

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

YOON JA KIM,

Plaintiff,

vs.

THE EARTHGRAINS COMPANY,
k/n/a SARA LEE BAKERY GROUP, INC.

Defendant.

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Case No. 01 CV 3895

Magistrate Michael T. Mason

NOTICE OF FILING

To: David Levitt
HINSHAW & CULBERTSON
222 North LaSalle Street
Suite 300
Chicago, Illinois 60601
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Bryan K. Wheelock
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FILED
JAN 8 2005
MICHAEL W DOBBINS
CLERK, U.S. DISTRICT COURT

DOCKETED

JAN 4 2005

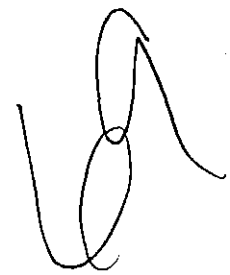
PLEASE TAKE NOTICE that on Monday, January 3, 2005, Plaintiff Yoon Ja Kim, by her attorneys, filed **PLAINTIFF'S FIRST AMENDED COMPLAINT** in the above-captioned matter, a copy of which is attached hereto.

Respectfully submitted,

YOON JA KIM

By: 
One Of Her Attorneys

Keith D. Parr
Denean K. Sturino
LORD, BISSELL & BROOK LLP
115 South LaSalle Street
Chicago, IL 60603
(312) 443-0497 (K. Parr)
(312) 443-1893 (D. Sturino)



CERTIFICATE OF SERVICE

I, Denean K. Sturino, an attorney, certify that on this 3rd day of January, 2005, I caused to be served prior to 5:00 p.m., a true and correct copy of the foregoing **NOTICE OF FILING** by causing copies of same to be delivered by U.S. Mail, first class postage prepaid, to:

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Denean K. Sturino

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CLERK, U.S. DISTRICT COURT
MICHAEL W. DOBBINS
JAN 3 2005

FILED

PLAINTIFF'S FIRST AMENDED COMPLAINT

Plaintiff, Yoon Ja Kim ("Kim") by her attorneys, LORD, BISSELL & BROOK LLP
states and alleges as follows:

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JAN 4 2005

The Parties

1. Dr. Kim is an individual residing at 913 Frances Parkway, Park Ridge, Illinois 60068. Dr. Kim is also the sole proprietor of a company called Research Resources, Inc.
2. On October 26, 1999, the United States Patent and Trademark Office duly and legally issued United States Patent No. Re.: 35,355 ("the '355 patent"), entitled "Potassium Bromate Replacer Composition," to Kim, naming Kim as the sole inventor.
3. At all times relevant to this complaint, Kim was, and is, the lawful owner of all right, title and interest in the '355 patent.
4. On information and belief, The Earthgrains Company, n/k/a Sara Lee Bakery Group Inc. ("Earthgrains") is a corporation organized and existing under the laws of the State of Missouri with its principal place of business in St. Louis, Missouri.

5. On information and belief, Earthgrains received notice of the '355 patent at least by May 3, 2000.

6. At all times relevant to this complaint, including from October 26, 1999 to the present date, Earthgrains engaged in the business of developing, manufacturing, producing and distributing certain types of breads under at least the "Healthy Choice" brands and the "D'Italia" and "Buttertop" brands (collectively "Accused Products"). On information and belief, the Accused Products are made using the stated proportions of ascorbic acid, food acid, flour and other ingredients claimed by at least claims 5, 6, 7, 8, and/or 10 of the '355 patent.

Jurisdiction and Venue

7. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35 of the United States Code.

8. This court has jurisdiction of this action under 28 U.S.C. §1331 and §1338(a).

9. This court has personal jurisdiction over Earthgrains in this action because Earthgrains does business in this District, and because the Accused Products are licensed, distributed and sold in this District.

10. Venue is proper in this District under 28 U.S.C. §1391 and §1400(b).

Infringement of the '355 Patent

11. Kim realleges Paragraphs 1-10 as if specifically realleged and set forth herein.

12. Earthgrains has entered into various licensing agreements with ConAgra Foods Inc. ("ConAgra") to manufacture and distribute breads under the "Healthy Choice" brand using the formulas required by and provided by ConAgra. Earthgrains has and continues to strictly adhere to the bread formulas provided by ConAgra in the production and distribution of "Healthy Choice" breads. The formula that Earthgrains uses to produce and distribute the "Healthy

Choice” bread brands calls for the ascorbic acid, food acid, flour and/or other ingredients, or their equivalents, in the proportions specified in the claims of Kim’s ‘355 patent.

13. Earthgrains has and continues to develop, manufacture, produce, distribute and sell breads under the “D’Italia” and “Buttertop” brands which use bread formulas calling for proportions of ascorbic acid, food acid, flour, and/or other ingredients, or their equivalents, as specified in the claims of Kim’s ‘355 patent.

14. On information and belief, the Accused Products, when made, used, sold or offered for sale by Earthgrains directly infringe the ‘355 patent, either literally or under the doctrine of equivalents.

15. Earthgrains knew, or should have known, at least by May 3, 2000, that the Accused Products, when made, used, sold or offered for sale by Earthgrains, directly infringed or under the doctrine of equivalents infringed the ‘355 patent.

16. Earthgrains has infringed and continues to infringe upon one or more of the claims of the ‘355 patent by knowingly manufacturing, selling, offering for sale, producing and distributing the Accused Products.

17. Earthgrains’ actions constitute direct infringement as defined in 35 U.S.C. §271(a) by making, using, selling and/or offering for sale within this District and elsewhere in the United States the Accused Products without authority or license from Kim.

18. Kim has been and continues to be damaged by the continued infringement of Earthgrains under 35 U.S.C. §284, including monetary damages and/or a reasonable royalty, as applicable.

19. Kim will suffer additional and irreparable damages unless this Court enjoins Earthgrains under 35 U.S.C. §283 from continuing its infringement. Kim has no adequate remedy at law.

20. Earthgrains has had actual knowledge of the '355 patent since at least as early as May 3, 2000. Upon information and belief, the aforesaid mentioned infringement of the '355 patent by Earthgrains has been and is deliberate and in willful disregard of Kim's patent rights, entitling Kim to an assessment of treble damages against Earthgrains pursuant to 35 U.S.C. §284.

21. Because Earthgrains has been aware of the '355 patent for over four years and has refused to cease its infringing acts, this case should be deemed an exceptional case, also entitling Kim to an award of her reasonable attorneys' fees pursuant to 35 U.S.C. §285.

22. Kim demands a trial by jury on all issues so triable.

WHEREFORE, Kim prays for a preliminary and permanent injunction against Earthgrains for its infringing acts; an accounting for damages and/or award of a reasonable royalty for Earthgrains' infringing acts; treble damages; an assessment against Earthgrains of interest, costs and reasonable attorneys' fees incurred by Kim; and such other and further relief as the Court may deem just and proper.

Dated: January 3, 2005

Respectfully submitted,

YOON JA KIM

By:


One Of Her Attorneys

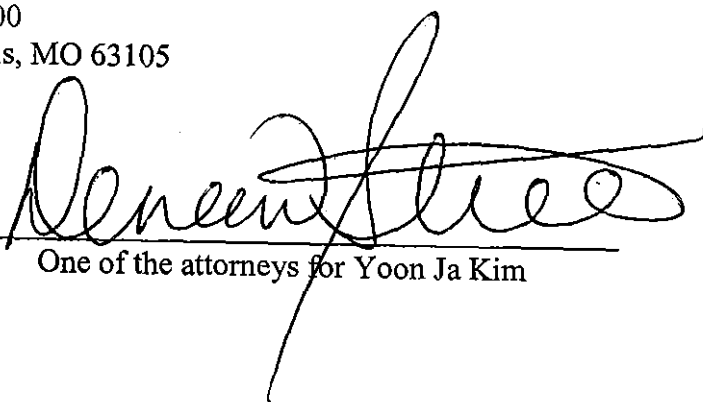
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I, Denean K. Sturino, certify that on this 3rd day of January, 2005, I caused to be served prior to 5:00 p.m., a true and correct copy of the foregoing Plaintiff's First Amended Complaint by causing copies of same to be delivered by U.S. mail, first class postage prepaid, to:

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222 North LaSalle Street
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Mr. Bryan K. Wheelock
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One of the attorneys for Yoon Ja Kim