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3:05-CV-01470 MINTZ V. DIETZ AND WATSON INC

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CMP.

ORIGINAL

FILED

05 JUL 22 PM 4:23

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: *[Signature]* DEPUTY

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6 Attorneys For: Plaintiffs
7 NEIL MINTZ, MARCUS MINTZ AND
8 JIF-PAK MANUFACTURING, INC.

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

11 NEIL MINTZ, an individual; and MARCUS
12 MINTZ, an individual; and JIF-PAK
13 MANUFACTURING, INC., a California
14 corporation,

14 Plaintiffs,

15 v.

16 DIETZ & WATSON, INC., a Pennsylvania
17 corporation and PACKAGE CONCEPTS &
18 MATERIALS, INC., a South Carolina
19 corporation,

18 Defendants.

CASE NO. **05 CV 1470 L (AJB)**

**COMPLAINT FOR PRELIMINARY
AND PERMANENT INJUNCTION AND
FOR DAMAGES FOR PATENT
INFRINGEMENT, CONTRIBUTORY
INFRINGEMENT AND INDUCEMENT
TO INFRINGE, AND FOR
DECLARATORY RELIEF
REGARDING NON-INTERFERENCE
WITH BUSINESS RELATIONSHIP**

Demand for Jury Trial

21 Plaintiffs, NEIL MINTZ, MARCUS MINTZ, and JIF-PAK MANUFACTURING, INC.
22 (collectively "Plaintiffs") for their complaint against Defendant, DIETZ & WATSON, INC.,
23 (hereinafter called "D&W") and PACKAGE CONCEPTS & MATERIALS (hereinafter "PCM")
24 hereby alleges as follows:

25 **I.**

26 **JURISDICTION**

27 1. This is a civil action for patent infringement, contributory infringement and
28 inducement to infringe which arises under the Patent Laws of the United States namely Title 35

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1 of the United States Code and this Court has jurisdiction under 28 U.S.C. §§ 1331, 1332 and
2 1338(a). In addition, this is an action for declaratory judgment (28 U.S.C. § § 2201, 2202)
3 regarding the non-interference with a business relationship and this Court has jurisdiction under
4 28 U.S.C. § 1367.

5 **II.**

6 **VENUE**

7 2. Plaintiffs are informed and believe that this Court is the proper venue under 28
8 U.S.C. §§ 1391(b), (c) and § 1400 because Defendant D&W is subject to personal jurisdiction in
9 this judicial district, the products of the infringing activities, as alleged herein below, are
10 advertised and sold within this judicial district and D&W is doing business in this judicial
11 district.

12 3. Plaintiffs are informed and believe that this Court is the proper venue under 28
13 U.S.C. §1391(b), (c) and § 1440 because Defendant PCM, is subject to personal jurisdiction in
14 this judicial district, the products of the infringing activities, as alleged herein below, are
15 advertised and sold within this judicial district and PCM is doing business in this Judicial
16 District. Plaintiffs are further informed and believe that Defendant PCM will admit to the
17 jurisdiction of this court.

18 **III.**

19 **THE PARTIES**

20 4. Plaintiff Neil Mintz is an individual, residing in the county of San Diego.

21 5. Plaintiff Marcus Mintz is an individual, residing in the county of San Diego.

22 6. Jif-Pak Manufacturing, Inc. is a California corporation with its principal place of
23 business in the County of San Diego ("Jif-Pak").

24 7. Upon information and belief, Defendant D&W is a Pennsylvania corporation,
25 with a principal place of business in Philadelphia, Pennsylvania.

26 8. Upon information and belief, Defendant PCM is a South Carolina corporation,
27 with a principal place of business in Greenville, South Carolina.

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IV.

COUNT 1

PATENT INFRINGEMENT

(Against All Defendants)

9. Plaintiffs, Neil Mintz and Marcus Mintz, reallege the allegations of the foregoing Paragraphs 1 through 6, and incorporates allegations herein by reference as though fully set forth.

10. On May 9, 1995, United States Letters Patent No. 5,413,148 (the '148 patent) entitled Casing Structure for Encasing Meat Products (hereinafter the Patented Invention) issued to co-inventors Neil Mintz and Marcus Mintz. Plaintiffs are the owners/licensees of the '148 patent and enjoy all rights, title and interest in and to said '148 patent.

11. Plaintiffs Neil Mintz and Marcus Mintz, have informally licensed the right to make have made use sell and advertise the invention claimed in the '148 patent to Plaintiff Jif-Pak.

12. The '148 patent relates to a tubular casing for meat products having a stockinette member with a knit tubular member formed of threads and a netting arrangement which is intricately formed with the stockinette member. The netting arrangement may either be knit in with the stockinette member or the strands of the knitting arrangement may be laid in.

13. Plaintiffs are informed and believe and on that basis alleged that Defendants have been and continue to directly infringe, contributory infringement and/or induced others to infringe the '148 patent by practicing the patent invention, selling components which have no substantial non-infringing use and/or knowingly teaching others to practice the patented invention.

14. Plaintiffs are informed and believe that Defendants infringement is willful, malicious and without regard to the rights of Plaintiffs.

15. Plaintiffs are further informed and believe that such practice will continue unless enjoined by this Court.

/////

V.

COUNT TWO

DECLARATORY JUDGMENT: NON-INTERFERENCE
WITH BUSINESS RELATIONSHIP

(Against All Defendants)

16. Plaintiff Jif-Pak reallege all the allegations in the foregoing paragraphs 1 through 15 and incorporates said allegations herein by reference as though fully set forth.

17. Plaintiff Jif-Pak is the licensee of the '148 patent and has notified Defendant D&W and other customers including Specialty Food Group, Inc. of Virginia of the existence of the '148 patent and that their activities may be infringing said patent.

18. Plaintiff Jif-Pak's notice was in the form of a communication to Plaintiff Jif-Pak's current customers to identify the benefits of continuing to do business with Jif-Pak.

19. Defendant PCM has asserted that Jif-Pak's communication with its customers regarding the existence of the '148 patent and encouraging its customers to maintain its business with Jif-Pak constitutes an interference with PCM's relationship with said customers.

20. Jif-Pak has notified PCM that it has the right to advise others, specifically Plaintiffs own customers as to the existence of the '148 patent and of its belief that the activities of such customers may constitute infringement and that Jif-Pak would like to maintain their business.

21. There is a present actual and continuing controversy between Plaintiff Jif-Pak and Defendant PCM as to Jif-Pak's right to notify its customers including Dietz & Watson, Inc. of the existence of the '148 patent and to indicate that its customers including Dietz & Watson, Inc. may be infringing such patent..

VI.

PRAYER

WHEREFORE, Plaintiffs pray the Court for the following relief:

1. That Defendants, their subsidiaries, affiliates, parents, successors, assigns, officers, agents, servants, employees, attorneys, and all persons acting in concert or in

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1 participation with them, or any of them, be preliminarily enjoined during the pendency of this
2 action, and permanently enjoined thereafter from infringing, contributing to the infringement of,
3 and inducing infringement of the '148 patent and specifically from directly or indirectly making,
4 using, marketing, advertising, offering for sale, or selling and distributing devices embodying the
5 invention of the '148 patent during the life of the '148 patent without express written authority of
6 Plaintiffs. That Defendants be ordered to deliver to Plaintiffs for destruction at Plaintiffs' option,
7 their entire inventory of products that infringe the '148 patent.

8 2. That Defendants and each of them, be directed to fully compensate Plaintiffs for
9 all damages attributable to Defendants' infringement of '148 patent in an amount according to
10 proof at trial.

11 3. That Plaintiffs' notification to Dietz & Watson, Inc. and other customers and
12 potential customers regarding the existence of the '148 patent is lawful and does not constitute
13 an interference with any business relationship of Defendant PCM.


14 4. For an accounting of such damages.

15 5. That such damages be trebled.

16 6. An award of attorneys' fees, interest and costs against Defendants and each of
17 them.

18 Dated: July 22, 2005

GORDON & REES LLP

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21 By: 
22 John L. Haller
23 Attorneys For Plaintiffs
24 NEIL MINTZ and MARCUS MINTZ
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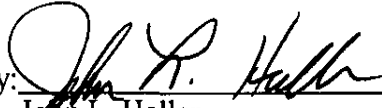
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1 DEMAND FOR JURY TRIAL

2 Plaintiffs hereby demand trial by jury of every issue that is triable by jury.

3 Dated: July 22, 2005

GORDON & REES LLP

4
5 By: 
6 John L. Haller
7 Attorneys For Plaintiffs
8 NEIL MINTZ and MARCUS MINTZ

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AO 120 (Rev.3/04)

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court San Diego on the following Patents or Trademarks:

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT
05CV1470	7/22/05	United States District Court, Southern District of California
PLAINTIFF		DEFENDANT
Mintz		Dietz and Watson Inc
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 5,413,148	5/9/95	Mintz
2		
3		
4		
5		

In the above-entitled case, the following patent(s)/trademark(s) have been included:

DATE INCLUDED	INCLUDED BY			
	<input type="checkbox"/> Amendment	<input type="checkbox"/> Answer	<input type="checkbox"/> Cross Bill	<input type="checkbox"/> Other Pleading
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK		
1				
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In the above-entitled case, the following decision has been rendered or judgment issued:

DECISION/JUDGMENT		
CLERK	(BY) DEPUTY CLERK	DATE

Copy 1 - Upon initiation of action, mail this copy to Director

Copy 3 - Upon termination of action, mail this copy to Director

Copy 2 - Upon filing document adding patent(s), mail this copy to Director

Copy 4 - Case file copy

ORIGINAL

CIVIL COVER SHEET

JS 44 (Rev. 07/89)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
NEIL MINTZ, MARCUS MINTZ, and JIF-PAK MANUFACTURING, INC.

DEFENDANTS
DIETZ & WATSON, INC., and PACKAGE CONCEPTS & MATERIALS, INC.
05 JUL 22 PM 4:23

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF SAN DIEGO
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
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101 W. BROADWAY
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SAN DIEGO, CA 92101
619-696-6700

ATTORNEYS (IF KNOWN)
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NEXSEN PRUET
201 W. McBee Avenue, Suite 400
P. O. Drawer 10648, Greenville, SC 29603
864-282-1172

05 CV 1470 L (AJB)

II. BASIS OF JURISDICTION (PLACE AN 'X' IN ONE BOX ONLY)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN 'X' IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)
PT DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business in This State
Incorporated and Principal Place of Business in Another State
Foreign Nation

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)
Patent Infringement (direct, contributory, inducement); Declaratory Judgment (Non-Interference with Business Relationship)
LP: 1338 SD

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes checkboxes for various legal categories like Insurance, Land Condemnation, Personal Injury, etc.

VI. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)
1 Original Proceeding
2 Removal from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ in excess of \$75,000 and declaratory relief CHECK YES only if demanded in complaint: JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE Hon. Robert B Harwell Docket Number District of South Carolina (Greenville) Case No. 05-CV-1184

DATE July 22, 2005 SIGNATURE OF ATTORNEY OF RECORD John L. Haller, Esq., GORDON & REES LLP

Handwritten notes: 115662 \$250.00 pr 7/22/05