

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

F'REAL FOODS, LLC and RICH
PRODUCTS CORPORATION,

Plaintiffs,

v.

HAMILTON BEACH BRANDS, INC. and
HERSHEY CREAMERY COMPANY,

Defendants.

C.A. No. 16-41-CFC

CONSOLIDATED

DEFENDANTS' NOTICE OF APPEAL

Notice is hereby given that Defendants Hamilton Beach Brands, Inc. and Hershey Creamery Co. (collectively, "Defendants") in the above-named case hereby appeal to the United States Court of Appeals for the Federal Circuit from the Judgment of this Court entered on August 26, 2019 (D.I. 286) and from any and all other judgments, orders, opinions, rulings, and findings that merge therein or are pertinent or ancillary to the foregoing, including, by way of illustration and not in limitation of the foregoing¹:

- The orders granting Plaintiffs' motions for summary judgment of (1) direct infringement of claim 21 of U.S. Patent No. 7,520,662 ("the '662 patent") for Defendants' use and demonstrations of the accused products and (2) direct

¹ Defendants reserve the right to amend this Notice of Appeal to include any future judgments, orders, opinions, rulings, and findings.

infringement of claim 15 of U.S. Patent No. 7,144,150 (“the ’150 patent”).

See D.I. 241, D.I. 242, D.I. 249.

- The orders denying (1) Defendants’ motions summary judgment of noninfringement of U.S. Patent No. 7,520,658 (“the ’658 patent”) and summary judgment of noninfringement of claim 22 of the ’150 patent and (2) Defendants’ Renewed Motion for Judgment as a Matter of Law of Noninfringement or, in the Alternative, Motion for a New Trial on Infringement of Claims 1, 5, 6, 10, and 11 of the ’658 Patent and Claim 22 of the ’150 Patent. *See* D.I. 244, D.I. 250, D.I. 353.
- The order construing disputed claim terms of the ’150 patent, ’658 patent, and ’662 patent. *See* D.I. 83.
- The orders (1) granting Plaintiffs’ motion of no invalidity of claim 21 of the ’662 patent in view of Defendants’ admissible prior art, (2) granting Plaintiffs’ motion *in limine* regarding prior art combinations using the Sato reference, and (3) denying Defendants’ Motion for New Trial on Invalidity of the ’150, ’662, and ’658 Patents. *See* D.I. 247, D.I. 249, D.I. 284 at 26:12-27:3, D.I. 352.
- The orders denying (1) Defendants’ motion to exclude certain testimony of Plaintiffs’ damages expert, Dr. Michael P. Akemann and (2) Defendants’ Renewed Motion for Judgment as a Matter of Law of No Lost Profits or, in

the Alternative, Motion for a New Trial on or Remittitur of Lost Profits with respect to “upcharge” lost profits. *See* D.I. 240, D.I. 366, D.I. 367.

Payment of the required fee of \$505 is provided with this Notice of Appeal. This fee includes the \$500 fee for docketing a case on appeal as required by 28 U.S.C. § 1913 and Fed. Cir. R. 52(a), and the \$5 fee for filing a notice of appeal as required by 28 U.S.C. § 1917. Pursuant to Federal Rule of Appellate Procedure 4(a)(4)(A), this Notice of Appeal is timely filed within 30 days of the Court’s conditional denial of Defendants’ Renewed Motion for Judgment as a Matter of Law of No Lost Profits or, in the Alternative, Motion for a New Trial on or Remittitur of Lost Profits on June 9, 2020. *See* D.I. 366, D.I. 367.

Dated: July 9, 2020

/s/ Francis DiGiovanni
Francis DiGiovanni (#3189)
Thatcher A. Rahmeier (#5222)
FAEGRE DRINKER BIDDLE & REATH
LLP
222 Delaware Avenue, Suite 1410
Wilmington, DE 19801
(302) 467-4200
francis.digiovanni@faegredrinker.com
thatcher.rahmeier@faegredrinker.com

Of Counsel:

William S. Foster, Jr.
Brianna L. Silverstein
FAEGRE DRINKER BIDDLE & REATH
LLP
1500 K Street, N.W.
Washington, DC 20005-1209
(202) 842-8800
william.foster@faegredrinker.com
brianna.silverstein@faegredrinker.com

Counsel for Defendants

CERTIFICATE OF SERVICE

I certify that on July 9, 2020, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF prior to 6:00 p.m. ET, which will send notification of such filing to all registered participants. In addition, the foregoing will be served upon counsel of record via electronic mail.

Dated: July 9, 2020

/s/ Francis DiGiovanni
Francis DiGiovanni (#3189)
FAEGRE DRINKER BIDDLE & REATH LLP
222 Delaware Avenue, Suite 1410
Wilmington, DE 19801
Tel: (302) 467-4200
Fax: (302) 467-4201
francis.digiovanni@dbr.com