

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

SARGENTO FOODS, INC.,
One Persnickety Place
Plymouth, WI 53073,

Plaintiff,

Case No. _____

v.

PERDUE FARMS INC.,
31149 Old Ocean City Road
Salisbury, MD 21804-1806,

Defendant.

COMPLAINT

Plaintiff, Sargento Foods Inc., by its attorneys, Reinhart Boerner Van Deuren s.c., as and for its complaint against Defendant Perdue Farms Inc., alleges and states as follows:

PARTIES

1. Sargento Foods Inc. ("Sargento") is a Wisconsin corporation with its headquarters and primary place of business located at One Persnickety Place, Plymouth, WI 53073. Sargento is a national packager and marketer of cheese products, non-cheese snack food items and ethnic sauces.

2. Upon information and belief, Perdue Farms Inc. ("Perdue") is a Maryland corporation with a primary place of business at 31149 Old Ocean City Road, Salisbury, MD 21804-1806.

Nature of the Action

3. This is a civil action for patent infringement of United States Patent No. 6,910,806 B2 (the " '806 Patent") and United States Patent No. 7,086,782 B2 (the " '782 Patent") arising under the Patent Laws of the United States, 35 U.S.C. § 100 *et seq.* This action relates to products manufactured, used, sold, and offered for sale and/or imported by Defendant Perdue that infringe one or more claims of the '806 and '782 Patents.

Jurisdiction and Venue

4. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338.

5. This Court has personal jurisdiction over Defendant Perdue by virtue of, *inter alia*: (1) its systematic and continuous contacts with Wisconsin; and (2) its choice to sell and offer for sale infringing products in Wisconsin causing harm to Defendant Sargento in Wisconsin.

6. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400.

Factual Background

7. On June 28, 2005, U.S. Patent No. 6,910,806, entitled "Resealable Bag for Filling with Food Product and Method" was duly and legally issued, and Sargento is the assignee of the '806 Patent. A true and correct copy of the '806 Patent is attached as Exhibit A.

8. On August 8, 2006, U.S. Patent No. 7,086,782 entitled "Resealable Bag for Filling with Food Product and Method" was duly and legally issued, and Sargento is the assignee of the '782 Patent. A true and correct copy of the '782 Patent is attached as Exhibit B.

9. Defendant Perdue has been and still is making, using, offering for sale and/or selling products embodying the patented invention disclosed in the '806 Patent, including, without limitation, at least sixteen (16) Perdue Frozen Chicken Products (as shown on the print out from Perdue's Internet web site page located at http://www.perdue.com/products/subcategory.html?category_id=41 and attached hereto as Exhibit C), as well as the Perdue Bourbon Chicken product in a 56 ounce package (as shown on the product photograph attached hereto as Exhibit D), the Perdue Popcorn Chicken product in a 56 ounce package (as shown on the product photograph attached hereto as Exhibit E), and the Perdue Oven Baked Chicken Breast Cutlet product in a 48 ounce package (as shown on the product photograph attached hereto as Exhibit F), each of which utilizes a reclosable bag covered by claims of the '806 Patent identified on the packaging as a "ZIP·PAK SLIDER" (hereafter, collectively, the "Infringing Articles").

10. Defendant Perdue has been and still is making, using, offering for sale and/or selling the Infringing Articles, which embody the patented invention disclosed in the '782 Patent.

Count I: Direct Infringement of the '806 Patent

11. Plaintiff realleges and incorporates herein by reference the allegations set forth in Paragraphs 1 through 10 above.

12. Upon information and belief, Defendant Perdue has infringed and is now infringing one or more claims of the '806 Patent under 35 U.S.C. § 271(a) by making, using, offering for sale and/or selling Infringing Articles.

13. Upon information and belief, Defendant Perdue threatens to continue to infringe one or more claims of the '806 Patent. Defendant Perdue's actions have caused and will continue to cause Plaintiff Sargento substantial and irreparable damage for which Plaintiff Sargento has no adequate remedy at law unless enjoined by this Court.

14. Upon information and belief, Defendant Perdue has committed and continues to commit its acts of infringement willfully and with reckless disregard for Plaintiff Sargento's rights.

Count II: Direct Infringement of the '782 Patent

15. Plaintiff realleges and incorporates herein by reference the allegations set forth in Paragraphs 1 through 14 above.

16. Upon information and belief, Defendant Perdue has infringed and is now infringing one or more claims of the '782 Patent under 35 U.S.C. § 271(a) by making, using, offering for sale and/or selling Infringing Articles.

17. Upon information and belief, Defendant Perdue threatens to continue to infringe one or more claims of the '782 Patent. Defendant Perdue's actions have

caused and will continue to cause Plaintiff Sargento substantial and irreparable damage for which Plaintiff Sargento has no adequate remedy at law unless enjoined by this Court.

18. Upon information and belief, Defendant Perdue has committed and continues to commit its acts of infringement willfully and with reckless disregard for Plaintiff Sargento's rights.

COUNT III: Inducement of Patent Infringement of the '806 Patent

19. Plaintiff realleges and incorporates herein by reference the allegations set forth in Paragraphs 1 through 18 above.

20. Upon information and belief, Defendant Perdue manufactured, offered for sale and sold Infringing Articles which infringe the '806 Patent and which entered the market with the knowledge, belief or expectation that a substantial portion of the products so offered for sale would be the subject of infringing retail sales to the public.

21. As a result, Defendant Perdue is liable for infringement under 35 U.S.C. § 271(b) as an active inducer of infringement of the '806 Patent in causing infringing sales, by others, of Infringing Articles embodying the apparatus disclosed in the '806 Patent.

22. Upon information and belief, Defendant Perdue threatens to continue to induce infringement of one or more claims of the '806 Patent. Defendant Perdue's actions have caused and will continue to cause Plaintiff Sargento

substantial and irreparable damage for which Plaintiff Sargento has no adequate remedy at law unless enjoined by this Court.

23. Upon information and belief, Defendant Perdue has committed and continues to commit its acts of infringement willfully and with reckless disregard for Plaintiff Sargento's rights.

COUNT IV: Inducement of Patent Infringement of the '782 Patent

24. Plaintiff realleges and incorporates herein by reference the allegations set forth in Paragraphs 1 through 23 above.

25. Upon information and belief, Defendant Perdue manufactured, offered for sale and sold Infringing Articles which infringe the '782 Patent and which entered the market with the knowledge, belief or expectation that a substantial portion of the products so offered for sale would be the subject of infringing retail sales to the public.

26. As a result, Defendant Perdue is liable for infringement under 35 U.S.C. § 271(b) as an active inducer of infringement of the '782 Patent in causing infringing sales, by others, of Infringing Articles embodying the apparatus disclosed in the '782 Patent.

27. Upon information and belief, Defendant Perdue threatens to continue to induce infringement of one or more claims of the '782 Patent. Defendant Perdue's actions have caused and will continue to cause Plaintiff Sargento substantial and irreparable damage for which Plaintiff Sargento has no adequate remedy at law unless enjoined by this Court.

28. Upon information and belief, Defendant Perdue has committed and continues to commit its acts of infringement willfully and with reckless disregard for Plaintiff Sargento's rights.

WHEREFORE, Plaintiff Sargento prays that this Court enter judgment in its favor and against Defendant Perdue as follows:

A. Adjudging that Defendant Perdue has infringed and is infringing the '806 Patent and the '782 Patent by making, using, offering for sale or selling the Infringing Articles; and, further, that Defendant Perdue is liable as an infringer for actively inducing others to sell Infringing Articles supplied by Defendant Perdue.

B. Enjoining, both preliminarily and permanently, Defendant Perdue and its agents, servants, employees, attorneys, subsidiaries, affiliates, corporate parents, and all persons or entities in active concert or participation with any of them from infringement of the '806 Patent and the '782 Patent.

C. Ordering that Defendant Perdue account for and pay over to Plaintiff Sargento all gains and profits derived by Defendant Perdue from its infringing activities.

D. Ordering that Defendant Perdue pay over to Plaintiff Sargento the actual damages suffered by Plaintiff Sargento as a result of Defendant Perdue's acts of infringement, but in any event not less than a reasonable royalty.

E. Ordering that all damages due to Plaintiff Sargento be trebled, in view of the willful nature of the infringement.

F. Finding that this is an exceptional case under 35 U.S.C. § 285, and Ordering that Plaintiff Sargento be awarded interest, costs and the reasonable attorneys' fees incurred in pursuing this action.

G. Ordering that Plaintiff Sargento be awarded such other and further relief as this Court may deem just and equitable.

PLAINTIFF SARGENTO DEMANDS A TRIAL BY JURY OF ALL ISSUES SO TRIABLE.

Dated this 17th day of September, 2009.



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