

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

GOJO Industries, Inc.)	
One GOJO Plaza, Suite 500)	Civil Action No. 5:09-cv-02612-DDD
Akron, Ohio 44311)	
)	
Plaintiff,)	Judge: David D. Dowd, Jr.
)	
v.)	
)	
Buckeye International, Inc.)	
2700 Wagner Place)	
Maryland Heights, Missouri 63043)	
)	
Defendant.)	

FIRST AMENDED COMPLAINT

Now comes Plaintiff, GOJO Industries, Inc. (“GOJO”), and for its First Amended Complaint against Buckeye International, Inc. (“Buckeye”), alleges as follows:

PARTIES

1. GOJO is a corporation organized and existing under the laws of the State of Ohio, having a principal place of business at One GOJO Plaza, Suite 500, Akron, Ohio 44311.
2. Buckeye, upon information and belief, is a corporation organized and existing under the laws of the State of Missouri, having a principal place of business at 2700 Wagner Place, Maryland Heights, Missouri 63043.

JURISDICTION AND VENUE

3. This action arises under (a) the patent laws of the United States, specifically the Patent Act of 1952, 35 U.S.C. §1 *et seq.*; and (b) the Trademark Act of 1946 (“Laham Act”), 15 U.S.C. § 1051 *et seq.* Subject matter jurisdiction is founded under 28 U.S.C. §1331, §1338(a) and 35 U.S.C. §281 and 15 U.S.C. §1121.

4. This Court has personal jurisdiction over Buckeye because Buckeye has transacted business within this District and has caused tortuous injury by the acts complained of herein within this District, which has injured GOJO in this District.

5. Venue is proper in this District pursuant to 28 U.S.C. §1400(b) because Buckeye has committed acts of infringement and has a regular and established place of business in this District. In addition, venue is proper in this District pursuant to 28 U.S.C. §1400(b) because Buckeye resides within the Northern District of Ohio as residence is defined in 28 U.S.C. §1391(c). Particularly, Buckeye has a regular and established place of business in this District at 4587 Hinckley Industrial Parkway, Cleveland, Ohio 44109.

COUNT I - PATENT INFRINGEMENT

6. U.S. Patent No. 6,877,642 entitled “Wall-Mounted Dispenser for Liquids” (“the ‘642 patent”), issued on April 12, 2005, to Joseph S. Kanfer, who has licensed said patent to GOJO exclusively with rights of enforcement. A copy of the ‘642 patent is attached hereto as Exhibit A.

7. Buckeye has made, used, sold, offered to sell, or imported wall-mounted dispensers for liquids that are covered by one or more claims of the ‘642 patent (“Accused Products”). Such accused products include a dispenser sold under the name Symmetry™. Upon information and belief, Buckeye has further induced others to make, use, sell or offer to sell accused products within this District and elsewhere.

8. Upon information and belief, Buckeye had actual notice of the existence of the ‘642 patent at the time of engaging infringing activity.

9. Buckeye has infringed the ‘642 patent in violation of 35 U.S.C. §§271(a) and 271(c) by making, using, selling, offering to sell, and/or importing accused products

and/or material components thereof within the United States that embody the features and improvements claimed by the '642 patent. In addition, Buckeye has induced others to infringe the '642 patent in violation of 35 U.S.C. §271(b).

10. Buckeye's conduct, as alleged above, has been willful, intentional, and in conscious disregard of GOJO's rights.

COUNT II - 15 U.S.C. §1125(a)(1)(A) – UNFAIR COMPETITION

11. GOJO repeats the allegations set forth in Paragraphs 1 through 10 above as if fully rewritten.

12. GOJO is an exclusive distributor of PURELL products for QualPak, LLC, an Ohio limited liability company and licensee of the following U.S. Trademark Registrations: Registration No. 3273969 for the trademark PURELL plus design; U.S. Trademark Registration No. 2321519 for the trademark PURELL plus design; and U.S. Trademark Registration No. 1696754 for the trademark PURELL. Copies of the registrations are attached as Exhibits B through D.

13. The PURELL plus design trademark Registration No. 2321519 and the PURELL trademark Registration No. 1696754 are incontestable.

14. GOJO has used in commerce since the dates indicated in said registrations and, under the authority of QualPak, continues to use in commerce the trademarks PURELL and PURELL plus design in connection with its sales of hand sanitizer, hand sanitizer dispensing units ("the Dispensers"), and hand sanitizer cartridges designed specifically for the Dispensers ("the Cartridges").

15. The PURELL and/or PURELL plus design marks are prominently displayed on the Dispensers to advertise and promote that PURELL hand sanitizer is dispensed from the Dispensers.
16. GOJO has both the right and the obligation to protect the PURELL trademarks, including the quality of the hand sanitizer that is dispensed from the Dispensers bearing the marks PURELL and PURELL plus design.
17. GOJO has taken reasonable steps to ensure that the Dispensers bearing the marks PURELL and PURELL plus design dispense only genuine high quality GOJO hand sanitizer so as to protect GOJO's goodwill and reputation, and the goodwill and reputation of the PURELL and PURELL plus design marks.
18. Buckeye is a competitor of GOJO in the hand sanitizer product market.
19. Buckeye markets its hand sanitizer products through the same channels of trade and to the same end-user consumers as GOJO.
20. Buckeye recently began manufacturing and marketing its own hand sanitizer cartridges under the brand name "Symmetry" and the mark "SUREfit" ("Buckeye Cartridges") to customers of GOJO who have purchased GOJO's Dispensers bearing the marks PURELL and PURELL plus design.
21. Upon information and belief, Buckeye has intentionally designed and is manufacturing, marketing and selling the Buckeye Cartridges for use in GOJO's Dispensers bearing the marks PURELL and PURELL plus design.
22. Buckeye is acting with intentional disregard for GOJO's rights by intentionally targeting end user customers of GOJO's Cartridges bearing the marks PURELL and PURELL plus design with the knowledge that Buckeye's products are likely being placed

in and dispensed by GOJO's Dispensers bearing the marks PURELL and PURELL plus design in a wrongful and infringing manner.

23. Buckeye is causing end-user customers to dispense its hand sanitizer from dispensers bearing the PURELL and PURELL plus design trademarks, thereby misrepresenting the origin, nature, quality and characteristics of the dispensed hand sanitizer.

24. Buckeye is also depriving GOJO of its right to control the quality of the hand sanitizer dispensed by its Dispensers bearing the marks PURELL and PURELL plus design, and thus is causing the misrepresentation of the nature, quality and characteristics of GOJO's hand sanitizer.

25. Buckeye's conduct, directly as well as by contribution and inducement, harms GOJO and defrauds the public by (a) falsely passing off Buckeye's hand sanitizer as genuine PURELL hand sanitizer thereby diverting sales from GOJO and diminishing the PURELL trademark and GOJO's reputation, goodwill, revenue and profits; (b) depriving GOJO of its right to control the nature and quality of the hand sanitizer associated with the Dispensers and the PURELL and PURELL plus design trademarks, thereby diminishing GOJO's reputation goodwill, revenue and profits; and (c) causing confusion among consumers of the hand sanitizer dispensed from GOJO's Dispensers bearing the marks PURELL and PURELL plus design, thereby diminishing the reputation, goodwill, revenue and profits of GOJO.

26. Buckeye's manufacture, marketing and sales of its cartridges bearing the SUREfit mark to customers of GOJO who have purchased GOJO's Dispensers bearing the marks PURELL and/or PURELL plus design for use therein, directly as well as by

contribution and inducement, constitutes a false designation of origin or false or misleading description of fact or false or misleading representation of fact which is likely to cause confusion or to cause mistake or to deceive as to the origin of Buckeye's goods.

27. Buckeye's conduct as set forth herein above constitutes unfair competition in violation of 15 U.S.C. §1125(a)(1)(A), to the great and continuing damage of GOJO.

COUNT III – 15 U.S.C. § 1125(a)(1)(B) – False Advertising

28. GOJO repeats the allegations set forth in Paragraphs 1 through 27 above as if fully rewritten.

29. Buckeye's manufacture, marketing and sales of its hand sanitizer cartridges bearing the SUREfit mark to customers of GOJO who have purchased GOJO's Dispensers bearing the marks PURELL and/or PURELL plus design for use therein, constitutes commercial advertising or promotion that (1) misrepresents the nature, characteristic and qualities of Buckeye's hand sanitizer product, and/or (2) misrepresents the nature, characteristics and qualities of the PURELL product.

30. GOJO has been and continues to be, damaged by Buckeye's false advertising and promotion.

31. Buckeye's conduct as set forth herein above constitutes false advertising and promotion in violation of 15 U.S.C. § 1125(a)(1)(B), to the great and continuing damage of GOJO.

PRAYER FOR RELIEF

Wherefore, GOJO prays for judgment against Buckeye as follows:

- (a) that Buckeye be adjudged to have infringed the '642 patent;

- (b) that GOJO be awarded compensatory damages in an amount adequate to compensate it for its damage and injury, but in no event less than a reasonable royalty;
- (c) that in view of Buckeye's deliberate and intentional acts the case be declared exceptional pursuant to 35 U.S.C. §285 and Plaintiffs be awarded treble damages pursuant to 35 U.S.C. §284;
- (d) that Buckeye be enjoined from infringing the '642 patent;
- (e) that Buckeye be adjudged to have engaged in unfair competition in violation of 15 U.S.C. §1125(a)(1)(A);
- (f) that Buckeye be adjudged to have engaged in false advertising and promotion in violation of 15 U.S.C. §1125(a)(1)(B);
- (g) that Buckeye be enjoined from its acts of unfair competition, and from its false advertising and promotion;
- (h) that Buckeye account for its profits, actual damages and costs related to its various acts involving unfair competition, and false advertising and promotion;
- (i) that the award of damages for unfair competition and false advertising and promotion be trebled, this being an exceptional case;
- (j) that GOJO have and recover the costs of this action, including reasonable attorney fees and interest to the maximum extent permissible, including prejudgment interest; and
- (k) that GOJO be awarded such other and further relief as the Court may deem just and equitable.

JURY DEMAND

A trial by jury of the maximum number of jurors allowed by law is hereby demanded.

GOJO INDUSTRIES, INC.

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