

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

Civil Action No. _____

ASSURPACK, LLC, a Colorado limited liability
company,

Plaintiff,

v.

A&A GLOBAL IMPORTS, INC., d/b/a
MARIJUANAPACKAGING.COM, a California
company,

Defendant.

COMPLAINT AND JURY DEMAND

Plaintiff Assurpack, LLC (“Plaintiff”), by its undersigned attorneys, for its complaint alleges as follows, upon knowledge with respect to its own acts, and upon information and belief as to all other matters:

Substance of the Action

1. This is a case of willful patent infringement in violation of 35 U.S.C. §§ 271 *et seq.* Plaintiff seeks compensatory damages and injunctive remedies, with the damages in an amount to be established at trial.

Parties

2. Plaintiff Assurpack LLC ("Plaintiff") is a Colorado limited liability company, located in Greenwood Village, Colorado.

3. Defendant A&A Global Imports, Inc. does business as MarijuanaPackaging.com (“Defendant”) and is a California company having locations in Vernon, California and Aurora, Colorado.

Jurisdiction and Venue

4. This Court has subject matter jurisdiction over the present action pursuant to 35 U.S.C. §§ 271 *et seq.*, 28 U.S.C. 1331 (federal question jurisdiction) and 28 U.S.C. § 1338(a) (jurisdiction over patent actions).

5. This Court has personal jurisdiction over Defendant because Defendant resides and conducts business in the State of Colorado and in this District.

6. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400 because Defendant resides in this District and/or Defendant has committed acts of infringement and has a regular and established place of business in this District.

Factual Summary

7. On January 1, 2019, the United States Patent and Trademark Office (“USPTO”) duly and legally issued U.S. Patent No. 10,167,109 B2 (“the ‘109 Patent”), entitled “Safety Container” to Plaintiff. Plaintiff is the owner by assignment of the ‘109 Patent and holds all rights and interest in the ‘109 Patent. A true and correct copy of the ‘109 Patent is attached as **Exhibit 1**.

8. The ‘109 Patent is directed to a safety container having a liner removably disposed within an outer container.

9. As described in the ‘109 Patent, the liner is a material part of the invention claimed therein.

10. Plaintiff practices the invention claimed in the '109 Patent by the manufacture, sale, and distribution of safety containers which conform to the claims of the '109 Patent.

11. The safety container conforming to the invention claimed in the '109 Patent possesses the advantages of child-resistance; that is, resistance to being opened by a child, thereby safely storing the contents of the safety container therein.

12. On or before April 10, 2019, Defendant has manufactured, sold, offered for sale, imported and/or distributed, or caused to be manufactured, sold, offered for sale, imported and/or distributed child-resistant boxes with silicone inserts, as a combination (“Accused Product”), at least through Defendant’s website having the following URL: <https://marijuanapackaging.com> (“Defendant’s Website”).

13. Defendant’s Website advertises Defendant’s business addresses as 3089 E. 50th St., Vernon, CA 90058 and 13250 East Smith Rd., Ste. A, Aurora, CO 80011. Attached as **Exhibit 2** is a screenshot of Defendant’s Website showing its business addresses.

14. Defendant continues to sell the Accused Product on Defendant’s Website in the form of child-resistant boxes (“Accused Box”) and silicone inserts for the boxes (“Accused Insert”) as separate components. Attached as **Exhibit 3** are screenshots of Defendant’s Website showing the Accused Box and the Accused Insert for sale.

15. As shown in **Exhibit 3**, Defendant advertises that the Accused Insert is to be used with the Accused Box, which are sold separately side-by-side.

16. On April 10, 2019, Plaintiff, by its undersigned attorneys, sent a letter by email and by UPS to Defendant, by which letter Plaintiff forwarded a copy of the ‘109 Patent and

advised that Plaintiff had inspected the Accused Product and further indicated that Plaintiff believed that the Accused Product infringes one or more claims of the '109 Patent.

17. Plaintiff has compared claim 9 of the '109 Patent, as shown in the attached **Exhibit 4**, and forwarded the same to Defendant's counsel on June 5, 2019.

COUNT I
LITERAL INFRINGEMENT OF THE '109 PATENT
(35 U.S.C. §§ 271 *et seq.*)

18. Plaintiff incorporates by reference all of the averments contained in the foregoing paragraphs as if set forth fully at length herein.

19. Defendant has literally infringed and continues to literally infringe at least claim 9 of the '109 Patent under 35 U.S.C. § 271(a) by manufacturing, selling and/or distributing the Accused Product through Defendant's Website and/or other channels of commerce within the United States that is covered by the claims of the '109 Patent.

20. On or before April 10, 2019, Defendant has had knowledge and/or notice of the '109 Patent, as well as its own literal infringement of the '109 Patent.

21. Plaintiff has been and continues to be damaged by Defendant's literal infringement of the '109 Patent.

22. Defendant's literal infringement of the '109 Patent has been and continues to be willful.

23. Defendant's literal infringement of the '109 Patent renders this case exceptional within the meaning of 35 U.S.C. § 285.

COUNT II
INFRINGEMENT OF THE '109 PATENT
UNDER THE DOCTRINE OF EQUIVALENTS
(35 U.S.C. §§ 271 *et seq.*)

24. Plaintiff incorporates by reference all of the averments contained in the foregoing paragraphs as if set forth fully at length herein.

25. The Accused Product performs substantially the same function in substantially the same way to obtain the same result as the safety container claimed in at least claim 9 of the '109 Patent.

26. Defendant has infringed under the Doctrine of Equivalents and continues to infringe under the Doctrine of Equivalents at least claim 9 of the '109 Patent under 35 U.S.C. § 271(a) by manufacturing, selling and/or distributing the Accused Product through Defendant's Website and/or other channels of commerce within the United States that is covered by the claims of the '109 Patent.

27. On or before April 10, 2019, the Defendant has had knowledge and/or notice of the '109 Patent, as well as its own infringement under the Doctrine of Equivalents of the '109 Patent.

28. Plaintiff has been and continues to be damaged by Defendant's infringement under the Doctrine of Equivalents of the '109 Patent.

29. Defendant's infringement under the Doctrine of Equivalents of the '109 Patent has been and continues to be willful.

30. Defendant's infringement under the Doctrine of Equivalents of the '109 Patent renders this case exceptional within the meaning of 35 U.S.C. § 285.

COUNT III
INFRINGEMENT BY INDUCEMENT OF THE '109 PATENT
(35 U.S.C. §§ 271 *et seq.*)

31. Plaintiff incorporates by reference all of the averments contained in the foregoing paragraphs as if set forth fully at length herein.

32. Defendant has infringed by inducement and continues to infringe by inducement at least claim 9 of the '109 Patent under 35 U.S.C. § 271(b) by manufacturing, selling and/or distributing the Accused Product and/or components of the Accused Product, including the Accused Insert, through Defendant's Website and/or other channels of commerce within the United States that is covered by the claims of the '109 Patent.

33. Defendant has infringed by inducement and continues to infringe by inducement at least claim 9 of the '109 Patent under 35 U.S.C. § 271(b) by causing the manufacturing, selling and/or distributing the Accused Product and/or components of the Accused Product, including the Accused Insert, through Defendant's Website and/or other channels of commerce within the United States that is covered by the claims of the '109 Patent.

34. On or before April 10, 2019, Defendant has had knowledge and/or notice of the '109 Patent, as well as its own inducement of infringement by others of the '109 Patent.

35. Plaintiff has been and continues to be damaged by Defendant's inducement of infringement by others of the '109 Patent.

36. Defendant's inducement of infringement by others of the '109 Patent has been and continues to be willful.

37. Defendant's inducement infringement by others of the '109 Patent renders this case exceptional within the meaning of 35 U.S.C. § 285.

COUNT IV
CONTRIBUTORY INFRINGEMENT OF THE '109 PATENT
(35 U.S.C. §§ 271 *et seq.*)

38. Plaintiff incorporates by reference all of the averments contained in the foregoing paragraphs as if set forth fully at length herein.

39. Defendant has performed contributory infringement and continues to perform contributory infringement of at least claim 9 of the '109 Patent under 35 U.S.C. § 271(a) by manufacturing, selling and/or distributing the Accused Product and/or components of the Accused Product, including the Accused Insert, through Defendant's Website and/or other channels of commerce within the United States that is covered by the claims of the '109 Patent.

40. Defendant sells the Accused Insert knowing that it is especially made or adapted for use with the Accused Box.

41. The Accused Insert is not a staple article or commodity of commerce suitable for substantial non-infringing use.

42. Defendant has performed contributory infringement and continues to perform contributory infringement of at least claim 9 of the '109 Patent under 35 U.S.C. § 271(a) by causing the manufacturing, selling and/or distributing the Accused Product and/or components of the Accused Product, including the Accused Insert, through Defendant's Website and/or other channels of commerce within the United States that is covered by the claims of the '109 Patent.

43. On or before April 10, 2019, Defendant has had knowledge and/or notice of the '109 Patent, as well as its own contributory infringement of the '109 Patent.

44. Plaintiff has been and continues to be damaged by Defendant's contributory infringement of the '109 Patent.

45. Defendant's contributory infringement of the '109 Patent has been and continues to be willful.

46. Defendant's contributory infringement of the '109 Patent renders this case exceptional within the meaning of 35 U.S.C. § 285.

Prayer for Relief

WHEREFORE, Plaintiff prays the Court to enter judgment against Defendant as follows:

- A. A declaration that Defendant has infringed Plaintiff's '109 Patent;
- B. A declaration that such infringement is willful;
- C. An award of damages for Defendant's infringement of the '109 Patent;
- D. A declaration that the damages awarded to Plaintiff be trebled;
- E. A declaration that this case is an exceptional case within the meaning of 35 U.S.C. § 285, and that Plaintiff be awarded its attorney fees, costs and expenses incurred in connection with this case;
- F. A declaration awarding Plaintiff interest, including pre-judgment interest, on the foregoing sums;
- G. A declaration awarding Plaintiff such exemplary and punitive damages as the Court finds appropriate to deter any future infringement;
- H. A declaration permanently enjoining the Defendant, its employees, agents, officers, directors, attorneys, successors, affiliates, subsidiaries and assigns, and all those in active concert and participation with the Defendant, from directly or indirectly infringing Plaintiff's '109 Patent or continuing to market, offer, sell, dispose of, license, lease, transfer,

public display, advertise, reproduce, develop or manufacture any of the Accused Products or components thereof or to participate or assist in any such activity; and

I. For such other and further relief as the Court may deem just and proper.

Jury Demand

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury in this case for all of the issues triable by jury.

Dated: July 17, 2019

/s/ Charles Fuller _____

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