

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY**

PACTIV CORPORATION, NEWSRING
INDUSTRIAL CORPORATION, and
NEWSRING CANADA, INC.,

Plaintiffs

v.

PERK-UP, INC. D/B/A KARI-OUT, INC.,
TRIPAK INDUSTRIAL USA, LLC, TRIPAK
INDUSTRIAL CORPORATION, IZON
INDUSTRIES, INC., 52 GREEN POND ROAD,
LLC, 1460 CHESTNUT ASSOCIATES, LLC,
690 UNION BLVD. ASSOCIATES, LLC,
HOWARD EPSTEIN, DAVID EPSTEIN, ADAM
EPSTEIN, PAUL EPSTEIN, GREGORY
COLACITTI,

Defendants.

Civil Action No.

COMPLAINT AND JURY DEMAND

Plaintiffs Pactiv Corporation, Newspring Industrial Corporation and Newspring Canada, Inc. (collectively, "Plaintiffs" or "Pactiv"), by and for their Complaint in the above-captioned action, allege as follows:

NATURE OF ACTION

1. This is an action for patent and trade dress infringement, unfair competition, breach of contract, misappropriation, unlawful disclosure of confidential and other proprietary information, tortious interference with prospective economic advantage and related claims. Defendant Kari-Out is a current Pactiv customer/distributor that has decided to manufacture and

sell Pactiv knock-off containers in place of the Pactiv containers it has sold for more than ten years.

2. To circumvent the time, effort and money required to develop its own product and manufacturing facility, Kari-Out partnered with Tripak Industrial Corporation (“Tripak Canada”) and Gregory Colacitti, a company and individual already embroiled in a patent infringement action with Pactiv subsidiaries, Newspring Industrial Corporation and Newspring Canada (collectively “Newspring”), stemming from Tripak Canada’s manufacture and sales of Pactiv knock-off products.

3. Kari-Out’s new venture sought out state funds to finance its new manufacturing facility and established 52 Green Pond Road, LLC, 1460 Chestnut Associates LLC, 690 Union Blvd. Associates LLC, and Tripak Industrial USA LLC to conduct its infringing and unlawful acts.

4. In this action, Pactiv seeks to stop the infringing activity, shut down the defendants’ knock-off product venture, protect its misappropriated intellectual property, and recover monetary damages against Kari-Out, Tripak, Izon, Howard Epstein, David Epstein, Adam Epstein, Paul Epstein, Gregory Colacitti, and all the others (collectively “Defendants”) who have been involved in these wrongful activities.

PARTIES

5. Pactiv Corporation (“Pactiv Corp.”) is a publicly traded company (NYSE: PTV) incorporated under the laws of the State of Delaware and having offices at 1900 West Field Court, Lake Forest, Illinois. Pactiv Corp. is a leading producer of specialty packaging products for the consumer and foodservice/food packaging markets. On or about March 15, 2005, Pactiv Corp. acquired plaintiff Newspring Industrial Corporation (“Newspring Industrial”).

6. Newspring Industrial is a New Jersey corporation having its principal place of business located at 35 O'Brien Street, Kearny, New Jersey. Newspring Industrial is a wholly-owned subsidiary of Pactiv Corp. Newspring Industrial is a leading manufacturer of thin wall injection molded polypropylene products for use in take-out, delicatessen and foodservice markets.

7. Newspring Canada, Inc. ("Newspring Canada") is a corporation organized under the laws of Ontario, Canada and having offices located at 33 Inspiration Avenue, Richmond Hill, Ontario, Canada. It is a wholly-owned subsidiary of Pactiv. Hereinafter, Newspring Canada and Newspring Industrial are referred to collectively as "Newspring."

8. Upon information and belief, defendant Perk-Up Inc., d/b/a Kari-Out Inc., ("Kari-Out") is an entity having a place of business at 399 Knollwood Road, Suite 309, White Plains, New York and is a New York Domestic Business Corporation. Upon information and belief, Kari-Out is a manufacturer of food products, food packaging, and paper products distributed nationally to food distributors throughout the United States.

9. Upon information and belief, Kari-Out is 100% owned and controlled by Howard Epstein, Adam Epstein, David Epstein, and Paul Epstein.

10. Upon information and belief, defendant Tripak Industrial USA, LLC ("Tripak USA") is an entity having a place of business at 399 Knollwood Road, Suite 309, White Plains, New York, and is a New Jersey limited liability company. Upon information and belief, Tripak USA is a manufacturer of food packaging products distributed nationally to food distributors throughout the United States.

11. Upon information and belief, Tripak USA is 100% owned and controlled by Howard Epstein, Adam Epstein, David Epstein and Paul Epstein.

12. Upon information and belief, defendant Tripak Industrial Corporation (“Tripak Canada”) is a corporation organized and existing under the laws of Ontario, Canada and having a principal place of business at 185 Claireport Crescent, Etobicoke, Ontario. Upon information and belief, Tripak Canada is a manufacturer of plastic food packaging products.

13. Upon information and belief, defendant Izon Industries, Inc. (“Izon”) is a corporation organized and existing under the laws of Ontario, Canada and having a principal place of business at 321 Deerhurst Drive, Brampton, Ontario. Upon information and belief, Izon is a mold manufacturer specializing in thin walled plastic food packaging products.

14. Upon information and belief, defendant 52 Green Pond Road, LLC (“Green Pond”) is a New Jersey limited liability company having its principal place of business at 399 Knollwood Road, Suite 309, White Plains, New York. Upon information and belief, Green Pond is a holding company formed for the purpose of acquiring real property.

15. Upon information and belief, Green Pond is 100% owned and controlled by Howard Epstein, Adam Epstein, David Epstein and Paul Epstein (collectively, the “Epsteins”).

16. Upon information and belief, defendant 1460 Chestnut Associates, LLC (“Chestnut”) is a New Jersey limited liability company having its principal place of business at 399 Knollwood Road, Suite 309, White Plains, New York. Upon information and belief, Chestnut is a holding company formed for the purpose of acquiring real property

17. Upon information and belief, Chestnut is 100% owned and controlled by the Epsteins.

18. Upon information and belief, defendant 690 Union Blvd. Associates, LLC (“Union Blvd.”) is a New Jersey limited liability company having its principal place of business

at 399 Knollwood Road, Suite 309, White Plains, New York. Upon information and belief, Union Blvd. is a holding company formed for the purpose of acquiring real property.

19. Upon information and belief, Union Blvd. is 100% owned and controlled by Adam Epstein, David Epstein and Paul Epstein.

20. Upon information and belief, defendant Howard Epstein is the founder and Chairman of Kari-Out and the Chairman of Tripak USA. He is also a member of the board of defendant Chestnut. Upon information and belief, Howard Epstein is a citizen of the United States of America and resides in Westchester County, New York at 54 Greenacres Avenue, Scarsdale, New York.

21. Upon information and belief, defendant David Epstein is a Vice President of Kari-Out and Treasurer of Tripak USA. He is also a CEO of Chestnut and a member of the board of Union Blvd. Upon information and belief, David Epstein is a citizen of the United States of America and resides in the county of New York, New York at 300 E. 85th Street, Apt. 1903, New York, New York.

22. Upon information and belief, defendant Adam Epstein is a Vice President of Kari-Out, Vice President of Tripak USA, and a member of the board of Chestnut and the CEO of Union Blvd LLC. Upon information and belief, Adam Epstein is a citizen of the United States of America and resides at 1 Charcoal Lane, Westport Connecticut.

23. Upon information and belief, defendant Paul Epstein is President of Kari-Out and President of Tripak USA. He is also a member of the boards of Chestnut and Union Blvd. Upon information and belief, Paul Epstein is a citizen of the United States of America and resides at 44 Circle Avenue, Larchmont, New York.

24. Upon information and belief, the Epsteins control and manage Kari-Out, Tripak USA, Green Pond, Chestnut and Union Blvd. as alter egos such that the acts and omissions of the Epsteins are the acts and omissions of Kari-Out, Tripak USA, Green Pond, Chestnut and Union Blvd., and vice versa.

25. Upon information and belief, defendant Gregory Colacitti (“Colacetti”) is a corporate officer and President of Tripak Canada. Upon Information and belief, Colacitti is a citizen of Canada and resides at 109 Triton Avenue, Woodbridge, Ontario, Canada.

26. Upon information and belief, Colacitti controls and manages Tripak Canada as an alter ego thereof such that the acts and omissions of Colacitti are the acts and omissions of Tripak Canada, and vice versa.

27. Upon Information and belief, the Epsteins and Colacitti have established Tripak USA, Green Pond, Chestnut, and Union Blvd. to engage in their unlawful and infringing activities, as outlined herein.

JURISDICTION AND VENUE

28. This Court has subject matter jurisdiction in this matter pursuant to 28 U.S.C. §§ 1331, 1338 and 1367.

29. Venue is appropriate in this district pursuant to 28 U.S.C. §§ 1391.

30. Upon information and belief, Kari-Out is a company that regularly transacts and conducts business throughout the United States and has specifically conducted business within this district and is subject to the jurisdiction of this Court. Among other things, Kari-Out recently established a manufacturing facility in Rockaway, New Jersey to manufacture its infringing products. Further, on information and belief, Kari-Out maintains multiple manufacturing and distribution facilities in New Jersey. As the alter ego of Kari-Out, the

Epsteins are similarly subject to the jurisdiction of this Court, by virtue of Kari-Out's acts and omissions within this district. Independent of those, however, upon information and belief, the Epsteins conduct business in this district.

31. Upon information and belief, Tripak USA is a New Jersey limited liability company transacting business within this district and, therefore, subject to the jurisdiction of this Court.

32. Upon information and belief, Tripak Canada is a company that has partnered with Kari-Out and applied for grants and funding through the New Jersey Economic Development Association to finance Kari-Out's manufacturing facilities in New Jersey and is therefore subject to the jurisdiction of this Court. As the alter ego of Tripak Canada, Colacitti is also subject to the jurisdiction of this Court, by virtue of Tripak Canada's acts and omissions within this district.

33. Upon information and belief, Izon is a company that has partnered with Tripak Canada to provide it with molds to manufacture infringing plastic containers using Pactiv's proprietary information. Upon information and belief, Izon is providing, within this judicial district, Kari-Out and Tripak USA with molds to manufacture plastic containers using Newspring's proprietary information. Upon information and belief, the molds manufactured by Izon and shipped into this judicial district serve no non-infringing use and indirectly contribute to the infringing acts of Kari-Out and Tripak USA.

34. Upon information and belief, Green Pond, Chestnut, and Union Blvd. are all New Jersey limited liability entities registered to conduct business within the State of New Jersey and, therefore, and subject to the jurisdiction of this Court.

35. Additionally, upon information and belief, Defendants have committed acts of patent infringement, trade dress infringement, trade secret misappropriation unfair competition,

breach or contract and tortious interference with a contract in this district in such a way as to cause injury and damage to Plaintiffs in this district.

36. All Defendants are subject to personal jurisdiction in this district.

PACTIV'S VERSAtainer® PRODUCT

37. Newspring was founded in 1988 by Jeffrey Chen, as an unincorporated business entity, and incorporated in 1993 to develop, manufacture and market plastic disposable items such as plates, cutlery and containers for the food service industry.

38. Active in the business with Jeffrey Chen was his brother, Corey Chen.

39. Since 1988, Newspring has grown to a substantial business enterprise and its facilities employ over 100 people. It has developed a reputation as a company that consistently delivers high-end products at competitive prices.

40. Initially, Newspring's business was limited to the manufacture and sale of plastic soup containers for the Chinese take-out restaurant trade, but the innovative design and impressive quality of the products have expanded the market and Newspring's products are now used regularly by a wide range of food service providers.

41. Prior to the end of 1996, Jeffrey and Corey Chen identified a need within the food service industry for containers of a higher quality than those that were available at that time.

42. Jeffrey Chen then began to develop a product that would fill that market need. Specifically, he began to develop a product that contained a reliable seal, would present food in a more elegant, "up-scale" and visually pleasing manner than the existing food containers did, and that would distinguish Newspring and its products from those of its competitors.

43. Jeffrey Chen successfully developed a new container that satisfied all of his development goals and would eventually be marketed under the registered trademark

VERSAtainer®. The VERSAtainer® product is an attractive, high quality food container with an extremely reliable seal that is manufactured using costly plastic that has been approved for microwave use by the Food and Drug Administration

44. Very substantial investment was necessary from Newspring to realize the Chens' concept of an improved food container, including, inter alia, extensive market research, personal interviews of end users, design and engineering time, prototypes, and the initial cost for the mold for the first VERSAtainer® product.

45. Newspring's initial investment in developing the VERSAtainer® product line represented a risk that could have bankrupted Newspring had the VERSAtainer® product been a marketing failure.

46. The market for food containers is conservative, and very slow to accept innovative products. The unique look of the VERSAtainer® and its new seal made it stand out from all of the other available food containers and made potential purchasers reluctant to gamble on the new type of design.

47. When Newspring began to market the VERSAtainer® products, it encountered resistance to the new product, which has only been overcome by substantial effort over the years since the VERSAtainer® product's introduction.

48. This initial resistance was overcome through persistent sales activities, including the distribution of substantial amounts of free samples, sales visits to distributors, and distribution of printed materials and advertisements to end users and distributors.

49. As a result of Newspring's advertising and promotional efforts and related expenditures, the food service industry came to recognize the value of the VERSAtainer®

product and that product gained acceptance and Newspring's initial investment and risk were rewarded with increased sales.

50. As a result of Newspring's extraordinary efforts and significant marketing expenditures, the marketplace of distributors and commercial end users has accepted the VERSAtainer® product and recognized it as an innovation that provides valuable benefits not available in previous products.

51. The VERSAtainer® products are sold to a wide range of end users such as restaurants, educational and government institutions with food-service programs, and other food processors that require a reliable, cost effective, and high quality plastic food container.

52. The distinctive look, design, and appearance of the VERSAtainer® product make it immediately identifiable as a Newspring product by distributors and commercial end users.

PACTIV'S DESIGN PATENT

53. On February 11, 1997, Jeffrey Chen applied to the U.S. Patent and Trademark Office ("PTO") for a design patent, application number 29/066,299.

54. U.S. Patent No. D415,420 (the "'420 Patent") issued on October 19, 1999 as a result of Jeffrey Chen's February 11, 1997 application. See Exhibit A.

55. On or about May 2004, Jeffrey Chen assigned the '420 patent to Newspring.

56. In March 2005, Pactiv acquired Newspring and all of its right, title and interest in and to the VERSAtainer® product line, including the '420 patent and all intellectual property associated with that product line.

THE VERSAtainer® TRADE DRESS

57. Pactiv's VERSAtainer® products are sold, typically via distributors, to a wide range of end users such as restaurants, educational and government institutions with food-service programs. The relevant market for Pactiv is characterized by purchasers who associate certain designs with certain manufacturers such as Pactiv.

58. Although not part of the '420 patent, certain distinctive features of the VERSAtainer® products identify the product to the public. Specifically, among other things, the colors of the containers, the products model numbers and the type of packaging contribute to the distinctive image and customer identification of the VERSAtainer® products.

59. The VERSAtainer® product is available in either black or white. Those colors do not aid in performing the function of the VERSAtainer® product. They were chosen because black is a traditional color for the bottoms of food containers in this industry, and white for exactly the opposite reason: that it was non-traditional and made a statement about the innovative nature of the VERSAtainer® product design.

60. Further, in the wholesale market for commercial food containers, products are typically known industry-wide by their model numbers and meaning attaches to those model numbers as indicators of source, manufacturer, and commercial affiliation of the product. Pactiv's most prominent models of the VERSAtainer®, Model Nos. 717, 718, 723, 729, 737, 919, and 948 (the "717", "718", "723", "729", "737", "919", and "948"), are arbitrary and are not related to any functional aspects or features of the containers themselves.

61. The food container industry knows and readily recognizes the 717, 718, 723, 729, 737, 919, and 948 as distinctive and innovative products of Pactiv and associates the model designations with Pactiv as the source of manufacture and commercial affiliation of the product.

The 717, 718, 723, 729, 737, 919, and 948 when applied to plastic food containers and within the wholesale market for commercial food containers, have acquired secondary meaning.

62. Pactiv also developed packaging for the VERSAtainer® product line and sells its products in 150/150 combo packaging where 150 lids and 150 bases of the containers, respectively, are compactly stacked separately in cartons to effectively utilize shipping/storage space.

63. The food container industry knows and readily recognizes 150/150 combo packaging with Pactiv as the source of manufacture and commercial affiliation of the product. The 150/150 combo packaging, when applied to plastic food containers and within the wholesale market for commercial food containers, have acquired secondary meaning.

64. The design and features of the VERSAtainer®, including those elements that are the subject of the '420 patent, have acquired secondary meaning in that they signify to the purchasing distributor or commercial end user that the product emanates from Pactiv.

65. Attached hereto as Exhibit B are photographs of sample Pactiv VERSAtainer® products and packaging.

66. Defendants, as long time distributors and resellers of the Pactiv products, were fully aware of the '420 Patent and the distinctiveness of the Pactiv trade dress prior to making, using, selling or offering for sale their knock-off products.

PRIOR ENFORCEMENT ACTIVITIES

67. Over the years, Pactiv has expended significant efforts and costs in policing and enforcing successfully through the courts its intellectual property rights in the United States and abroad against unlawful competitors offering “knock-offs” of Pactiv’s proprietary product lines, including actions before the International Trade Commission, United States Customs, and federal

courts in several states. In all cases, the defendants in these litigations have been enjoined, involuntarily by federal courts or by consent, from continuing to sell unrestricted their knock-off competitive products.

68. Pactiv's conscientious policing of its marks and patents have resulted in numerous actions. For example, Pactiv initiated litigation against Associated Mechanical in the United States District Court for the District of New Jersey on October 26, 1999. That litigation, captioned, Newspring v. Associated Mechanical et al., Civil Action No. 99-5008, was resolved by entry of a consent judgment on March 28, 2000.

69. Pactiv initiated litigation against Kingtext Paper in the United States District Court for the District of New Jersey on August 27, 2001. That litigation, captioned, Newspring v. Kingtext Paper et al., Civil Action No. 01-167 and 01-4059 was resolved by entry of a consent judgment on October 9, 2001.

70. Pactiv initiated litigation against Alliance in the United States District Court for the District of New Jersey on October 31, 2001. That litigation, captioned, Newspring v Alliance et al., Civil Action No. 01-5047 was resolved by entry of a consent judgment on March 13, 2001.

71. Pactiv initiated litigation against New Mayline, and SunGem in the United States District Court for the District of New Jersey on May 15, 2002. That litigation, captioned Newspring v Mayline et al., Civil Action No. 02-2326, was resolved by entry of a judgment in favor of Newspring and against defendants on January 21, 2005.

72. Pactiv initiated litigation against Polyte in the United States District Court for the District of New Jersey on November 19, 2003. That litigation, captioned Newspring v. Polyte

Inc., Civil Action No. 03-5819, was resolved by entry of a consent judgment on January 16, 2004.

73. Pactiv initiated litigation against Empire in the United States District Court for the District of New Jersey Industrial on July 20, 2004. That litigation, captioned Newspring v. Empire Industrial Corp., Civil 04-03435, was resolved by entry of a consent judgment on October 24, 2006.

74. Pactiv initiated proceedings in the United States International Trade Commission, on May 17, 2004. That action, captioned In The Matter of Certain Plastic Containers, 337-TA 514, was resolved by entry of an order prohibiting importation of certain plastic food containers found to infringe Pactiv's patents.

75. Pactiv initiated litigation against Group W and other in the United States District Court for the District of New Jersey on January 24, 2006. That litigation, captioned Newspring v. Group W, Inc., Civil Action No. 06-343, was resolved by entry of a consent judgment on April 24, 2006.

76. Pactiv initiated litigation against Worldwide Business in the United States District Court for the District of New Jersey on July 21, 2006. That litigation, captioned Newspring v. Worldwide Business, Civil Action No. 06-2774, was resolved by entry of a judgment in favor of Newspring and against defendants on September 14, 2006.

IZON'S RELATIONSHIP TO PACTIV

77. Upon information and belief, Izon is in the business of manufacturing customized molds for plastic injection molding.

78. Beginning in 2001, Izon manufactured customized molds for Newspring's container lines including the VERSAtainer® products. Key to the relationship between Izon and Newspring was the understanding that Newspring's designs were confidential and not to be used to fabricate similar mold designs for others, especially Newspring's competitors.

79. It is custom in the plastic injection molding manufacturing industry that mold designs are kept in confidence by mold manufacturers.

80. On December 8, 2005, Izon entered into a Mutual Confidentiality Agreement with Pactiv, agreeing to keep and maintain all Pactiv information in confidence and not disclose it to any third party. (See Exhibit C attached). This more formal agreement memorialized what was already understood by the parties.

81. By virtue of its relationship and past business dealings with Pactiv, Izon is in possession of proprietary information and trade secrets regarding the specifications of the molds used to manufacture containers protected by Pactiv's intellectual property rights, including the '420 patent and Pactiv's trade dress.

TRIPAK CANADA

82. Colacitti was a director of TriSpring Plastics Inc. ("TriSpring"), a Newspring sales broker, selling the VERSAtainer® containers on behalf of Newspring in Canada. Colacitti worked at TriSpring with the Pactiv product from the VERSAtainer® product's first introduction into the Canadian market in September 1998 until the end of 2001.

83. The VERSAtainer® containers were the highest volume Newspring product that TriSpring sold during the years 1999-2001.

84. Colacitti had no experience in the plastic container industry prior to his sales experience selling Newspring containers.

85. Based on the know-how and information he learned while working as a Newspring distributor, Colacitti formed Tripak Canada in 2001.

86. Colacitti set up Tripak Canada to leverage his experience as a Newspring sales broker to directly compete against Pactiv.

87. Upon information and belief, Colacitti is or was the president of Tripak Canada.

88. Colacitti chose a name for his new venture similar to TriSpring in an attempt to benefit from, and trade on the goodwill and reputation of Newspring and the VERSAtainer® product line that he previously sold.

89. Tripak Canada, despite being incorporated in 2002, originally advertised on its website that it was formed in 2000, in an attempt to mislead prospective customers into falsely associating Newspring and Tripak Canada. See Exhibit D, attached.

90. Upon information and belief, Tripak Canada began marketing plastic food containers to the food packaging industry in early 2002.

91. Tripak Canada has continued its deception, and in 2008, when applying for grant money from the state of New Jersey Economic Development Association, Tripak USA indicated that it was formed in 2000, solidifying ties to Tripak Canada, even though Tripak Canada's website now admits that it was formed in 2002.

92. Plastic food containers like those manufactured and sold by Newspring and Tripak Canada are manufactured using plastic injection molds.

93. The dimensions and design of such plastic injection molds are confidential and proprietary.

94. Rather than developing their own plastic injection molds, Colacitti and Tripak Canada retained Izon, the same engineers that had worked with Newspring, to design Tripak Canada's plastic injection molds based on the Pactiv's VERSAtainer® container molds.

95. Colacitti and Tripak Canada used these Izon molds to manufacture products that they then sold as direct replacements for Pactiv's VERSAtainer® containers.

96. As a result of the actions of Tripak Canada, Colacitti , and Izon, Pactiv filed a civil action in Federal Court in Ontario Canada captioned T-1033-06 (the "Canadian Action"). The Canadian Action is still pending.

97. Upon information and belief, defendant Kari-Out acquired an interest in Tripak Canada or its assets.

KARI-OUT'S RELATIONSHIP WITH PLAINTIFFS

98. Upon information and belief, Kari-Out is a distributor of food products and food packaging containers to the restaurant and food service industry.

99. Upon information and belief, Kari-Out was founded by Howard Epstein in 1964 and is presently managed by the Epsteins.

100. Kari-Out has been a large Newspring/Pactiv customer for more than ten years.

101. Prior to its relationship with Newspring, Kari-Out did not sell any plastic food containers.

102. Kari-Out's website www.kariout.com displays VERSAtainer® products under the heading microwavable food containers and displays images of the Pactiv products and identifies them using the Pactiv colors and product numbers NC723, NC729, NC718, etc. (See Exhibit E, attached)

103. Kari-Out's website does not advertise microwavable food containers other than Pactiv's.

104. In addition to the VERSAtainer® product line, Kari-Out sells Pactiv's DELItainer® line of products under its own private label.

105. Kari-Out relying on the quality and reputation of the Pactiv VERSAtainer® product has been able to successfully establish itself as a distributor of microwavable plastic food containers to the food service industry.

106. Kari-Out has developed significant sales channels and a loyal customer base and earned significant revenue from the sale of Pactiv's VERSAtainer® products over the years and continues to offer VERSAtainer® products it to its customers.

107. Upon information and belief, Kari-Out was generally aware of Newspring and Pactiv's prior patent enforcement activities and Newspring and Pactiv's commitment to protecting their intellectual property.

KARI-OUT, TRIPAK, THE EPSTEINS AND COLACITTI GET TOGETHER

108. Upon information and belief, Kari-Out, in an effort to enter the plastic food container market with its own line of products, sought out and acquired an interest in an existing plastic container manufacturer, namely, Tripak Canada.

109. Upon information and belief, Kari-Out sought out and purchased the assets of Tripak Canada from Colacitti, including, machinery, molds, and know-how, with the intent of manufacturing and selling products that were replacements for Pactiv's VERSAtainer® products.

110. Upon information and belief, Kari-Out intentionally sought out Tripak Canada's assets because they could easily be used to make products that look virtually identical to Pactiv's VERSAtainer® products.

111. Kari-Out has since begun to manufacture and sell products that look virtually identical to Pactiv's VERSAtainer® products.

112. Kari-Out, alone or in concert with the other Defendants, is now manufacturing, offering for sale, and selling in the United States products that look virtually identical to Pactiv's VERSAtainer® products (the "Knock-Off Products"). Photographs of the Kari-Out Knock-Off Products are attached hereto as Exhibit F.

113. The Kari-Out Knock-Off Products are packaged in a 150/150 combo pack just like the VERSAtainer® products. The Knock-Off Products themselves are not marked with any Kari-Out logo, but are only identified by a model number, "TC-724." Tripak Canada's products also utilizes the same model number, i.e., TC-724.

114. Kari-Out, Tripak Canada, Tripak USA, Green Pond, Chestnut and Union Blvd. are manufacturing, distributing, importing, selling and offering for sale Kari-Out's Knock-Off Products.

115. Upon information and belief, the Epsteins formed Tripak USA so that they could purchase the assets of Tripak Canada from Colacitti and move Tripak Canada's machinery, molds, and know-how to its new facility in Rockaway, New Jersey where they could manufacture the Knock-Off Products in mass quantities.

116. Upon information and belief, the Epsteins formed 52 Green Pond Road LLC to acquire the necessary real estate to establish their facility to manufacture Kari-Out's Knock-Off Products.

117. Upon information and belief, Kari-Out, Tripak USA and Green Pond, applied to the New Jersey Economic Development Authority ("NJEDA"), for direct loans to secure the financing for their facility where they manufacture VERSAtainer® Knock-Off Products.

118. Upon information and belief, Kari-Out, Tripak USA and Green Pond applied for a \$10,000,000 Tax Exempt Bond from NJEDA to purchase land and a 157,000 sq. manufacturing facility and equipment to establish a new manufacturing business in Rockaway. Further, Kari-Out, Tripak and Green Pond applied for a \$1,250,000 loan to provide gap financing necessary to complete the project. (See Exhibit G, attached).

119. In its loan application to the NJEDA, Green Pond, Kari-Out and Tripak USA represent that Tripak is located in Ontario and is looking to expand operations in Rockaway, New Jersey.

120. Upon information and belief, the Epsteins wanted their NJEDA application to appear as if an existing manufacturer were setting up shop, thereby giving the NJEDA more

confidence to make the loan, when in fact Tripak USA, the occupant of the facility, was not in existence prior to 2007.

121. Upon information and belief, Kari-Out's Green Pond facility is set up to be a large-scale operation.

122. Upon information and belief, the Green Pond facility is setup to run three modules of seven injection molding machines each, for a total of 21 machines.

123. Upon information and belief, as of the end of August, Kari-Out's facility had 14 of the 21 possible machines in operation making Pactiv Knock-Off Products around the clock.

124. Upon information and belief, Colacitti, is the key technical person on site for Kari-Out.

125. Since the acquisition of Tripak Canada by the Epsteins, Tripak USA has utilized the know-how, confidential information and design information Colacitti and Tripak Canada gained while working as a Newspring distributor and selling the infringing products that form the basis of the Canadian Action.

126. Upon information and belief, Tripak USA is using the designs and molds originally designed by Izon to manufacturer its Knock-Off Products.

127. The Epsteins and Kari-Out are utilizing the other assets of their distribution network such as Chestnut and Union Blvd. to manufacture, distribute, and warehouse the Knock-Off Products.

DEFENDANTS' ANTICIPATORY ACTIVITIES

128. In anticipation of undertaking its infringing activities, and with the knowledge that such an undertaking would undoubtedly damage the prior long-standing relationship with

Pactiv, Kari-Out placed significantly larger than normal orders with Pactiv to enable it to stockpile Pactiv inventory while Kari-Out's manufacturing facility came up to speed.

129. To date, Kari-Out has failed to pay for their large order and has an outstanding accounts receivable balance to Pactiv in excess of \$1,000,000.

130. To date, Kari-Out has failed to take delivery of its private label product manufactured for it by Pactiv.

COUNT I - PATENT INFRINGEMENT AGAINST ALL DEFENDANTS

131. Pactiv realleges and incorporates by reference paragraphs 1 through 130 hereof as though fully set forth herein.

132. This cause of action arises under the Patent Act, 35 U.S.C. § 101 et seq.

133. Pactiv notified the public of its rights under the '420 patents in accordance with 35 U.S.C. § 287.

134. The Defendants' Knock-Off Products infringe the '420 Patent

135. Upon information and belief, by virtue of their past dealings with Pactiv, their knowledge of Pactiv's intellectual property, and their large volume of sales of the Pactiv products, as well as the fact that all Pactiv products are marked as required, Defendants were aware of the existence of the '420 patent long before they undertook their infringing activities.

136. By manufacturing, offering for sale and selling the Knock-off Products, Defendants are knowingly, recklessly and willfully infringing the '420 patent under 35 U.S.C. § 271(a).

137. Upon information and belief, Defendants have knowingly and willfully aided, abetted, induced, and directed its manufacturers, customers, and users to infringe upon the '420 patent in violation of 35 U.S.C. § 271(b), (c).

138. Defendants' acts of direct and indirect patent infringement are continuing and ongoing.

139. Upon information and belief, Defendants will not cease committing the wrongful acts alleged in this Complaint without this Court's intervention.

140. As a direct and proximate result of Defendants' direct and indirect infringement of the '420 patent, Pactiv is suffering damages and irreparable injury for which it has no adequate remedy at law.

COUNT II - TRADE DRESS INFRINGEMENT AGAINST ALL DEFENDANTS

141. Pactiv realleges and incorporates by reference paragraphs 1 through 130 hereof as though fully set forth herein.

142. This cause of action arises under the Lanham Act, 15 U.S.C. § 1051 et seq.

143. The VERSAtainer® product trade dress described above is protectable under the trademark laws of the United States, 15 U.S.C. § 1051 et seq.

144. Defendants' Knock-Off Products together with their knock-off activities overall constitute trade dress infringement in violation of 15 U.S.C. § 1125.

145. Defendants' wrongful acts of trade dress infringement are continuing and ongoing and directed with the knowledge and intent of violating Pactiv's trade dress.

146. Upon information and belief, Defendants' acts of trade dress infringement were and continue to be knowingly and intentionally directed in violation of Pactiv's legal rights.

147. Upon information and belief, Defendants will not cease committing the wrongful acts alleged in this Complaint without this Court's intervention.

148. As a direct and proximate result of Defendants' wrongful acts of trade dress infringement, Pactiv is suffering damages and irreparable injury for which it has no adequate remedy at law.

**COUNT III - UNFAIR COMPETITION AND PASSING OFF AGAINST ALL
DEFENDANTS**

149. Pactiv repeats and realleges each of the allegations in paragraphs 1 through 130 and incorporates them by reference as though fully set forth herein.

150. This cause of action arises under the N.J. Stat. § 56:4-1 *et. seq.* and the common law of the State of New Jersey.

151. This Court has subject matter jurisdiction over this cause of action pursuant to 28 U.S.C. § 1367.

152. On information and belief, in the course of their business, Defendants have marketed, used, sold, offered for sale and distributed a reproduction, counterfeit, copy, or colorable imitation of the VERSAtainer® product and have appropriated, for their own use, Pactiv's reputation and goodwill in order to further the sale of their Knock-Off Products.

153. On information and belief, Defendants' Knock-Off Products are likely to confuse or mislead customers as to source because they contain elements and many of the other distinctive attributes of Pactiv's VERSAtainer® products, including deceptively similar model numbers, packaging and identical colors.

154. On information and belief, Defendants' marketing, use, sale, offers for sale and distribution of a reproduction, counterfeit, copy, or colorable imitation of the VERSAtainer's product on their Knock-Off Products in a manner likely to cause confusion or misunderstanding as to the source of the Knock-Off Products, constitutes a misuse of Pactiv's reputation and is a deceptive acts in violation of § 56:4-1 *et. seq.* and the common law of New Jersey.

155. On information and belief, in the course of their business, Defendants have passed off their Knock-Off Products as goods of Pactiv, intentionally and with knowledge of the damage to and unfair appropriation of Pactiv's rights.

156. Defendants' acts of passing off the Knock-Off Products as those of Pactiv constitute deceptive acts in violation of the common law of New Jersey.

157. On information and belief, Defendants' acts of unfair competition were and continue to be willful and knowing, in violation of the rights of Pactiv under the laws of the State of New Jersey.

158. On information and belief, Defendants will not cease committing the wrongful acts alleged in this Complaint without the intervention.

159. As a direct and proximate result of Defendants' unfair competition, Pactiv is suffering damages and irreparable injury for which it has no adequate remedy at law.

COUNT IV - TRADE SECRET MISAPPROPRIATION AGAINST IZON INDUSTRIES

160. Pactiv realleges and incorporates by reference paragraphs 1 through 130 hereof as though fully set forth herein.

161. Upon information and belief, during its course of dealings with Pactiv, and after the termination of its relationship, Izon knowingly and willfully misappropriated Pactiv's confidential and proprietary information for the purposes of providing such information to Tripak Canada, Tripak USA, Colacitti and Kari-Out, and for exploiting said information for their own pecuniary interests.

162. Upon information and belief, Tripak Canada, Tripak USA, Colacitti and Kari-Out knew that the confidential and other proprietary information provided to Izon was

misappropriated from Pactiv. Further, upon information and belief, Tripak Canada, Tripak USA, Colacitti and Kari-Out indirectly and/or directly participated with Izon in their misappropriation of said information.

163. As a direct and proximate result of said misappropriation, Pactiv is suffering damages and irreparable injury for which Pactiv has no adequate remedy at law.

COUNT V - BREACH OF CONTRACT AGAINST KARI-OUT

164. The allegations of paragraphs 1 through 130 are incorporated herein by reference as though fully set forth herein.

165. By placing an order with Pactiv, Kari-Out entered into a valid and enforceable contract to purchase Pactiv products.

166. Pactiv has performed all its obligations under the contract by delivering and preparing for delivery the products ordered by Kari-Out.

167. Upon information and belief, Kari-Out has breached this valid and enforceable contract by failing to pay for the products in accordance with the terms of the contract.

168. As a direct and proximate result of said breach, Pactiv is suffering damages and continues to suffer damage.

COUNT VI - BREACH OF CONTRACT AGAINST IZON

169. The allegations of paragraphs 1 through 130 are incorporated herein by reference as though fully set forth herein.

170. The Mutual Confidentiality Agreement between Pactiv and Izon constitutes a valid and enforceable contract.

171. Pactiv performed all its obligations under the Mutual Confidentiality Agreement.

172. By virtue of the aforementioned conduct, Izon has breached the Mutual Confidentiality Agreement, including without limitation the non-disclosure provisions thereof.

173. As a direct and proximate result of said breaches, Pactiv is suffering damages and irreparable injury for which Pactiv has no adequate remedy at law.

COUNT VII - TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS AGAINST TRIPAK USA, TRIPAK CANADA, COLACITTI, GREEN POND, CHESTNUT, AND UNION BLVD.

174. The allegations of paragraphs 1 through 130 are incorporated herein by reference as though fully set forth herein.

175. A valid and enforceable contract exists between Pactiv and Kari-Out for the sale of Pactiv products.

176. Upon information and belief, Tripak USA, Tripak Canada, Colacitti, Green Pond, Chestnut and Union Blvd. were aware of the contract.

177. Tripak USA, Tripak Canada, Colacitti, Green Pond, Chestnut and Union Blvd. intentionally and/or maliciously and without justification interfered with the contract and induced Kari-Out to breach said contract.

178. Tripak USA, Tripak Canada, Colacitti, Green Pond, Chestnut and Union Blvd.'s wrongful conduct caused Kari-Out to breach the contract.

179. As a direct and proximate result of said tortious interference and Kari-Out's breach, Pactiv is suffering damages and irreparable injury for which Pactiv has no adequate remedy at law.

COUNT VIII - TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE AGAINST KARI-OUT, TRIPAK USA, TRIPAK CANADA, THE EPSTEINS, COLACITTI, GREEN POND, CHESTNUT, AND UNION BLVD.

180. The allegations of paragraphs 1 through 130 are incorporated herein by reference as though fully set forth herein.

181. At all times relevant herein, Pactiv had a valid expectancy of developing new business and business relationships with their existing and prospective customers.

182. Kari-Out, Tripak USA, Tripak Canada, the Epsteins, Colacitti, Green Pond, Chestnut and Union Blvd. knew of Pactiv's valid expectancy of developing new business and business relationships with their and prospective customers, and intentionally and/or maliciously and without justification interfered with said expectancy.

183. Kari-Out, Tripak USA, Tripak Canada, the Epsteins, Colacitti, Green Pond, Chestnut and Union Blvd.'s intentional interference was improper.

184. As a direct and proximate result of said tortious interference, Pactiv is suffering damages and irreparable injury for which Pactiv has no adequate remedy at law.

WHEREFORE, Plaintiffs respectfully request and demand judgment as follows:

- (a) That Defendants have directly and/or indirectly infringed the '420 patent;
- (b) That Defendants' direct and/or indirect infringement of the '420 has been willful;
- (c) That Defendants and their agents, employees, assigns and all persons acting under their control, be preliminarily and permanently enjoined from manufacturing, selling, attempting to sell, purchasing, promoting, storing, shipping, receiving, maintaining in their possession or otherwise exploiting in commerce the Knock-off Products and packaging or any other product and packaging that (1) infringes the '420 patent; (2) is confusingly similar to Pactiv's trade dress; (3) is derivative of the Pactiv confidential and other proprietary information improperly disclosed and/or misappropriated by the Defendants;

(d) Declaring that Plaintiffs own all rights in any of the Knock-off Products or other products and/or designs derived from Plaintiffs' confidential and other proprietary information.

(e) Awarding Plaintiffs Defendants' profits related to the Knock-off Products, pursuant to 15 U.S.C. § 1117 and 35 U.S.C. § 289;

(f) Awarding Plaintiffs the greater of its damages under 35 U.S.C. § 284 or Defendants' profits under 35 U.S.C. § 289 for infringement of the '420 patent;

(g) Awarding Plaintiffs their actual and consequential damages in an amount necessary to compensate Plaintiffs for the damages caused by Defendants' conduct in violation of law and equity;

(h) Awarding Plaintiffs treble damages pursuant to 15 U.S.C. § 1117 and 35 U.S.C. § 284;

(i) Declaring this an exceptional case and awarding Plaintiffs their costs and attorneys fees in this action pursuant to 35 U.S.C. § 285;

(j) Awarding Plaintiffs punitive damages;

(k) Awarding Plaintiffs prejudgment interest; and,

(l) Awarding Plaintiffs such further relief as the Court shall find just and equitable.

DATED: October 14, 2008

**PACTIV CORPORATION, PACTIV CANADA,
INC., NEWSRING INDUSTRIAL
CORPORATION AND NEWSRING
CANADA, INC.**

By: s/ David E. De Lorenzi
One of their Attorneys

Mr. David E. De Lorenzi
Mr. Michael Cukor
GIBBONS, P.C.
One Gateway Center
Newark, New Jersey 07102
973-596-4500
Attorneys for Plaintiffs

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Plaintiffs hereby demand a jury trial on all issues.

DATED: October 14, 2008

**PACTIV CORPORATION, PACTIV CANADA,
NEWSPRING INDUSTRIAL CORPORATION
AND NEWSPRING CANADA, INC.**

By: s/ David E. De Lorenzi
One of their Attorneys

Mr. David E. De Lorenzi
Mr. Michael Cukor
GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102
973-596-4500
Attorneys for Plaintiffs