of the '759 patent under 35 U.S.C. § 271(a)

by making, using, offering to sell and/or selling the Accused Products in the United States.

141. For at least Ice River's 16.9 oz bottled water products, each product has a plastic blow molded container with a lower supporting base portion; a sidewall portion extending upwardly from the base portion; a neck portion extending upwardly from the sidewall portion, the neck portion including a support flange having an upper and lower surface; multiple-lead threads; a tamper-evident formation; and a dispensing opening at the top of the neck portion, the dispensing opening having a top.

142. For at least Ice River's 16.9 oz bottled water products, the weight of the neck portion is 2.3 grams or less.

143. For at least Ice River's 16.9 oz bottled water products, the vertical distance from the top of the dispensing opening to the lower surface of the support flange, is 0.500 inches or less.

144. For at least Ice River's 16.9 oz bottled water products, the outside diameter of the support flange is greater than 22 mm and less than or equal to 39.2 mm.

145. For at least Ice River's 16.9 oz bottled water products, each product has a tamper-evident formation comprising a bead.

146. For at least Ice River's 16.9 oz bottled water products, each product has a radially extending length of the support flange that is 0.20 inches or less.

147. On information and belief, the ratio of the height of the center of gravity to the container height for at least Ice River's 16.9 oz bottled water products is less than 0.57.

148. The containers for at least Ice River's 16.9 oz bottled water products are comprised of polyethylene terephthalate (PET).

149. For at least Ice River's 16.9 oz bottled water products, the combined weight of the neck portion, the sidewall portion, and the base portion is 11 grams or less.

150. For at least Ice River's 16.9 oz bottled water products, the inner diameter of the dispensing opening is at least 22 mm.

151. For at least Ice River's 16.9 oz bottled water products, each product has a tamper-evident formation that is vertically spaced from the threads.

152. To the extent Ice River has continued to sell or induced others to manufacture, use, import, offer to sell and/or sell the Accused Products after it learned of the '759 patent, Ice River has induced infringement of the '759 patent under 35 U.S.C. § 271(b), including by selling the Accused Products in the United States for subsequent use or re-sale by Ice River's customers and by providing those

customers with marketing material and/or product packaging intended to promote subsequent use and re-sale.

153. Ice River does not have a license or permission to use the '759 patent.

154. Ice River has been willfully infringing the '759 patent since at least the time it received Plastipak's April 12, 2019, letter.

155. Ice River's behavior is an egregious case of willful misconduct. Ice River has known of the '759 patent and Plastipak's allegation that Ice River infringed the patent since at least its receipt of Plastipak's April 12, 2019, letter. On information and belief, Ice River has no good faith defense to Plastipak's infringement allegations, and refused to meet to discuss a business resolution. Instead, Ice River has deliberately and wantonly continued its infringement.

156. As a result of Ice River's infringement of the '759 patent, Plastipak has suffered and will continue to suffer damages, in an amount not yet determined, of at least a reasonable royalty.

COUNT VI – INFRINGEMENT OF THE '409 PATENT

157. Plastipak hereby incorporates by reference its allegations contained in paragraphs 1 through 156 of this complaint as though fully set forth herein.

158. Ice River has directly infringed and continues to directly infringe at least claims 1-2, 4-5, 7-16, 18-19, and 21-29 of the '409 patent under 35 U.S.C. §

271(a) by making, using, offering to sell and/or selling the Accused Products in the United States.

159. For at least Ice River's 16.9 oz bottled water products, each product has a container assembly comprising a plastic blow molded container with a lower supporting base portion; a sidewall portion extending upwardly from the base portion; a neck portion extending upwardly from the sidewall portion, the neck portion including a dispensing opening positioned at a top of the neck portion, the dispensing opening having a top; multiple-lead threads positioned below the dispensing opening; a tamper-evident formation, having a lower surface, that is positioned below the threads; and a support flange, having an upper and lower surface, that is positioned below the tamper-evident formation.

160. A closure is configured to receive the threads for at least Ice River's 16.9 oz bottled water products.

161. For at least Ice River's 16.9 oz bottled water products, the weight of the neck portion is 2.3 grams or less.

162. For at least Ice River's 16.9 oz bottled water products, the vertical distance from the top of the dispensing opening to the lower surface of the support flange, including the threads and tamper-evident formation, is 0.500 inches or less.

163. For at least Ice River's 16.9 oz bottled water products, the outside diameter of the support flange is greater than 22 mm and less than or equal to 39.2 mm.

164. For at least Ice River's 16.9 oz bottled water products, the tamper-evident formation comprises a bead.

165. For at least Ice River's 16.9 oz bottled water products, the radially extending length of the support flange is 0.20 inches or less.

166. On information and belief, the ratio of a height of the center of gravity of the container to the container height for at least Ice River's 16.9 oz bottled water products is less than 0.57.

167. The containers for at least Ice River's 16.9 oz bottled water products are comprised of polyethylene terephthalate (PET).

168. For at least Ice River's 16.9 oz bottled water products, the combined weight of the neck portion, the sidewall portion, and the base portion is 11 grams or less.

169. For at least Ice River's 8 oz and 16.9 oz bottled water products, the inner diameter of the dispensing opening is at least 22 mm.

170. For at least Ice River's 16.9 oz bottled water products, the tamper-evident formation is vertically spaced from the threads.

171. To the extent Ice River has continued to sell or induced others to manufacture, use, import, offer to sell and/or sell the Accused Products after it learned of the '409 patent, Ice River has induced infringement of the '409 patent under 35 U.S.C. § 271(b), including by selling the Accused Products in the United States for subsequent use or re-sale by Ice River's customers and by providing those customers with marketing material and/or product packaging intended to promote subsequent use and re-sale.

172. Ice River does not have a license or permission to use the '409 patent.

173. Ice River has been willfully infringing the '409 patent since at least the time it received Plastipak's April 12, 2019, letter.

174. Ice River's behavior is an egregious case of willful misconduct. Ice River has known of the '409 patent and Plastipak's allegation that Ice River infringed the patent since at least its receipt of Plastipak's April 12, 2019, letter. On information and belief, Ice River has no good faith defense to Plastipak's infringement allegations, and refused to meet to discuss a business resolution. Instead, Ice River has deliberately and wantonly continued its infringement.

175. As a result of Ice River's infringement of the '409 patent, Plastipak has suffered and will continue to suffer damages, in an amount not yet determined, of at least a reasonable royalty.

COUNT VII – INFRINGEMENT OF THE '019 PATENT

176. Plastipak hereby incorporates by reference its allegations contained in paragraphs 1 through 175 of this complaint as though fully set forth herein.

177. Ice River has directly infringed and continues to directly infringe at least claims 1-2, 4-5, 7-16, 18, 20-24, and 26-30 of the '019 patent under 35 U.S.C. § 271(a) by making, using, offering to sell and/or selling the Accused Products in the United States.

178. The preforms for at least Ice River's 16.9 oz bottled water products have a closed bottom portion and a lower portion extending upwardly from the bottom portion; a neck portion extending upwardly from the lower portion, the neck portion including a support flange having an upper surface and a lower surface, multiple-lead threads, a tamper-evident formation, and a dispensing opening having a top at an upper end of the neck portion.

179. For Ice River's preforms for at least its 16.9 oz bottled water products, the weight of the neck portion is 2.3 grams or less.

180. For Ice River's preforms for at least its 16.9 oz bottled water products, the vertical distance from the top of the dispensing opening to the lower surface of the support flange, including the threads and tamper-evident formation, is 0.50 inches or less.

181. For Ice River's preforms for at least its 16.9 oz bottled water products, the outside diameter of the support flange is greater than 22 mm and less than or equal to 39.2 mm.

182. For Ice River's preforms for at least its 16.9 oz bottled water products, the tamper-evident formation comprises a bead.

183. For Ice River's preforms for at least its 16.9 oz bottled water products, the radially extending length of the support flange is 0.20 inches or less.

184. On information and belief, for Ice River's preforms for at least its 16.9 oz bottled water products, the ratio of the height of the center of gravity to the container height is less than 0.57.

185. The preforms for at least Ice River's 16.9 oz bottled water products are comprised of polyethylene terephthalate (PET).

186. For Ice River's preforms for at least its 16.9 oz bottled water products, the combined weight of the neck portion, the lower portion, and the bottom portion is 11 grams or less.

187. For Ice River's preforms for at least its 16.9 oz bottled water products, the inner diameter of the dispensing opening is at least 22 mm.

188. For Ice River's preforms for at least its 16.9 oz bottled water products, the tamper-evident formation is vertically spaced from the threads.

189. To the extent Ice River has induced others to manufacture, use, import, offer to sell and/or sell the Accused Products after it learned of the '019 patent, Ice River has induced infringement of the '019 patent under 35 U.S.C. § 271(b).

190. Ice River does not have a license or permission to use the '019 patent.

191. Ice River has been willfully infringing the '019 patent since at least the time it received Plastipak's April 12, 2019, letter.

192. Ice River's behavior is an egregious case of willful misconduct. Ice River has known of the '019 patent and Plastipak's allegation that Ice River infringed the patent since at least its receipt of Plastipak's April 12, 2019, letter. On information and belief, Ice River has no good faith defense to Plastipak's infringement allegations, and refused to meet to discuss a business resolution.

193. As a result of Ice River's infringement of the '019 patent, Plastipak has suffered and will continue to suffer damages, in an amount not yet determined, of at least a reasonable royalty.

COUNT VIII – INFRINGEMENT OF THE '345 PATENT

194. Plastipak hereby incorporates by reference its allegations contained in paragraphs 1 through 193 of this complaint as though fully set forth herein.

195. Ice River has directly infringed and continues to directly infringe at least claim 28 of the '345 patent under 35 U.S.C. § 271(a) by making, using, offering to sell and/or selling the Accused Products in the United States.

196. For at least Ice River's 16.9 oz bottled water products, each product has a container assembly comprising a plastic blow molded container with a base portion; a sidewall portion; and a neck portion, the neck portion including threads, a tamper-evident formation, and a support flange.

197. A closure is configured to receive the threads for at least Ice River's 16.9 oz bottled water products.

198. The containers for at least Ice River's 16.9 oz bottled water products are comprised of polyethylene terephthalate (PET).

199. For at least Ice River's 16.9 oz bottled water products, the vertical distance from the top of the dispensing opening to the lower surface of the support flange, including the threads and tamper-evident formation, is 0.580 inches or less.

200. For at least Ice River's 16.9 oz bottled water products, the outside diameter of the support flange is greater than 22 mm and less than or equal to 39.2 mm.

201. The containers for at least Ice River's 16.9 oz bottled water products are filled with water.

202. To the extent Ice River has continued to sell or induced others to manufacture, use, import, offer to sell and/or sell the Accused Products after it learned of the '345 patent, Ice River has induced infringement of the '345 patent under 35 U.S.C. § 271(b), including by selling the Accused Products in the United

States for subsequent use or re-sale by Ice River's customers and by providing those customers with marketing material and/or product packaging intended to promote subsequent use and re-sale.

203. Ice River does not have a license or permission to use the '345 patent.

204. Ice River has been willfully infringing the '345 patent since at least the time it received Plastipak's April 12, 2019, letter.

205. Ice River's behavior is an egregious case of willful misconduct. Ice River has known of the '345 patent and Plastipak's allegation that Ice River infringed the patent since at least its receipt of Plastipak's April 12, 2019, letter. On information and belief, Ice River has no good faith defense to Plastipak's infringement allegations, and refused to meet to discuss a business resolution. Instead, Ice River has deliberately and wantonly continued its infringement.

206. As a result of Ice River's infringement of the '345 patent, Plastipak has suffered and will continue to suffer damages, in an amount not yet determined, of at least a reasonable royalty.

COUNT IX – INFRINGEMENT OF THE '312 PATENT

207. Plastipak hereby incorporates by reference its allegations contained in paragraphs 1 through 206 of this complaint as though fully set forth herein.

208. Ice River has directly infringed and continues to directly infringe at least claims 1-3, 6, 8-19, 22, and 24-30 of the '312 patent under 35 U.S.C. § 271(a)

by making, using, offering to sell and/or selling the Accused Products in the United States.

209. For at least Ice River's 16.9 oz bottled water products, each product has a container assembly comprising a plastic blow molded container with a lower supporting base portion; a sidewall portion extending upwardly from the base portion; a neck portion extending upwardly from the sidewall portion, the neck portion including a dispensing opening positioned at a top of the neck portion, the dispensing opening having a top; multiple-lead threads positioned below the dispensing opening; a tamper-evident formation, having a lower surface, that is positioned below the threads; and a support flange, having an upper and lower surface, that is positioned below the tamper-evident formation.

210. A closure is configured to receive the threads for at least Ice River's 16.9 oz bottled water products.

211. The containers for at least Ice River's 16.9 oz bottled water products are comprised of polyethylene terephthalate (PET).

212. For at least Ice River's 16.9 oz bottled water products, the weight of the neck portion is 2.3 grams or less.

213. For at least Ice River's 16.9 oz bottled water products, the outside diameter of the support flange is greater than 22 mm and less than or equal to 39.2 mm.

214. For at least Ice River's 16.9 oz bottled water products, the vertical distance from the top of the dispensing opening to the lower surface of the support flange, including the threads and tamper-evident formation, is 0.500 inches or less.

215. For at least Ice River's 16.9 oz bottled water products, the vertical distance from the top of the dispensing opening to the upper surface of the support flange is 0.50 inches or less.

216. For at least Ice River's 16.9 oz bottled water products, the vertical distance from a furthest outwardly radially-extending portion of a lower surface of the tamper-evident formation to the upper surface of the support flange at the same outward radial distance is 0.10 inches or less.

217. For at least Ice River's 16.9 oz bottled water products, the vertical distance from a furthest outwardly radially-extending portion of a lower surface of the tamper-evident formation to the lower surface of the support flange at the same outward radial distance is 0.20 inches or less.

218. For at least Ice River's 16.9 oz bottled water products, the dispensing opening has an inner diameter that is at least 22 mm and less than 29 mm.

219. For at least Ice River's 16.9 oz bottled water products, the tamper-evident formation comprises a bead.

220. For at least Ice River's 16.9 oz bottled water products, the combined weight of the neck portion, the sidewall portion, and the base portion is 10 grams or less.

221. For at least Ice River's 16.9 oz bottled water products, the radially extending length of the support flange is 0.17 inches or less.

222. The containers for at least Ice River's 16.9 oz bottled water products are filled with water.

223. To the extent Ice River has continued to sell or induced others to manufacture, use, import, offer to sell and/or sell the Accused Products after it learned of the '312 patent, Ice River has induced infringement of the '312 patent under 35 U.S.C. § 271(b), including by selling the Accused Products in the United States for subsequent use or re-sale by Ice River's customers and by providing those customers with marketing material and/or product packaging intended to promote subsequent use and re-sale.

224. Ice River does not have a license or permission to use the '312 patent.

225. Ice River has been willfully infringing the '312 patent since at least the time it received Plastipak's April 12, 2019, letter.

226. Ice River's behavior is an egregious case of willful misconduct. Ice River has known of the '312 patent and Plastipak's allegation that Ice River infringed the patent since at least its receipt of Plastipak's April 12, 2019, letter. On

information and belief, Ice River has no good faith defense to Plastipak's infringement allegations, and refused to meet to discuss a business resolution. Instead, Ice River has deliberately and wantonly continued its infringement.

227. As a result of Ice River's infringement of the '312 patent, Plastipak has suffered and will continue to suffer damages, in an amount not yet determined, of at least a reasonable royalty.

COUNT X –INFRINGEMENT OF THE '299 PATENT

228. Plastipak hereby incorporates by reference its allegations contained in paragraphs 1 through 227 of this complaint as though fully set forth herein.

229. Ice River has directly infringed and continues to directly infringe at least claims 1-5, 7-9, 13-16, 18, and 29 of the '299 patent under 35 U.S.C. § 271(a) by making, using, offering to sell, and/or selling the Accused Products in the United States.

230. For Ice River's preforms for at least its 16.9 oz bottled water products, each preform has a hollow body portion, including a closed bottom portion and a lower portion extending upwardly from the bottom portion; a neck portion extending upwardly from the lower portion, the neck portion including a dispensing opening positioned at the top of the neck portion, multiple-lead threads positioned below the dispensing opening, a tamper-evident formation positioned below the threads, and a

support flange positioned below the tamper-evident formation, the support flange having an upper surface and a lower surface.

231. The preforms for at least Ice River's 16.9 oz bottled water products are comprised of polyethylene terephthalate (PET).

232. For Ice River's preforms for at least its 16.9 oz bottled water products, the weight of the neck portion from the lower surface of the support flange to a top of the dispensing opening is 2.3 grams or less.

233. For Ice River's preforms for at least its 16.9 oz bottled water products, the vertical distance from the top of the dispensing opening to the lower surface of the support flange, including the threads and the tamper-evident formation, is 0.500 inches or less.

234. For Ice River's preforms for at least its 16.9 oz bottled water products, the vertical distance from a furthest outwardly radially-extending portion of the lower surface of the tamper-evident formation to the lower surface of the support flange at the same outward radial distance is 0.10 inches or less.

235. For Ice River's preforms for at least its 16.9 oz bottled water products, the vertical distance from a furthest outwardly radially-extending portion of a lower surface of the tamper-evident formation to the lower surface of the support flange at the same outward radial distance is 0.20 inches or less.

236. Ice River's preforms for at least its 16.9 oz bottled water products are formed of a material comprising recycled material.

237. The preforms for at least Ice River's 16.9 oz bottled water products have a dispensing opening with an inner diameter between 22 mm and 29 mm.

238. The preforms for at least Ice River's 16.9 oz bottled water products have a tamper-evident formation comprising a bead.

239. For Ice River's preforms for at least its 16.9 oz bottled water products, the combined weight of the neck portion, the closed bottom portion and the lower portion is 10 grams or less.

240. For Ice River's preforms for at least its 16.9 oz bottled water products, an outside diameter of the support flange is greater than 22 mm and less than or equal to 39.2 mm.

241. For Ice River's preforms for at least its 16.9 oz bottled water products, the radially extending length of the support flange is 0.17 inches or less.

242. Ice River's preforms for at least its 16.9 oz bottled water products have a tamper-evident formation that is vertically spaced from the threads.

243. To the extent Ice River has induced others to manufacture, use, import, offer to sell and/or sell the Accused Products after it learned of the '299 patent, Ice River has induced infringement of the '299 patent under 35 U.S.C. § 271(b).

244. Ice River does not have a license or permission to use the '299 patent.

245. On information and belief, Ice River has had knowledge of the '299 patent since shortly after it issued on April 23, 2019. Ice River has been willfully infringing the '299 patent since at least the time it learned of the '299 patent.

246. Ice River's behavior is an egregious case of willful misconduct. On information and belief, Ice River has no good faith defense to Plastipak's infringement allegations.

247. As a result of Ice River's infringement of the '299 patent, Plastipak has suffered and will continue to suffer damages, in an amount not yet determined, of at least a reasonable royalty.

PRAYER FOR RELIEF

WHEREFORE, Plastipak prays for relief as follows:

- A. For a judgment declaring that Ice River has infringed the Asserted Patents;
- B. For a judgment declaring that Ice River's infringement of the Asserted Patents has been willful;
- C. For a grant of an injunction pursuant to 35 U.S.C. § 283, enjoining Ice River from further acts of infringement;
- D. For a judgment awarding Plastipak compensatory damages as a result of Ice River's infringement of the Asserted Patents, together with interest, including

post-judgment interest, and costs, and in no event less than a reasonable royalty, and an accounting;

E. For a judgment declaring that this case is exceptional and awarding Plastipak its expenses, costs, and attorneys' fees in accordance with 35 U.S.C. § 285 and Rule 54(d) of the Federal Rules of Civil Procedure;

F. For a judgment awarding Plastipak enhanced damages under 35 U.S.C. § 284; and

G. For such other and further relief as the Court deems just and proper.

DEMAND FOR A JURY TRIAL

Plastipak hereby demands a trial by jury in this action.

Respectfully submitted,

Dated: May 28, 2019

By: /s/ Christopher R. Dillon
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