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U.S. DISTRICT COURT  
DISTRICT OF COLORADO

UNITED STATES DISTRICT COURT  
DISTRICT OF COLORADO

2006 SEP -6 PM 4:23

Civil Action No. **06-CV-01769-LTB-PAC** GREGORY C. LANGHAM  
CLERK

Cake Top Publishing, Inc.  
a Colorado corporation,

BY \_\_\_\_\_ DEP. CLK

Plaintiff,

v.

DecoPac, Inc.  
a Minnesota corporation,

Defendant.

**COMPLAINT**

Plaintiff Cake Top Publishing, Inc. ("CTP") by and through its undersigned attorneys, for its Complaint for declaratory relief against Defendant, DecoPac, Inc. ("DecoPac") states as follows:

**PARTIES, JURISDICTION AND VENUE**

1. CTP is a Colorado corporation with its principal place of business in Louisville, Colorado at 1849 Cherry Street, #1, Louisville, Colorado 80027. CTP manufactures and distributes computerized cake top decorating systems throughout the United States including Colorado

2. Defendant DecoPac, Inc. is a Minnesota corporation located in Minneapolis, Minnesota and is the purported owner, by assignment, of U.S. Patent No. 7,012,712B2 (the "712 Patent"). DecoPac advertises that it manufactures and sells computerized cake top decorating systems throughout the United States including Colorado.

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §1331 and §1338 as a federal question relating to patents.

4. The Court has jurisdiction to hear this actual controversy pursuant to the Declaratory Judgment Act, 28 U.S.C. §2201 *et seq.*

5. The Court has personal jurisdiction over DecoPac pursuant to Colorado Revised Statute §13-1-1 and venue is proper in this judicial district, because Plaintiff resides here; a substantial portion of the relevant transactions and events occurred here; the injury to Plaintiff from DecoPac's conduct has occurred, and will occur here; DecoPac has purposefully directed its activities here; and the litigation results from DecoPac's activities in this judicial district.

#### NATURE OF COMPLAINT

6. In this action, Plaintiff seeks the Court's declaratory judgment that the claims of the '712 Patent are invalid and unenforceable.

7. The '712 Patent has a Provisional application filing date of March 25, 1998.

8. 35 U.S.C. §102(a) states in part that a person shall be entitled to a patent unless "the invention was known or used by others in this country, ...before the invention thereof by the applicant for patent...".

9. By information and belief the date of invention of the '712 Patent is shortly before March 25, 1998.

10. On or about May 12, 1997, in Colorado, a computerized cake top publishing system was co-developed by Frederick Wilson and Paul Para and was thereafter put into public use in several King Soopers stores in Colorado (the '63 system).

11. The '63 system had all the elements of claims 7 and 23 of the '712 Patent, and executed all of the steps of claims 12 and 19 of the '712 Patent.

12. DecoPac, by and through its attorneys, has created a reasonable apprehension on Plaintiff's part that Plaintiff is faced with a patent infringement suit if Plaintiff continues to make and sell its computerized cake top publishing system. DecoPac has escalated its threats in a series of three written communications to the plaintiff. (See Exhibits A, B, and C).

13. The '63 system did not have a control system that activated a retrieval and a printing with a single button.

14. Plaintiff's present cake top decorating system does not have a controller that activates a retrieval and a printing with a single button.

15. As a result, an actual controversy presently exists between DecoPac and Plaintiff as to the invalidity and/or the non-infringement of the '712 Patent.

**COUNT I**

**DECLARATORY RELIEF –  
NONINFRINGEMENT – '712 PATENT**

16. Plaintiff hereby incorporates and realleges Paragraphs 1 through 15 above as fully set forth herein.

17. Claims 1-6 of the '712 Patent are not infringed, either literally or under the doctrine of equivalents, by Plaintiff's products used in Plaintiff's services because Plaintiff's controller utilizes several movements of a mouse and/or several keyboard entries to activate a retrieval and a printing.

18. Plaintiff is entitled to a declaratory judgment of this Court that claims 1-6 of the '712 Patent are not infringed by Plaintiff, its products, or the use thereof.

**COUNT II**

**DECLARATORY RELIEF –  
INVALIDITY AND UNENFORCEABILITY – '712 PATENT**

19. Plaintiff hereby incorporates and realleges Paragraphs 1 through 18 above as fully set forth herein.

20. Upon information and belief, the '712 Patent is invalid and unenforceable for failure to comply with the patent laws of the United States, including, but not limited to, 35 U.S.C. §§102 and 103 for reasons including but not limited to the following:

- (a) the alleged invention claimed in the '712 Patent was known or used by others in this country before any alleged date of invention;
- (b) the applicants for the '712 Patent did not invent the subject matter claimed in the patent;
- (c) before applicants' alleged invention of the subject matter claimed in the '712 Patent it was made in this country by others who did not abandon, suppress or conceal it; and
- (d) the differences between the patented subject matter set forth in the '712 Patent and the prior art are such that the subject matter as a whole would have been obvious at the time the subject matter was made to a person having ordinary skill in the art to which the subject matter pertains.

21. Plaintiff is entitled to a declaratory judgment of this Court that the claims 7-27 of the '712 Patent are invalid and unenforceable.

**PRAYER FOR RELIEF**

Wherefore, Plaintiff requests this honorable Court to enter judgment in its favor:

- a. Declaring that the '712 Patent and each of its claims are not infringed by Plaintiff, Plaintiff's products, or the use thereof;
- b. Declaring that the '712 Patent and each of its claims are invalid and/or unenforceable;
- c. Awarding Plaintiff its costs and reasonable attorneys' fees incurred in connection with this action, including without limitation, pursuant to 35 U.S.C. §285; and

d. Granting Plaintiff such other and further relief as this Court may deem just and proper.

**JURY DEMAND**

Plaintiff hereby demands trial by jury on all issues so triable.

Dated this 6<sup>th</sup> day of September, 2006.

Respectfully submitted,

  
s/Aaron L. Evans

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