

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

BETTCHER INDUSTRIES, INC.  
6801 State Route 60  
Birmingham, Ohio 44816

Plaintiff,

vs.

BUNZL USA, INC.  
701 Emerson Rd.  
Suite 500  
St. Louis, MO 63141

BUNZL PROCESSOR DISTRIBUTION, LLC  
528 E. 19th Ave.  
North Kansas City, MO 64116

TKM COMPANY  
P.O. Box 12019  
Omaha, Nebraska, 68112

Defendants.

CASE NO.: 3:08CV2423

Judge Zouhary

**SECOND AMENDED COMPLAINT  
FOR PATENT INFRINGEMENT –  
JURY TRIAL DEMANDED**

Pursuant to Fed. R. Civ. Pro. 15(a)(1) and paragraph 8 of the Court's Scheduling Order dated December 30, 2008, [ECF 27] permitting the addition of parties and claims through January 30, 2009, Plaintiff Bettcher Industries, Inc. ("Bettcher") states as follows for its Second Amended Complaint against defendants Bunzl USA, Inc., Bunzl Processor Distribution, LLC (together referred to as "Bunzl") and TKM Company:

**Jurisdiction And Nature Of The Case**

1. Bettcher is a corporation organized and operating under the laws of the State of Delaware, with its principle place of business at 6801 State Route 60, Birmingham, Ohio 44816.

2. Upon information and belief, Bunzl USA, Inc., is a corporation organized and operating under the laws of the State of Delaware, with its principal place of business at 701 Emerson Rd., Suite 500, St. Louis, MO 63141.

3. Upon information and belief, Bunzl Processor Distribution LLC is a Missouri limited liability corporation with principal place of business at 528 E. 19<sup>th</sup> Ave., North Kansas City, Missouri 64116. Bunzl Processor Distribution, LLC is believed to be an affiliated company of Bunzl USA, Inc., and the two companies are referred to herein together as “Bunzl.”

4. Upon information and belief, TKM Company is a Nebraska business entity with mailing address of P.O. Box 12019, Omaha, Nebraska, 68112. In Bunzl’s Rule 26(a)(1) Disclosures, served in this matter on December 19, 2008, TKM Company is described by Bunzl as owned by Scott Allison and Kurt Hutter (“Allison” and “Hutter”). Allison and Hutter are alleged in that document to have knowledge of the “design, development and manufacture” of rotary blades for Bunzl.

5. Upon information and belief, Exact Manufacturing & Machine, Inc. (“Exact”) is a Nebraska corporation with principle place of business located at 6005 North 9<sup>th</sup> St., Omaha, Nebraska, 68110. Upon information and belief, Allison and Hutter are believed to be owners and/or principals of Exact.

6. Upon information and belief, Comet Equipment Co., Inc. (“Comet”) is a Nebraska corporation with principle place of business also located at 6005 North 9<sup>th</sup> St., Omaha, Nebraska, 68110. Upon information and belief, Allison and Hutter are believed to be owners and/or principals of Comet.

7. Upon information and belief, TKM Company may be a business name under which Exact, Comet, Allison and/or Hutter do business. Bettcher has been unable to determine

further business information as to TKM Company. In this Second Amended Complaint, Bettcher will use “TKM Company” to refer to the business entity so identified in Bunzl’s Initial Disclosure.

8. Bettcher’s claims arise under the patent laws of the United States, specifically 35 U.S.C. §§ 271, 281, 283, 284 and 285, for infringement of U.S. Patent No. 7,000,325 B2 (the “325 Patent”). A copy of the ‘325 Patent is attached hereto.

9. This action is authorized by 35 U.S.C. § 281. The federal courts have original and exclusive jurisdiction of the action pursuant to 28 U.S.C. § 1338(a).

10. On information and belief, Bunzl regularly conducts business within the State of Ohio and within the geographic area of the Northern District of Ohio. In addition, Bunzl is known to have sold the product alleged in this action to infringe the ‘325 Patent to a business located in the Northern District of Ohio, Western Division, thereby infringing that patent in this federal district. TKM Company, on information and belief, was the manufacturer of that infringing product.

11. Bettcher manufactures and sells food processing equipment and hand tools, including trimming knives and the blades utilized therein. Its products are used for various applications in the meat processing industry. Bettcher currently sells and offers for sale Whizard® rotary trimming knives and accessories, including the Whizard® Trimmer Series II products. Bettcher sells its products directly to end users through its sales network.

12. Bunzl competes directly with Bettcher in the food processing equipment market. Among other products, Bunzl offers for sale and sells rotary knife blades. Bunzl advertises that at least some of those rotary knife blades are for use as replacement blades in the Bettcher Whizard® Trimmer Series II products. Bunzl has from time to time referred to these blades as

“M2 Replacement Blades” and in those cases has made specific reference to the Bettcher Model number associated with the sizing of the corresponding Bettcher rotary knife blade. These rotary knife blades, and any other similar products made, sold, offered for sale, or used by Bunzl, regardless of the identifier utilized therefor, are the products the sale of which is accused of infringing, or inducing or contributing to the infringement, of the ‘325 Patent (the “Accused Products”).

13. Based upon the Initial Disclosures of Bunzl, it is the information and belief of Bettcher that TKM Company is the manufacturer of the Accused Products.

14. On February 21, 2006, the United States Patent and Trademark Office issued U.S. Patent No. 7,000,325, to Jeffrey A. Whited of Amherst, Ohio, entitled “Low Friction Rotary Knife”.

15. Bettcher is the assignee of all rights in the ‘325 Patent and has not granted any rights to Bunzl or to TKM Company to practice the ‘325 Patent.

**Claim One – Infringement Of The ‘325 Patent**

16. The allegations of paragraphs 1 through 9 of this Complaint are incorporated by reference into Claim One of this Complaint.

17. Bunzl and TKM Company infringe claims of the ‘325 Patent, induce others so to infringe, and/or contribute to the infringement thereof by others, by making, using, selling, importing into the United States, and/or offering for sale the Accused Products, either literally or by virtue of the Doctrine of Equivalents.

18. Neither Bunzl nor TKM Company is authorized to practice the invention of the ‘325 Patent.

19. If either Bunzl or TKM Company is permitted to make, use, sell or offer for sale the invention claimed in the '325 Patent, Bettcher will suffer irreparable injury from the erosion of its patent rights in the '325 Patent.

20. Bettcher has suffered injury from Bunzl's and TKM Company's infringement and is entitled to be made whole to the extent possible by an award of money damages in its favor.

21. Bunzl's and TKM Company's past, present and expected future infringement of the '325 Patent with knowledge of that Patent is willful and objectively reckless, entitling Bettcher to enhanced damages pursuant to 35 U.S.C. § 284, and to an award of its attorneys' fees and costs in the bringing and maintaining of this action pursuant to 35 U.S.C. § 285.

### **Request For Relief**

WHEREFORE, Bettcher demands a trial by jury and demands judgment against Defendant as follows:

- A. For a preliminary and a permanent injunction enjoining Defendants, their successors and assigns, and their officers, directors, agents, servants, employees, and all entities and individuals acting in concert with them or on their behalf, from continued infringement of the '325 Patent;
- B. For an accounting of all damages and a judgment for general damages against Bunzl and TKM Company as compensation for their use, exploitation and infringement of the '325 Patent;
- C. For an increase of all such damages to three times their amount, pursuant to 35 U.S.C. § 284, for willful infringement of the said patents;
- D. For the cost of this action, together with an assessment of interest and reasonable attorney fees pursuant to 35 U.S.C. § 285;
- E. For an award of pre-judgment interest; and

F. For such other and further relief as this Court may deem just and proper.

**Demand For Jury Trial**

Bettcher demands a trial by jury as to all issues tryable by a jury in this action.

Dated: January 15, 2009

/s/ Thomas H. Shunk

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Attorneys for Plaintiff, Bettcher Industries, Inc.

CERTIFICATE OF SERVICE

A copy of the foregoing First Amended Complaint was served on all counsel of record by virtue of the Court's electronic filing system on January 15, 2009.

/s/ Thomas H. Shunk  
Thomas H. Shunk (0025793)  
An Attorney for Plaintiff, Bettcher Industries,  
Inc.