

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
NEW YORK PACKAGING, II, LLC)	
135 Fulton Avenue)	
New Hyde Park, New York 11040)	
)	Civil Action No. 22-2741
Plaintiff,)	
v.)	
)	
UNISTAR PLASTICS, LLC)	
5821 Citrus Boulevard, Suite B)	
Harahan, Louisiana 70123)	
)	
Defendant)	
_____)	

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff New York Packaging (“NYP”), by its undersigned counsel, alleges as follows for its Complaint against defendant UniStar Plastics, LLC (“USP”).

THE NATURE OF THIS ACTION

1. NYP brings this action against USP pursuant to 35 U.S.C. §101 et. seq. and §§ 271, 281, 283, 284, & 285 inclusive, for infringement of one or more claims of U.S. Patent No. 10,513,078 (“the ’078 Patent) titled METHOD OF MANUFACTURING HEADERLESS PRODUCE BAGS WITH INCREASED ADHESION. The patent lists Jeffrey D. Rabiea as sole inventor and is assigned to New York Packaging II, LLC. The Rabiea ’078 Patent is directed to plastic bags used in grocery stores available on a rack for the consumer. The consumer removes a bag from the stack of bags and places produce or other items in the bag for weighing and purchase. Plaintiff NYP and Defendant USP are competitors in the manufacture and sale of

plastic produce bags to distributors and grocery stores. Plaintiff NYP developed the patented produce bags and introduced them into the market place in 2016. Defendant USP copied the patented bags and introduced their infringing bags in 2022. When NYP observed the bags, NYP obtained samples and evaluated the bags and made determinations about the manufacturing process used to make the bags. NYP placed USP on notice of infringement in June of 2022. USP has and continued to infringe the '078 and has refused to cease its infringing actions despite notice, thereby necessitating this lawsuit.

THE PARTIES

2. Plaintiff NYP is a limited liability company organized and existing under the laws of the State of New York, having its headquarters and a principal place of business at 135 Fulton Avenue, New Hyde Park, New York 11040. NYP manufactures and sells plastic bags to the wholesale and retail markets, directly and through distributors, providing its customers with cost effective packaging solutions and providing the end consumer with reliable and environmentally friendly bagging options.

3. Defendant USP is a Louisiana company, having its headquarters and principal place of business at 5821 Citrus Boulevard, Suite B, Harahan, Louisiana 70123. USP sells and distributes plastic bags, including its infringing bags, throughout a significant portion of the United States.

JURISDICTION AND VENUE

4. This is an action for patent infringement arising under the laws of the United States, 35 U.S.C. §271 *et seq.*

5. This Court has subject matter jurisdiction over this action pursuant to 35 U.S.C. §§271, 281 and 28 U.S.C. §§ 1331 and 1338(a), federal question, and 28 U.S.C. § 1332 diversity jurisdiction.

6. This Court has personal jurisdiction over USP because USP has sold accused goods into this District and thus established minimum contacts.

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

BACKGROUND AND GENERAL ALLEGATIONS

8. NYP has been in business since 2005 and provides a range of plastic packaging products. NYP's products are distributed throughout the US and in various other countries. NYP is recognized as an innovator in the packaging industry, was the first company to introduce Headerless T-shirt bags into the retail market and holds a number of patents on various aspects of plastic bags, protecting NYP's investments in innovation..

9. Mr. Rabiea has over 42 years of experience in the plastic bag industry, including intimate knowledge and participation in the manufacture and bag design process. The Rabiea '078 Patent-in-Suit is an innovation in the manufacturing process for headerless plastic produce bags which enhances consumer convenience while decreasing product loss and waste.

10. Typical produce bags are dispensed from a stack suspended from a bag hanger or in rolls of bags attached end to end. Stacked bags are removed one at a time from the stack by pulling from the rack. Roll bags can be removed one at a time from the roll by separating the first bag from the next bag along the perforation line therebetween. Like the bags hanging in face-to-face relation from a rack, each bag must be individually manually opened after it is removed from the roll. Care must also be made to prevent extra unwanted bags being removed from the stack or the roll and discarded. The requirement that each plastic bag be manually opened also causes many of the bags to be wasted because the bags cannot be opened easily. For that reason, many are discarded and end up on the floor. Aside from wasting bags, which increases the costs to the retail establishment, having unused bags accumulating on the floor around the location where the bags are dispensed can be dangerous because it creates a potential slip and fall hazard.

11. NYP therefore sought to develop headerless produce bags that would open the next bag as it was removed from a rack to avoid the need for manual opening by the customer. NYP developed headerless produce bags with increased adhesion between the surfaces of the bags and patented the unique method of manufacturing the new headerless produce bags.

12. In order to achieve the desired improved features, Mr. Rabiea developed a manufacturing process where the exterior surface of one or both of the sheets of plastic film which form the bags is treated with low temperature corona discharge plasma to raise the level of surface charge magnitude to at least Dyne to increase the adhesion force between the bags. A recess is formed in each of the bags to further increase the adhesion. The increased adhesion causes the mouth of one bag to automatically open as the adjacent bag is removed from the rack.

The recess is formed at the same time openings are created in the bags to accept the support rods of a dispensing rack. The bags can have simple edge sides or side gussets and may be provided in a package including a pouch which receives and supports the lower portions of the bags.

13. The Rabiea '078 Patent-in-suit, attached hereto as Exhibit A to the Complaint, and protects the new and innovative headerless plastic produce bags developed by NYP. The '078 Patent was issued on December 24, 2019 and is assigned to, and are currently owned by, Plaintiff NYP.

14. The '078 Patent's claims are directed to the unique manufacturing method that produces the superior headerless produce bags developed by NYP.

USP's Infringement

15. USP is a direct competitor of NYP. Both companies sell stacks of plastic bags that are placed onto racks by a retailer in retail stores for dispensing of the bags by customers, one at a time. USP sells boxes containing numerous of stacks of plastic bags, including the accused stacks of headerless produce bags (the "Accused Products"). The sales of USP compete directly with the sales of NYP, the two companies compete in the same markets for the same customers. Sales of USP products have directly replaced sales of NYP products and have interfered and displaced distribution contracts of NYP. NYP has lost sales and profits due to the infringing activities of USP.

16. Among other products, USP sells the Accused Products, including some product which is identified by USP as "fruits and veggies more matters." The Accused Products are identifiable by their characteristics which result from the patent manufacturing method.

Upon investigation, testing, information and belief, NYP has located infringing product in numerous retail, wholesale and distribution locations and supply chains in the United States. Photographs of one example of an identified Accused Product is attached hereto as Exhibit B to the Complaint.

17. NYP notified USP on June 28, 2022 citing the '078 Patent. USP continues to infringe.

18. NYP obtained quantities of the USP Accused Product and conducted a detailed analysis, which confirmed that the USP bag stacks infringe claims of the '078 Patent.

19. The '078 patent includes two independent claims, Claims 1 and 9.

Patent Claims:

Claim 1. A method useful for manufacturing a headerless plastic bag from sheets of thin plastic film, comprising:

- providing a first continuous web sheet aligned in facing relation to a second continuous web sheet at a forming station comprising a first platen to form aligned first and second sheets;
- applying and then removing pressure and heat at a section of the aligned first and second sheets using the platen to form heat sealed sides and a mouth of a headerless plastic bag;
- advancing the headerless plastic bag formed in the section of the aligned first and second sheets from the forming station to a plasma treatment station configured to directly apply low temperature corona discharge plasma treatment to only the first sheet;
- treating the first sheet at the plasma treatment station under zero added pressure with low temperature corona discharge plasma to increase the surface charge magnitude of the first sheet to a surface energy of at least 43 Dyne wherein the surface energy is sufficient to cause the headerless plastic bag to adhere to an adjacent second plastic bag with a force sufficient to automatically open the mouth of the headerless plastic bag upon removal of the second bag from therefrom;
- advancing the treated headerless plastic bag formed in the section of the aligned first and second sheets to a cutting station;
- cutting the first and second aligned sheets to separate the headerless plastic bag from the first sheet and the second sheet;

advancing the cut headerless plastic bag to a stacking station comprising a second platen;
stacking the cut headerless plastic bag at the stacking station onto a second plastic bag;
and
forming concurrently both a first pair of mated recesses in the first sheet and the second sheet of a first plastic bag, the first pair of recesses configured to cause the first sheet to releasably mechanically adhere to the second sheet, and a second pair of mated recesses in the second plastic bag, using the second platen, a recess of the first pair of mated recesses mated with a recess of the second pair of mated recesses, wherein the adherence between the second plastic bag and the cut headerless plastic bag caused by the plasma treatment, combined with the adherence between the first sheet and the second sheet of the cut headerless plastic bag caused by the mated first pair of recesses, and the adherence between the cut headerless plastic bag and the second plastic bag caused by the first pair of recesses in the first plastic bag mated with the second pair of recesses in the second plastic bag, together cause the cut headerless plastic bag to automatically open upon separation of the second plastic bag from the cut headerless plastic bag.

Claim 9. A method useful for manufacturing a headerless plastic bag from sheets of thin plastic film, comprising:

providing a first continuous web sheet aligned in facing relation to a second continuous web sheet at a forming station comprising a first platen to form aligned first and second sheets;
applying and then removing pressure and heat at a section of the aligned first and second sheets using the platen to form heat sealed sides and a mouth of a headerless plastic bag
advancing the headerless plastic bag formed in the section of the aligned first and second sheets from the forming station to a plasma treatment station configured to directly apply low temperature corona discharge plasma treatment to only the first sheet;
treating the first sheet at the plasma treatment station with low temperature corona discharge plasma to increase the surface charge magnitude of the first sheet to a surface energy of at least 43 Dyne wherein the surface energy is sufficient to cause the headerless plastic bag to adhere to an adjacent second plastic bag with a force sufficient to automatically open the mouth of the headerless plastic bag upon removal of the second bag from therefrom;
advancing the treated headerless plastic bag formed in the section of the aligned first and second sheets to a cutting station;
cutting the first and second aligned sheets to separate the headerless plastic bag from the first sheet and the second sheet;
advancing the cut headerless plastic bag to a stacking station comprising a second platen;
stacking the cut headerless plastic bag at the stacking station onto a second plastic bag;
and

forming concurrently both a first pair of mated recesses in the first sheet and the second sheet of the first bag, the first pair of recesses configured to cause the first sheet to releasably mechanically adhere to the second sheet, and a second pair of mated recesses in the second plastic bag, using the second platen, a recess of the first pair of mated recesses mated with a recess of the second pair of mated recesses, wherein the adherence between the second plastic bag and the cut headerless plastic bag caused by the plasma treatment, combined with the adherence between the first sheet and the second sheet of the cut headerless plastic bag caused by the mated first pair of recesses, and the adherence between the cut headerless plastic bag and the second plastic bag caused by the first pair of recesses in a first plastic bag mated with the second pair of recesses in the second plastic bag, together cause the cut headerless plastic bag to automatically open upon separation of the second plastic bag from the cut headerless plastic bag.

which define the broadest scope of the invention, The invention is further defined independent claims 2-8 and 10- 14.

COUNT I
Infringement of U.S. Patent No. 8,479,423

20. The allegations of paragraphs 1-19 above are hereby re-alleged and incorporated herein by reference.

21. NYP is the current assignee and owner of the '078 Patent-in-Suit.

22. USP has infringed, and continues to infringe, at least claims 1-14 of the '078 Patent under:

- 35 U.S.C. §271(a), by making and selling the Accused Products in the United States;

23. USP has infringed, and continues to infringe, at least claims 1-14 of the '078 Patent under:

- 35 U.S.C. §271(a) by importing into the United States any patented invention during the term of the patent therefor;

24. USP has infringed, and continues to infringe, at least claims 1-14 of the '078

Patent under:

- 35 U.S.C. §271(g) by importing into the United States a product which is made by a process patented in the United States;

25. USP has infringed, and continues to infringe, at least claims 1-14 of the '078

Patent under:

- 35 U.S.C. §271(g) by offering to sell within the United States a product which is made by a process patented in the United States;

26. USP has infringed, and continues to infringe, at least claims 1-14 of the '078

Patent under:

- 35 U.S.C. §271(g) by selling within the United States a product which is made by a process patented in the United States;

27. USP has infringed, and continues to infringe, at least claims 1-14 of the '078

Patent under:

- 35 U.S.C. §271(g) by using within the United States a product which is made by a process patented in the United States.

28. USP continues to make its headerless produce bags which infringe claims of the '078 Patent.

29. USP does not have a license or permission to the use the '078 Patent.

30. USP has been willfully infringing the '078 Patent since at least June 28, 2022, when it received notice from NYP. Upon information and belief, USP has no good faith defense to NYP's infringement allegations and has refused to cease selling products or to engage in further attempts to reach a business resolution. Instead, USP has intentionally continued its

infringement.

31. As a result of USP's willful infringement of the '078 Patent, NYP has suffered and will continue to suffer damages in an amount not yet determined, of lost profits on a majority of the sales and at least a reasonable royalty on the remainder.

PRAYER FOR RELIEF

A. For a Judgment declaring that Defendant has infringed the '078 Patent under 35 U.S.C. §271(a).

B. For a Judgment declaring that Defendant has infringed the '078 Patent under 35 U.S.C. §271(g).

C. For a judgment declaring that USP's infringement of the '078 Patent has been willful;

D. For a grant of a permanent injunction pursuant to 35 U.S.C. §283, enjoining USP from further acts of infringement;

E. For a judgment awarding NYP compensatory damages as a result of USP's infringement sufficient to reasonably and entirely compensate NYP for said infringement in an amount to be determined at trial;

F. For a judgment declaring that this case is exceptional and awarding NYP 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;

G. For a judgment awarding NYP prejudgment interest pursuant to 35 U.S.C. § 284, and a further award of post judgment interest, pursuant to 28 U.S.C. § 1961, continuing until

such judgment is paid.

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

I. For such other relief to which NYP is entitled under the applicable United States laws and regulations or as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure Rule 38(b), Plaintiff hereby demands trial by jury as to all claims in this litigation.

DATED: September 10, 2022

Respectfully submitted,

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