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UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

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U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

CHASU FOODS INC.,

CV 02 3505

Plaintiff,

PLAINTIFF DEMANDS
JURY TRIAL

HURLEY, J.

-against-

CIVIL ACTION NO:

BOYLE, M.J.

THE FREMONT COMPANY, SAM'S CLUB,
a/k/a SAM'S CLUB CAFE CONCESSION,

Defendants
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COMPLAINT

AS AND FOR A FIRST CAUSE OF ACTION

1. Plaintiff CHASU FOODS INC., is a New York Corporation with its principal office and place of business at 354 Waterside Road, Northport, New York.

2. Defendant THE FREMONT COMPANY is a foreign corporation and has regularly and continuously transacted business in this Judicial District by making, selling, offering for sale, using and/or supplying the products complained of herein to its distributors and other customers with this Judicial District, having its principal office and

place of business at 802 North Front Street, Fremont, Ohio.

3. Defendant THE FREMONT COMPANY is a partnership and has regularly and continuously transacted business in this Judicial District by making, selling, offering for sale, using and/or supplying the products complained of herein to its distributors and other customers within this Judicial District, having its principal office and place of business at 802 North Front Street, Fremont, Ohio.

4. Defendant SAM'S CLUB a/k/a SAM'S CLUB CAFE CONCESSION is a New York Corporation having its principal office and place of business at 2950 Horseblock Road, Medford, New York.

5. Defendant SAM'S CLUB a/k/a SAM'S CLUB CAFE CONCESSION is a foreign corporation and has regularly and continuously transacted business in this Judicial District by making, selling, offering for sale, using and/or supplying the products complained of herein to its distributors and other customers within this Judicial District, having its principal office and place of business at 2950 Horseblock Road, Medford, New York.

6. Defendant SAM'S CLUB a/k/a SAM'S CLUB CAFE CONCESSION is a partnership and has regularly and continuously transacted business in this Judicial District by making, selling, offering for sale, using and/or supplying the products complained of herein to its distributors and other customers within this Judicial District, having its principal office and place of business at 2950 Horseblock Road, Medford, New York.

7. This cause of action is brought under the patent laws of the United States, 35 USC Par. 271, 281, 283, 284, 285, 289 and under 28 USC Par. 1338. Venue is proper

under 28 USC Par. 1391(b), 1391© and 1400(b)..

8. On September 23, 1997, United States Patent No. 5,670,193 was lawfully issued to CHARLES VREUGDE, who assigned his rights to said patent to CHASU FOODS INC. for an invention of SAUERKRAUT IN SINGLE-SERVING PACKAGE AND PROCESSING METHOD of one and one half ounce single serving portion, 4 inches in length, 2 3/4 inches width and plaintiff CHASU FOODS INC. is the record owner of such Letters Patent.

9. Plaintiff is informed, believes and therefore aver that within the past 3 years, defendants have been and still are infringing the claims of Letters Patent No. 5,670,183 or a reasonable imitation thereof for SAUERKRAUT IN SINGLE-SERVING PACKAGE AND PROCESSING METHOD of one and one half ounce single serving portion, 4 inches in length, 2 3/4 inches width in the Eastern District of New York and elsewhere in the United States without leave or license of plaintiff herein, and in violation of plaintiff's rights and that defendants will continue the acts of infringement unless enjoined by this Court, by making, selling, offering for sale and/or using said product.

10. Plaintiff has given notice to the public that said package and processing method made and sold under Letters Patent No. 5,670,183 is patented by marking such package in accordance with the provisions of 35 USC Par. 287, and plaintiff having given notice in writing to defendants of its infringement of Letters Patent No. 5,670,183 and having demanded that defendants desist from such infringement.

11. Upon information and belief, defendants acts of patent infringement interfere with plaintiff CHASU FOODS INC.'s sales to, and relationships with, its potential and

existing customers for SAUERKRAUT IN SINGLE-SERVING PACKAGE AND PROCESSING METHOD of one and one half ounce single serving portion, 4 inches in length, 2 3/4 inches width. Such acts cause irreparable harm to CHASU FOODS INC.'s business and cause CHASU FOODS INC.'S patent to diminish greatly in value.

12. Upon information and belief, by reason of defendants' infringement of the patent claims, Plaintiff CHASU FOODS INC. has been irreparably damaged and will suffer additional and imminent irreparable harm unless this Court preliminary and permanently enjoin defendants from further acts of infringement.

13. CHASU FOODS INC. has no adequate remedy at law.

14. Plaintiff has been damaged by defendants wilful and intentional acts of said Letters Patent or a reasonable imitation thereof in an undetermined amount.

AS AND FOR A SECOND CAUSE OF ACTION

15. Plaintiff repeats, reiterates and realleges each and every allegation as set forth in Paragraphs designated "1" through "14" as if fully set forth in length herein.

16. That on March 20, 1998, plaintiff CHASU FOODS INC. And defendant THE FREMONT COMPANY entered into a Confidentiality Agreement which provided as follows:

“ CONFIDENTIALITY AGREEMENT

In connection with a request for FREMONT CO., herein referred to as ("FC") and/or its agents and/or representatives to consult with CHASU FOODS INC, herein referred to as ("CFI") acknowledges said consultation will contain proprietary information that would be harmful if it became known by competitors or others. Such information, including but not limited to sauerkraut in controlled portion serving, size, bags/pouches, flavored sauerkraut, sample bag and tasting sample bag, the name(s) of such

product, product and container, design, product purpose, ingredients, formulas, manufacturing processes, and/or techniques and ingredients, suppliers and cost for said product, and all such other information reasonably necessary to fully enable the undersigned to perform the work.

FC agrees not to disclose to others any such information furnished by CFI to FC on a confidential basis. The term "others" includes but is not limited to FC agents, vendors, suppliers and customers.

We hereby agree that the undersigned will maintain such information in the strictest confidence and without advance written consent, will not directly or indirectly give or disclose the information to any "others" or use said information any way other than in connection with work being done for CFI. The undersigned further understands the term "information" shall specifically include all formulas, drawings, sketches, actual product samples and other such format provided by CFI, all of which shall be and constitute CFI property."

17. That plaintiff's President met on numerous occasions with the representatives of defendant THE FREMONT COMPANY, disclosing the entire method of processing, packaging, machine refinements, potential customers and distributors, ingredients, suppliers, in addition to all steps necessary to manufacture, process and market said product, over a period of three years.

18. All said meetings and disclosures were directed at a contract being agreed to between Plaintiff CHASU FOODS INC. and defendant THE FREMONT COMPANY.

19. That defendant THE FREMONT COMPANY accepted all information and disclosures from plaintiff CHASU FOODS INC. with full knowledge and acceptance of the aforesaid Confidentiality Agreement and plaintiff CHASU FOODS INC. revealed all information to defendant THE FREMONT COMPANY, relying on defendant's THE FREMONT COMPANY compliance with said Confidentiality Agreement.

20. That defendant THE FREMONT COMPANY has violated and breached said

Confidentiality Agreement by manufacturing, processing and marketing said product of sauerkraut in a single serving package and processing method or a reasonable imitation thereof, based upon information obtained under said Confidentiality Agreement from plaintiff.

21. As a result, plaintiff has been damaged based upon defendant's THE FREMONT COMPANY breach and violation of said Confidentiality Agreement in an undetermined amount.

AS AND FOR A THIRD CAUSE OF ACTION

22. Plaintiff repeats, reiterates and realleges each and every allegation as set forth in Paragraphs designated "1" through "21" as if fully set forth in length herein.

23. Based upon the wrongful acts and misrepresentations made by defendant THE FREMONT COMPANY, which were relied on by plaintiff, the plaintiff sustained damages.

24. As the result of said misrepresentations of defendant, THE FREMONT COMPANY was unjustly enriched in an undetermined amount, based upon sales by defendant THE FREMONT COMPANY of the aforesaid product or a reasonable imitation thereof.

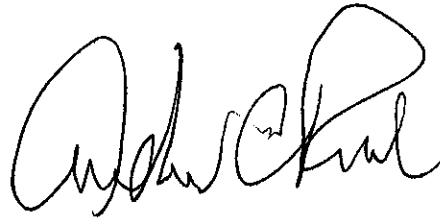
WHEREFORE, plaintiff CHASU FOODS INC. demands damages as follows:

AS AND FOR A FIRST CAUSE OF ACTION, (a) that plaintiff CHASU FOODS INC. be adjudged the record owner of all right title and interest in and to Letters Patent 5,670,193 and (b) that Letters Patent 5,670,193 be adjudged to be good and valid in law and to be infringed by defendants THE FREMONT COMPANY and SAM'S CLUB a/k/a

SAM'S CLUB CAFE CONCESSION, and © for a preliminary injunction pending this action and for a final injunction of further impingement of Letters Patent 5,670,193 by both defendants and to all other parties controlled by defendants, and (d) for an accounting for damages adequate to compensate plaintiff for said infringement, such damages to be trebled because of the wilful and deliberate character of the infringement, and (e) for reasonable attorney fees and the costs of this action, and AS AND FOR A SECOND CAUSE OF ACTION; (a) that the Confidentiality Agreement dated 3/16/98 and 3/20/98 be adjudged to be good, valid and binding on Defendant THE FREMONT COMPANY and plaintiff, and to have been breached by defendant THE FREMONT COMPANY, and (b) for a preliminary injunction pending this action and for a final injunction against the further breach of the Confidentiality Agreement by defendant THE FREMONT COMPANY, and © for an accounting for damages adequate to compensate plaintiff to said breach by defendant THE FREMONT COMPANY, said damages to be trebled because of the wilful and deliberate character of said breach, and (d) for reasonable attorney fees and the costs of this action; and AS AND FOR A THIRD CAUSE OF ACTION; (a) for a preliminary injunction pending this action and for a final injunction against the further unjust enrichment by defendant THE FREMONT COMPANY, and (b) for an accounting of damages adequate to compensate plaintiff for the unjust enrichment of defendant THE FREMONT COMPANY, said damages to be trebled because of the wilful and deliberate character of the unjust enrichment; and © for reasonable attorney fees and the costs of this action; and in all causes of action for such other and further relief

as this Court may deem proper and equitable.

DATED: New York, New York
May 22, 2002



ANDREW C. RISOLI