

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RICH PRODUCTS CORPORATION,

Plaintiff

v.

Civil No. _____

CABIN FOODS, LLC, a Limited Liability
Company organized under the laws of Texas,
and CABIN FOODS, LLC, a Limited Liability
Company organized under the laws of
California.

Defendant.

COMPLAINT

Plaintiff Rich Products Corporation, through its attorneys, Hodgson Russ LLP,
alleges as follows:

The Parties

1. Plaintiff Rich Products Corporation (“Rich Products”) is a corporation incorporated under the laws of the State of Delaware, and maintains its principal place of business at One Robert Rich Way, Buffalo, New York 14213.

2. Defendant Cabin Foods, LLC is a limited liability company organized and existing under the laws of the state of Texas and has its principal office at 800 Brazos, Suite 400, Austin, Texas 78701 (“Cabin Foods (Texas)”).

3. In or about July 2010, Cabin Foods (Texas) merged with Cabin Foods, LLC, a California limited liability company organized and existing under the laws of California

which had its principal office at 2216 Fanwood Avenue, Long Beach, California 90815 (“Cabin Foods (California)”).

4. Cabin Foods (Texas) is the successor of Cabin Foods (California) and has succeeded to all liabilities of Cabin Foods (California).

5. Cabin Foods (Texas) and Cabin Foods (California) are engaged in the same business of dessert manufacture and have the same owner.

6. Cabin Foods (Texas) and Cabin Foods (California) are referred to herein as “Cabin Foods.”

Jurisdiction and Venue

7. Plaintiff brings this action for patent infringement under the Patent Act, 35 U.S.C. § 1, *et seq*, including 35 U.S.C. § 271. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) and (b) and 15 U.S.C. § 1121(a) and supplemental jurisdiction under 28 U.S.C. § 1367.

8. Venue in this judicial district is proper pursuant to 28 U.S.C. §§ 1391 and 1400.

The Patents at Issue

9. The patents at issue relate to pourable dessert liquid products.

10. United States Patent No. 6,197,362, entitled “POURABLE DESSERT LIQUID PRODUCT” (the “‘362 patent”), issued on March 6, 2001. Rich Products is the

assignee of the '362 patent. A copy of the '362 patent is attached as Exhibit A.

11. United States Patent No. 6,569,485, entitled "POURABLE DESSERT LIQUID PRODUCT" (the "'485 patent"), issued on May 27, 2003. Rich Products is the assignee of the '485 patent. A copy of the '485 patent is attached as Exhibit B.

12. United States Patent No. 7,449,208, entitled "POURABLE DESSERT LIQUID PRODUCT" (the "'208 patent"), issued on November 11, 2008. Rich Products is the assignee of the '208 patent. A copy of the '208 patent is attached as Exhibit C.

13. United States Patent Application No. 12/267,832 (Publication No. US 2009/0068334 A1), entitled "POURABLE DESSERT LIQUID PRODUCT," was published on March 12, 2009. A copy of this patent application is attached as Exhibit D. Rich Products is the assignee of this application, and the application is a continuation of the '208 Patent.

Factual Background

14. Cabin Foods offers a variety of desserts and related products.

15. Among the products manufactured and sold by Cabin Foods is a dessert topping mix marketed under the registered trademark "Tres Leches de Mexico." A copy of the label of the Tres Leches de Mexico product is attached as Exhibit E.

16. Cabin Foods distributes its product to Sam's Club nationwide, and a variety of grocery stores. A copy of promotional material published by Cabin Foods indicating its sales throughout the United States is attached as Exhibit F.

17. In its promotional material, Cabin Foods states that it “started commercializing our own Tres Leches de Mexico (R) mix to the most competitive price in the market.” *See* Exhibit F.

18. Rich Products currently markets and sells a dessert topping mix called Tres Riches, and Rich Products practices the claims of the patents at issue.

19. Cabin Foods’s product, Tres Leches de Mexico, contains protein, fat, sweetener, stabilizer, emulsifier, and flavoring. The composition is shown on the product label of Tres Leches de Mexico. *See* Exhibit F.

20. The formulation of Cabin Foods’s Tres Leches de Mexico product is contained in the claims of the patents at issue, including those claims set forth herein.

The ‘362 Patent

21. Claim 1 of the ‘362 Patent is directed to a ready-to-use liquid dessert. The dessert comprises about 2 to 20 wt % of a protein source, about 1 to 15 wt % of fat, about 4 to 35 wt % of sweetener, about 0.01 to 2 wt % of stabilizer, about 0.1 to 2 wt % of flavoring agent, and about 0.1 to 2 wt % of emulsifier.

The ‘485 Patent

22. Claim 3 of the ‘485 Patent is directed to a ready-to-use liquid tres leches dessert composition. The composition comprises: about 2% to about 20% protein; about 4 to about 12% fat; about 10% to about 25% sweetener comprising dry and/or liquid sweetener; about

0.01 to about 1% stabilizer; about 0.05 to about 1% emulsifier; and about 0.2% to about 0.6% flavoring agent.

23. Claim 30 of the '485 Patent is directed to a ready-to-use liquid tres leches dessert composition. The composition comprises: about 2% to about 20% protein; about 4 to about 12% fat; about 10% to about 25% sweetener comprising dry and/or liquid sweetener; about 0.01 to about 1% stabilizer; about 0.05 to about 1% emulsifier; and about 0.2% to about 0.6% flavoring agent.

The '208 Patent

24. Claim 1 of the '208 Patent is directed to a ready-to-use liquid dessert composition. The composition comprises: about 2 to 20 wt % of a protein source; about 1 to 15 wt % of fat; about 4 to 35 wt % of sweetener; and about 0.01 to 2 wt % of stabilizer and the composition produces an unstable foam when whipped.

Tres Leches de Mexico

25. The label on the container of Cabin Foods's Tres Leches de Mexico sets out the ingredients of liquid dessert product. *See* Exhibit A.

26. Tres Leches de Mexico contains 3 grams of protein per 100 gram serving size. This equates to 3% by weight protein in the product.

27. Tres Leches de Mexico contains dried non-fat milk, a source of dairy protein. The amount of protein is within the recited range of protein source in the patents at issue.

28. The product contains 5 grams of fat per 100 gram serving size. This equates to 5% by weight fat in the product. Tres Leches de Mexico contains vegetable shortening, a fat. This falls within the recited range of fat in the patents at issue.

29. Tres Leches de Mexico contains 14 grams of sugars per 100 gram serving size. This equates to 14% by weight sugars.

30. Tres Leches de Mexico contains glucose, a sweetener. The amount of sugars falls within the recited range of sweetener in the patents at issue.

31. Tres Leches de Mexico contains carrageenans, gelatin, and alginate as stabilizers. The amount of stabilizer is within the claimed ranges of the patent at issue. The amount of stabilizer is within the recited range of stabilizer in the patents at issue.

32. Tres Leches de Mexico contains vanilla flavor, an artificial flavoring. The amount of vanilla flavor is within the recited range of the patents at issue.

33. Tres Leches de Mexico contains the emulsifiers monoglycerides and diglycerides. The amount of emulsifiers is within the claimed ranges of the asserted patents.

34. The Tres Leches de Mexico formulation falls within the compositional ranges of protein, fat, and sweetener recited in the claims of the '362, '485, and '208 patents.

35. Cabin Foods's conduct in manufacturing, importing, exporting, selling, and offering to sell Tres Leches de Mexico infringes Rich Products's patents.

FIRST CAUSE OF ACTION
(Patent Infringement)

36. Plaintiff repeats the allegations set forth in paragraphs 1 through 35.

37. Cabin Foods has infringed and continues to infringe by one or more of the following: making, selling, offering for sale, importing and/or exporting, and/or using certain dessert topping mixes, which incorporate one or more claims of the '362, '485, and '208 patents.

38. The infringement by Cabin Foods is intentional and willful.

39. As a result of Cabin Foods's infringing activities, Rich Products has sustained damages in an amount to be proven at trial.

40. Cabin Foods's acts of infringement have caused and will continue to cause Rich Products irreparable harm for which there is no adequate remedy at law.

SECOND CAUSE OF ACTION
(Indirect Infringement)

41. Plaintiff repeats the allegations set forth in paragraphs 1 through 40.

42. Cabin Foods has also induced others to infringe the '362, '485, and '208 patents, in violation of 35 U.S.C. § 271. Cabin Foods has induced infringement by its distributors and retailers who are selling, using, and importing and/or exporting this product.

43. The inducement to infringe by Cabin Foods is intentional and willful.

44. As a result of Cabin Foods's infringing activities, Rich Products has sustained damages in an amount to be proven at trial.

45. Cabin Foods's inducement of infringement has caused and will continue to cause Rich Products irreparable harm for which there is no adequate remedy at law.

THIRD CAUSE OF ACTION
(Unfair Competition)

46. Plaintiff repeats the allegations set forth in paragraphs 1 through 45.

47. Cabin Foods competes with Rich Products in the dessert and bakery industry.

48. Cabin Foods has willfully misappropriated for its own benefit Rich Products's intellectual property and is profiting and unjustly enriching itself by the unlawful and unauthorized use of Rich Products's intellectual property.

49. The conduct of Cabin Foods in manufacturing, selling, and offering for sale products that misappropriate Rich Products's intellectual property has injured the business and goodwill of Rich Products, in violation of the law of unfair competition.

50. As a result of the unfair competition by Cabin Foods, Rich Products has sustained damages in an amount to be proved at trial.

WHEREFORE, Rich Products is entitled to judgment:

(1) Declaring that Defendants have directly infringed one or more claims of the '362, '485, and '208 patents;

(2) Declaring that Defendants have induced infringement of the '362, '485, and '208 patents;

(3) Declaring that Defendant Cabin Foods (Texas) is the successor to Cabin Foods, LLC (California);

(4) Granting an injunction, pursuant to 35 U.S.C. § 283 and 15 U.S.C. § 1116, preliminarily and permanently enjoining the Defendants, their officers, directors, agents, servants, employees, attorneys, subsidiaries, affiliates, and all those acting in concert with or under or through them, from making, selling, offering for sale, using, and/or exporting or importing any cakes, cake mixes, and dessert topping mixes that infringe the '362, '485, and '208 patents, or otherwise directly or indirectly committing or inducing further acts of infringement of the '362, '485, and '208 patents;

(5) Ordering an accounting for damages arising from Defendants' acts of direct infringement and/or indirect infringement as a result of Defendants' infringing activities;

(6) Awarding damages pursuant to 35 U.S.C. § 284 and 15 U.S.C. § 1117(a), with interest;

(7) Awarding damages to Rich Products for damages resulting from Defendants' unfair competition;

(8) Finding that Defendants' infringement and inducement to infringe are intentional and willful and that this is an exceptional case, and granting an order awarding treble damages and reasonable attorneys' fees to Rich Products as permitted by 35 U.S.C. §§ 284-85 and 15 U.S.C. § 1117; and

(9) Such further relief as this Court deems proper.

Jury Demand

Plaintiff hereby demands a trial by jury on all issues properly triable to a jury.

Dated: March 16, 2011

HODGSON RUSS LLP

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