

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

RAYMOND D. DUCORSKY,)
)
 Plaintiffs,)
)
 v.)
)
 MOUNT FRANKLIN FOODS, LLC., SUNRISE)
 CANDY, LLC, CASAS GRANDES)
 CONFECTIONS, LLC,)
)
 Defendants.)

No. EP 09-CV-0084-FM
Jury Trial Demanded

FIRST AMENDED COMPLAINT

TO THE COURT:

COMES NOW RAYMOND D. DUCORSKY, Plaintiff herein, and files this First Amended Complaint and for cause of action would show the following:

I.
Parties

1. RAYMOND D. DUCORSKY ("DUCORSKY") is an individual residing in El Paso, El Paso County, Texas.
2. MOUNT FRANKLIN FOODS, LLC ("MOUNT FRANKLIN") is a Texas limited liability company which may be served with process by serving its registered agent, Capital Corporate Services, Inc., 800 Brazos, Suite 400, Austin, Texas 78701.
3. SUNRISE CANDY, LLC ("SUNRISE") is a Nevada limited liability company and can be served with process by serving its registered agent, Hector Delgado at 1112 Montana Ave, El Paso, Texas or its Manager, David Stewart, at 1800 Northwestern Dr., El Paso, Texas.

4. CASAS GRANDES CONFECTIONS, LLC (“CASAS GRANDES”) is a Nevada limited liability company which is engaged in business in Texas within the meaning of Tex. Civ. Prac. & Rem. Code § 17.042, but does not maintain a regular place of business in Texas, nor does it have a designated agent for service of process. As a consequence, service of process upon said Defendant can be obtained by serving its statutory agent for service of process, Secretary of State, State of Texas, Capitol Station, Austin, Texas 78711 and forwarded to Defendant’s home or home office, 601 S. Tenth Street, Suite 102, Las Vegas, Nevada 89101 pursuant to Tex. Civ. Prac. & Rem. Code §17.045.

III.
Statement of Jurisdiction and Venue

5. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §1, et seq. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1338(a).

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§1331(b), 1331(c), 1391(c), and 1400(b) because Defendants regularly conduct business in this jurisdictional district and in the State of Texas and have committed acts of patent infringement and/or have contributed to or induced acts of patent infringement by others in this judicial district.

III.
Facts

7. On August 15, 2000, United States Letters Patent No. 6,101,784 entitled “Patent Wrapping Machine” was issued to DUCORSKY and granted to him for the invention of a candy wrapping technology (the “Wrapping Patent”). The equipment

utilizing the technology protected by the Wrapping Patent has an approximate length of 102 inches, a width of approximately 44 inches, a height of approximately 64 inches and an approximate weight of 1200 pounds. The aforesaid specifications may have been modified by Defendants and/or others without the knowledge or approval of Ducorsky as applicable. The Wrapping Patent equipment is commonly known as “flow pack” or “flow wrap” machines and has an appearance similar to Exhibit B, attached hereto.

8. DUCORSKY is the owner of all right, title, and interest in the Wrapping Patent as well as all inventions and discoveries covered by the Wrapping Patent and all divisions, continuations, continuations in part, reissues, reexaminations or extensions thereof, and any other inventions or discoveries related thereto (the “Patent Rights”) as well as to technical information, know how, processes, procedures, compositions, devices, methods, formulas, protocols, techniques, software, designs, drawings, or data created by him in relation to the Wrapping Patent (the “Technology Rights”).

9. DUCORSKY owned the Wrapping Patent throughout the period of the Defendants’ infringing acts and still owns the Wrapping Patent and has full and exclusive rights to bring suit to enforce the Wrapping Patent, including the right to recover for past infringement.

10. Defendants have infringed and are still infringing on the Wrapping Patent by using the technology protected by the Wrapping Patent and the equipment containing the Wrapping Patent technology and then, based on information and belief, selling the products utilizing DUCORSKY’s Wrapping Patent to regional and national retailers, wholesalers, re-packagers including possibly Sam’s Club, Wal-Mart, Family Dollar, Albertson’s, Food Lion.

11. DUCORSKY entered into a Patent Licensing Agreement with Simply Goodies, LLP in which it was granted the Patent Rights and Technology Rights in inventions and discoveries covered by the Wrapping Patent. In addition, Simply Goodies, LLP was required to permanently and legibly mark all applicable products and documentation manufactured by it under the Patent Licensing Agreement with a patent notice as may be permitted or required by Title 35 of the United States Code. Subsequently, Simply Goodies, LLP breached the Patent Licensing Agreement. Simply Goodies, LLP was given notice of its breach and failed to respond, thereby terminating its rights in the Wrapping Patent. DUCORSKY provided written notice of the infringement as required by 35 U.S.C. §287.

IV.
Infringement of the Wrapping Patent

12. DUCORSKY re-alleges and incorporates herein the allegations of paragraphs 7-11 as if fully set for the herein.

13. The Wrapping Patent is valid and enforceable.

14. Upon information and belief, in violation of 35 U.S.C. §271, Defendants make, use, offer to sell, and/or sell within the United States, and/or import into the United States, products that infringe the Wrapping Patent as well as the Patent Rights and Technology Rights related thereto, including but not limited to the wrapping of a variety of candy products that are in a variety of shapes including the following shapes:



15. Upon information and belief, in violation of 35 U.S.C. §271, Defendants also contribute to and/or induce infringement of the Wrapping Patent, the Patent Rights and the Technology Rights.

16. Upon information and belief, Defendants have willfully infringed the Wrapping Patent, the Patent Rights and the Technology Rights.

17. Upon information and belief, Defendants acts of infringement of the Wrapping Patent, as well as the Patent Rights and the Technology Rights related thereto, will continue after service of this Complaint unless enjoined by the Court.

18. As a result of Defendants' infringement, DUCORSKY has suffered and will continue to suffer damages.

19. DUCORSKY is entitled to recover from Defendants the damages sustained by him as a result of Defendants' wrongful acts in an amount subject to proof at trial.

20. Unless Defendants are enjoined by this Court from continuing their infringement of the Wrapping Patent, DUCORSKY will suffer additional irreparable harm and impairment of the value of his patent rights. Thus, DUCORSKY is entitled to an injunction against further infringement.

V.
Prayer for Relief

WHEREFORE, DUCORSKY prays for judgment and relief as follows:

- a. That Defendants have infringed the Wrapping Patent; the Patent Rights and the Technology Rights;
- b. That Defendants' infringement of the Wrapping Patent, the Patent Rights and the Technology Rights has been willful;
- c. That Defendants be ordered to pay damages adequate to compensate DUCORSKY for Defendants' infringement of the Wrapping Patent, the Patent Rights and the Technology Rights pursuant to 35 U.S.C. §284, including an accounting;
- d. That Defendants be ordered to pay treble damages pursuant to 35 U.S.C. §284;
- e. That Defendants be ordered to pay DUCORSKY's attorney's fees pursuant to 35 U.S.C. §285;
- f. That Defendants, their officers, agents, affiliates, and employees, and those persons in active concert or in participation with them, and their successors and assigns, be enjoined from further infringement of the Wrapping Patent pursuant to 35 U.S.C. §283;
- g. That Defendants be ordered to pay prejudgment interest and all costs associated with this action; and
- h. That DUCORSKY have such other and further relief, at law and in equity, to which he may be justly entitled.

VI.
Demand for Jury Trial

DUCORSKY demands a trial by jury on all issues so triable.

Respectfully submitted,

ScottHulse PC

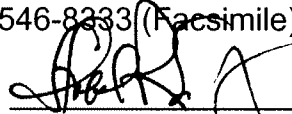
P. O. Box 99123

El Paso, Texas 79999-9123

(915) 533-2493

(915) 546-8333 (Facsimile)

By:

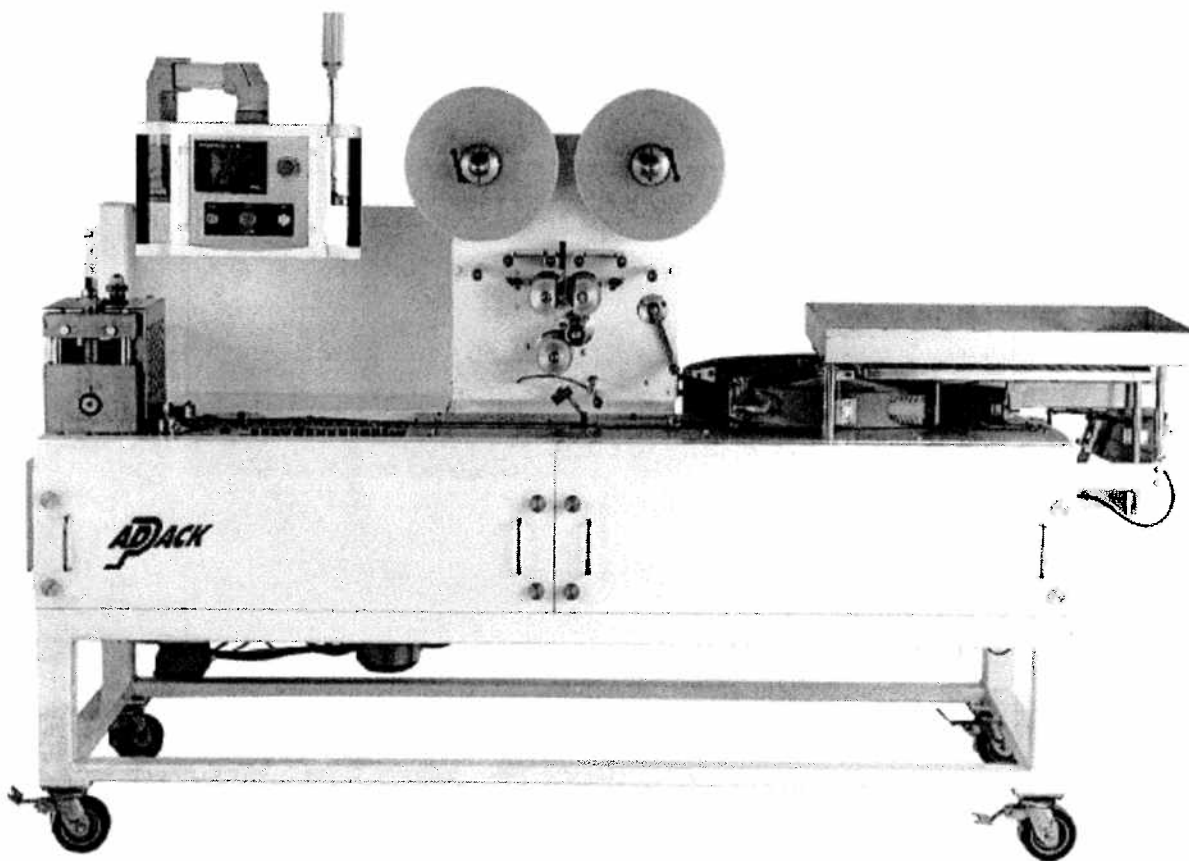


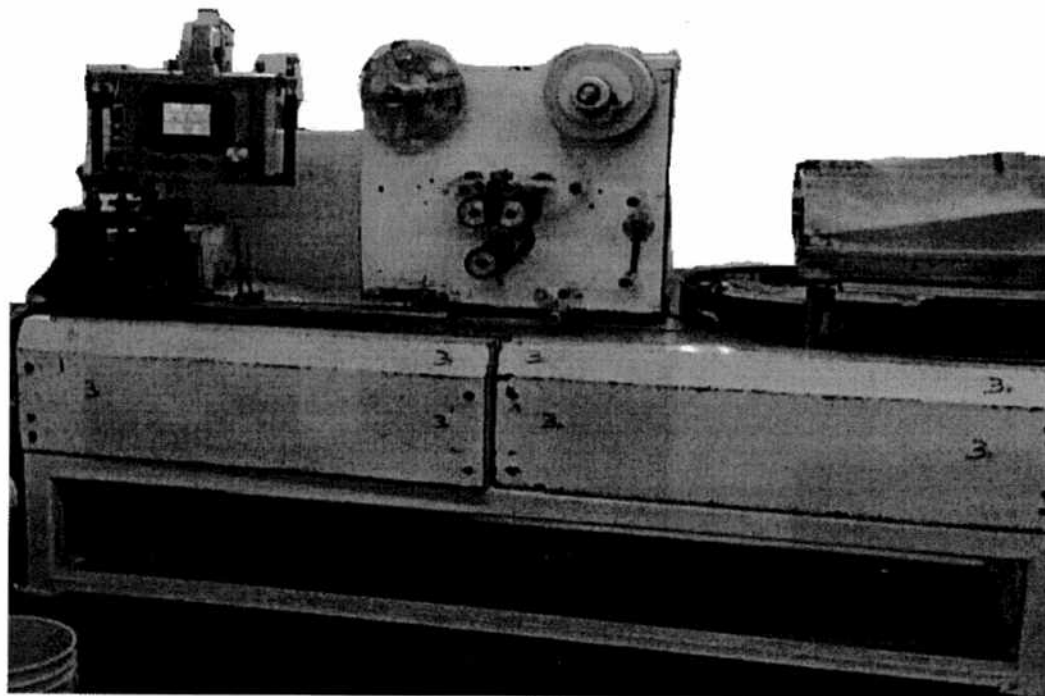
STUART R. SCHWARTZ

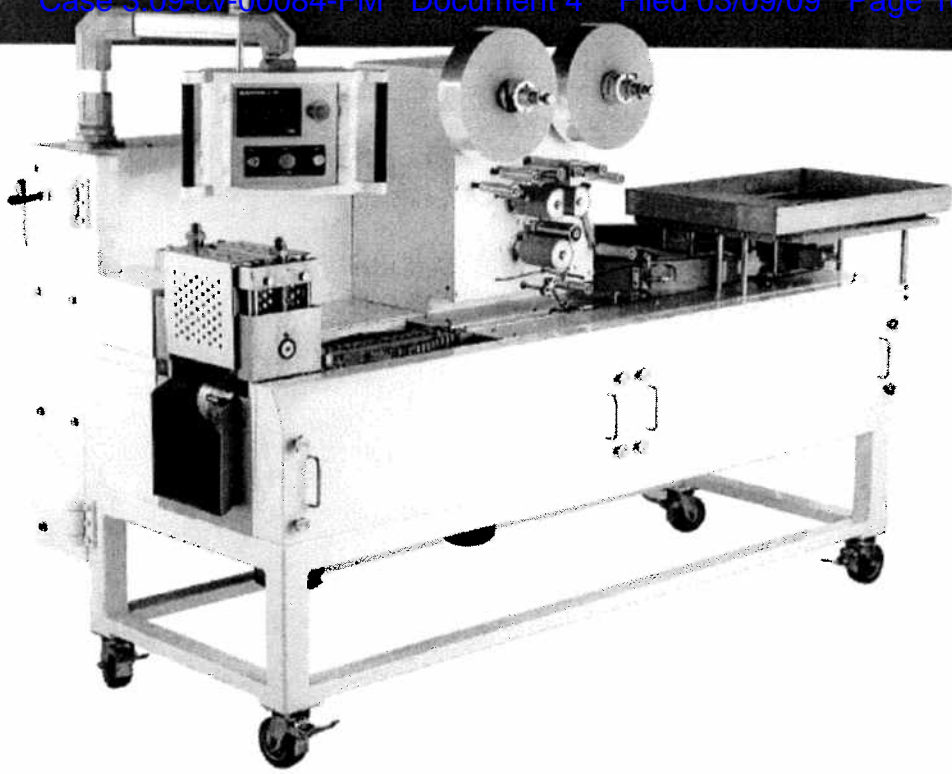
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Attorney for Plaintiff

EXHIBIT "B"







Photo's retouched for clarity.