

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

MARSHALL PACKAGING COMPANY, LLC,	§	CIVIL ACTION NO.
Plaintiff,	§	
v.	§	
CG ROXANE LLC, JANA NORTH AMERICA, INC., AND TOPCO HOLDINGS, INC.	§	
Defendants.	§	
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PLAINTIFF’S ORIGINAL COMPLAINT

Plaintiff Marshall Packaging Company, LLC (“Marshall Packaging”), by and through its undersigned counsel, files this Original Complaint against CG Roxane LLC, Jana North America, Inc., and Topco Holdings, Inc. (collectively “Defendants”) as follows:

BACKGROUND

1. Plaintiff Marshall Packaging Company, LLC is the owner of all rights, title and interest in and to United States Patent No. RE 38,770 entitled “Collapsible Container” (herein the “’770 Patent”).

2. The ‘770 Patent has been licensed by many of the major companies that make or sell, in the United States, water and other beverages that are packaged in collapsible plastic containers or bottles. Companies that have licensed the ‘770 Patent from Marshall Packaging include: Nestle Waters North America, Inc.; The Coca Cola Company; Groupe Danone SA; Ball Corporation; Amcor PET Packaging; Constar International, Inc.; Plastipak Packaging, Inc.; Premium Waters, Inc.; Niagara Drinking Waters, Inc.; and many others.

3. This is a patent infringement action alleging that each Defendant has infringed the ‘770 Patent without a license. Marshall Packaging seeks monetary damages, no less than a reasonable royalty, pursuant to 35 U.S.C. §284. Marshall Packaging also seeks injunctive relief to prevent further infringement of the ‘770 Patent.

PARTIES

4. Plaintiff Marshall Packaging Company, LLC (“Marshall Packaging”) is a limited liability company, organized and existing under the laws of the State of Texas. Marshall Packaging maintains its principal place of business at 104 E. Houston St., Suite 170, Marshall, Texas 75670. Marshall Packaging is the assignee of all rights, title, and interest in and to the ‘770 Patent and possesses all rights and recovery under the ‘770 Patent, including the right to sue for infringement and recover past damages.

5. Defendant CG Roxane LLC (“CG Roxane”) is a corporation organized and existing under the laws of the State of California. On information and belief, CG Roxane maintains its principle place of business at 55 Francisco St, Suite 410, San Francisco, CA 94133. CG Roxane may be served via its registered agent for service of process, Marco Quazzo, 855 Front St, San Francisco, CA 94111.

6. Defendant Jana North America, Inc. (“Jana”) is a corporation organized and existing under the laws of the State of New York. On information and belief, Jana maintains its principle place of business at 461 Park Avenue South, New York, NY 10016. Jana may be served via its registered agent for service of process, Corporation Service Company, 80 State Street, Albany, New York, 12207-2543.

7. Defendant Topco Holdings, Inc. (“Topco”) is a corporation organized and existing under the laws of the State of Wisconsin. On information and belief, Topco maintains

its principle place of business at 7711 Gross Point Road, Skokie, IL 60077. Topco may be served via its registered agent for service of process, CT Corporation System, 208 So. LaSalle Street, Suite 814, Chicago, IL 60604.

JURISDICTION AND VENUE

8. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. § 271. This Court has subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

9. The Court has personal jurisdiction over each Defendant. Each Defendant has conducted and does conduct business within the State of Texas. Each Defendant, directly and/or through intermediaries (including subsidiaries, distributors, retailers, and others), ships, distributes, offers for sale, sells, and/or advertises its products (including, but not limited to, the products that are accused of infringement in this lawsuit) in the United States, the State of Texas, and the Eastern District of Texas. Each Defendant (directly and/or through intermediaries, including subsidiaries, distributors, retailers, and others) has purposefully and voluntarily placed one or more of its products (including, but not limited to, the products that are accused of infringement in this lawsuit), as described below in Count 1, into the stream of commerce with the expectation that they will be purchased by consumers in the Eastern District of Texas. These infringing products have been and continue to be purchased by consumers in the Eastern District of Texas. Each Defendant has committed the tort of patent infringement within the State of Texas, and, more particularly, within the Eastern District of Texas as alleged in more detail below.

10. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §§ 1391 and 1400(b).

COUNT I – INFRINGEMENT OF U.S. PATENT RE 38,770

11. Marshall Packaging refers to and incorporates herein the allegations of Paragraphs 1 through 10 above.

12. United States Patent No. 5,370,250 (the “‘250 Patent”), entitled “Collapsible Container” was duly and legally issued by the United States Patent and Trademark Office on December 6, 1994 after a full and fair examination. The ‘250 Patent was reissued as Re. 36,377 (the “‘377 Patent”) on November 9, 1999 after a full and fair reissue proceeding. The ‘377 Patent was reissued as Re. 38,770 (the “‘770 Patent) (attached hereto as Exhibit “A”) on August 9, 2005 after a full and fair reissue proceeding. Marshall Packaging is the assignee of all rights, title, and interest in and to the ‘770 Patent and possesses all rights of recovery under the ‘770 Patent, including the right to sue for infringement and recover past damages.

13. Defendant CG Roxane has infringed and continues to infringe the ‘770 Patent by making, using, offering to sell, selling (directly or through intermediaries or authorized agents under CG Roxane’s control), and/or importing, in this judicial district and elsewhere in the United States, certain collapsible beverage containers that use and embody the patented inventions claimed in the ‘770 Patent. The infringing beverage containers include, without limitation, containers sold under the following brand labels and sizes: Crystal Geyser Natural Alpine Spring Water sold in 1.5 liter and 16.9 ounce sizes; Clover Valley Natural Spring Water sold in a 1.5 liter size; and Clover Valley Purified Water sold in .5 liter and 10 ounce sizes. Upon information and belief, CG Roxane’s infringing containers may be made, used, sold, offered for sale, and/or imported under other brand labels and/or in other sizes.

14. Defendant Jana has infringed and continues to infringe the ‘770 Patent by making, using, offering to sell, selling (directly or through intermediaries or authorized agents under

Jana's control), and/or importing, in this judicial district and elsewhere in the United States, certain collapsible beverage containers that use and embody the patented inventions claimed in the '770 Patent. The infringing beverage containers include, without limitation, containers sold under the following brand labels and sizes: Jana Natural European Artesian Water sold in 1.5 liter, 1 liter, and .5 liter sizes. Upon information and belief, Jana's infringing containers may be made, used, sold, offered for sale, and/or imported under other brand labels and/or in other sizes.

15. Defendant Topco has infringed and continues to infringe the '770 Patent by making, using, offering to sell, selling (directly or through intermediaries or authorized agents under Topco's control), and/or importing, in this judicial district and elsewhere in the United States, certain collapsible beverage containers that use and embody the patented inventions claimed in the '770 Patent. The infringing beverage containers include, without limitation, containers sold under the following brand labels and sizes: Food Club Spring Water sold in 1 liter, 20 ounce, and 10 ounce sizes. Upon information and belief, Topco's infringing containers may be made, used, sold, offered for sale, and/or imported under other brand labels and/or in other sizes.

16. Marshall Packaging specifically excludes from this claim for patent infringement all containers (if any) that are licensed pursuant to any previous license agreement entered into by Marshall Packaging.

17. Pursuant to 35 U.S.C. §284, Marshall Packaging is entitled to recover from each Defendant the damages sustained by Marshall Packaging as a result of each Defendant's wrongful acts in an amount subject to proof at trial, and no less than a reasonable royalty.

18. Defendants' infringement of Marshall Packaging's exclusive rights under the '770 Patent will continue to damage Marshall Packaging, causing irreparable harm for which there is

no adequate remedy at law, unless it is enjoined by this Court.

JURY DEMAND

19. Plaintiff demands a trial by jury on all issues and has paid the required jury fee.

PRAYER FOR RELIEF

20. Plaintiff Marshall Packaging Company, LLC respectfully requests this Court to enter judgment in its favor against each Defendant, granting the following relief:

- A. An adjudication that each Defendant has infringed and continues to infringe claims of the '770 Patent;
- B. An award to Marshall Packaging of damages adequate to compensate it for each Defendant's acts of infringement, no less than a reasonable royalty, together with prejudgment interest;
- C. An award of Marshall Packaging's costs of suit and reasonable attorneys' fees pursuant to 35 U.S.C. § 285 due to the exceptional nature of this case, or as otherwise permitted by law;
- D. A grant of permanent injunction pursuant to 35 U.S.C. § 283, enjoining each Defendant from further acts of infringement; and
- E. Any further relief that this Court deems just and proper.

Dated: August 12, 2011

Respectfully submitted,

By: /s/ Donald Puckett
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