

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION**

<b>VICTOR J. CAPONEY</b>	)	
	)	
Plaintiff,	)	<b>AMENDED COMPLAINT</b>
	)	(Jury Trial Requested)
vs.	)	
	)	C.A. No. 8:06-cv-00435-HMH
<b>ADA ENTERPRISES, INC. AND ARTEMIO ARANDA</b>	)	
	)	
Defendants,	)	
	)	
vs.	)	
	)	
<b>CLEANSITE SERVICES, INC.</b>	)	
	)	
Cross-claim Defendant.	)	
	)	

Plaintiff, complaining of Defendants, would respectfully show unto this Court that:

**JURISDICTION**

1. Plaintiff, Victor J. Caponey is an individual residing in Greenville, South Carolina.
  
2. Upon information and belief, Defendant, ADA Enterprises, Inc. (“ADA”), is a corporation organized and existing under the laws of the State of South Carolina, having a principal place of business at 2 Burts St., Pelzer, SC 29669.
  
3. Upon information and belief, Defendant, Artemio Aranda (“Aranda”) is an individual residing at 2 Burts St., Pelzer, SC 29669.
  
4. This Court has jurisdiction of the subject matter of this action pursuant to 28 U.S.C. § 1338(a) in that this action states claims for patent infringement whereby

venue is appropriate in this district pursuant to 28 U.S.C. § 1391(b)(3) and 28 U.S.C. § 1400(b).

5. This Court has personal jurisdiction over ADA, who is transacting business in the State of South Carolina, and are committing infringing acts in this State.

### **GENERAL ALLEGATIONS**

6. Caponey is in the business of refuse removal.

7. A unique Stackable Container for refuse was designed by Caponey, and he has sought protection for the novel design of the Stackable Container by filing for and receiving Letters Patent for the same in U.S. Patent No. Des. 475,854 herein referred to as the “’854 Patent.” The ‘854 Patent has an issue date of June 17, 2003, and a copy of the Letters Patent for the ‘854 Patent is attached to and made a part of this complaint as Exhibit A.

8. A novel method for refuse removal from a collection site was invented by Caponey, and he has sought protection for the method by filing for and receiving Letters Patent for the same in U.S. Patent No. 6,616,400, herein referred to as the “’400 Patent.” The ‘400 Patent has an issue date of September 9, 2003, and a copy of the Letters Patent for the ‘400 Patent is attached to and made a part of this complaint as Exhibit B.

9. Numerous business relationships have been developed by Caponey with a number of customers based on the licensing of the ‘854 Patent and the ‘400 Patent. One such relationship includes the license to use the design of the ‘854 Patent and the method of refuse removal of the ‘400 Patent in the counties of Greenville, Spartanburg, Anderson, Pickens, Laurens, and Oconee (hereinafter the “Upstate Region”) by CleanSite Services, Inc., (hereinafter “CleanSite”) a corporation with its principal place of business at 109 Cliffwood Ct., Greer, South Carolina 29650.

***Defendant ADA's Infringement***

10. Upon information and belief, Defendant is in the business of refuse removal services.

11. On or about December 14, 2005, ADA-labeled containers (hereinafter "Infringing Containers") identical to or substantially similar to the design of the '854 Patent were used by Defendant.

12. On or about December 14, 2005, Defendant provided refuse removal services to construction sites in and around the Upstate Region using Infringing Containers in conjunction with rotating fork lift trucks. These services included transporting Infringing Containers to such construction sites, unloading and dispensing the Infringing Containers around the construction sites using the rotating fork lift trucks, collecting the refuse in the Infringing Containers, and retrieving the Infringing Containers and unloading the contents of the Infringing Containers using the rotating fork lift trucks.

***Defendant Artemio Aranda's Infringement***

13. On information and belief, Aranda founded ADA in approximately 2001.

14. On information and belief, Aranda is the controlling shareholder of ADA.

15. On information and belief, Aranda effectively controls and makes all the major decisions for ADA.

16. Specifically, on information and belief, Aranda is responsible for overseeing and controlling all aspects of its day-to-day operations, including its manufacturing, marketing, and sales of infringing refuse removal services.

17. On information and belief, Aranda has authorized the manufacturing, marketing and selling of infringing products and methods.

18. On information and belief, Aranda has himself been personally using and selling infringing products and methods.

19. On information and belief, ADA is a sham corporation that is merely the alter ego for Aranda in that, without limitation, ADA has been undercapitalized and has operated without necessary corporate formalities for the purpose of marketing and selling infringing products and services, and piercing the corporate veil is necessary to prevent fraud, illegality, injustice or a contravention of public policy.

20. On information and belief, Aranda has also actively aided and abetted in the marketing and selling of infringing products and services by ADA despite its knowledge of the patents-in-suit, with intent to actively and knowingly assist ADA's infringement.

### **FIRST CLAIM FOR RELIEF**

#### **(Patent Infringement of the '854 Patent - 35 U.S.C. § 271 et. seq.)**

21. Caponey realleges and incorporates by reference herein the allegations of paragraphs 1 through 20 of this Complaint.

22. Caponey is the inventor and owner of the '854 Patent and utilizes Stackable Containers within the design of the '854 Patent.

23. The '854 Patent was duly and legally issued and is still in full force and effect.

24. Numerous business relationships have been developed by Caponey with a number of customers based on licensing of the '854 Patent, including, but not limited to, the licensing to use the design of the '854 Patent by CleanSite in the Upstate Region. Additionally, Caponey uses and continues to use the Stackable Containers in his refuse removal business and plans to continue developing business relationships by licensing the '854 Patent to potential customers.

25. Upon information and belief, the overall design of ADA's and Aranda's Containers are identical or, in the alternative, substantially similar to the ornamental features of the design protected by the '854 Patent as determined by an ordinary observer.

This substantial similarity is clear upon a first-time comparison by an ordinary observer of the overall design of ADA's Containers with the ornamental features of the design protected by the '854 Patent.

26. Upon information and belief, ADA and Aranda continue to use Containers incorporating the ornamental design of the '854 Patent. By using, manufacturing, offering for sale, and/or selling containers incorporating the ornamental design of the '854 Patent, ADA and Aranda have infringed and are now infringing the '854 Patent within this district and will continue to do so to Caponey's grave and irreparable damage unless ADA is enjoined by this Court. ADA's and Aranda's wrongful activities, as described above, constitute violations of 35 U.S.C. § 271.

27. ADA and Aranda had constructive notice of the '854 Patent and of its infringement thereof prior to commencement of this action and, upon information and belief, have made unlawful gains and profits from that infringement.

28. ADA's and Aranda's activities have caused and will continue to cause irreparable harm to Caponey, for which he has no adequate remedy at law, in that: (i) if ADA's and Aranda's wrongful conduct is permitted to continue, the ability to license the '854 Patent to potential licensees and develop business relationships with the same is severely limited and constitutes an interference with Caponey's licensee relationships and customer relationships; (ii) if ADA's and Aranda's wrongful conduct is permitted to continue, the value in the '854 Patent is substantially diminished; (iii) ADA's and Aranda's wrongful conduct, and the damages resulting to Caponey, are continuing; and (iv) if ADA's and Aranda's wrongful conduct is permitted to continue, Caponey's ability to license the '854 Patent for a reasonable royalty and develop future business relationships is substantially diminished.

29. Upon information and belief, alternative containers to Infringing Containers incorporating the design of the '854 Patent are available to ADA and Aranda to make, use, offer to sale, or sell. If ADA's and Aranda's wrongful conduct is permitted to continue, Caponey's business, including the ability to maintain existing licensee relationships and develop future business relationships based on the Stackable Container, will be minimized.

30. Aranda has been and is infringing the '854 Patent under 35 U.S.C. §271(a) & (b) without license in this district and elsewhere in the United States.

31. ADA's and Aranda's infringement has been deliberate, willful, intentional and with full knowledge of the existence of the '854 Patent.

32. Caponey is entitled to a permanent injunction, pursuant to 35 U.S.C. § 283, enjoining ADA and Aranda from making, using, offering for sale, and selling Infringing Containers incorporating the ornamental design of the '854 Patent.

33. As a direct and proximate result of ADA's and Aranda's infringement, as alleged above, Caponey has suffered and continues to suffer substantial monetary damage, including without limitation loss of sales, profits and damages, in an amount not yet determined. Caponey is entitled to damages, including interest and costs, adequate to compensate for ADA's and Aranda's misconduct, pursuant to 35 U.S.C. § 284.

## **SECOND CLAIM FOR RELIEF**

### **(Patent Infringement of the '400 Patent - 35 U.S.C. § 271 et. seq.)**

34. Caponey realleges and incorporates by reference herein the allegations of paragraphs 1 through 33 of this Complaint.

35. The '400 Patent discloses and claims a method for refuse removal from a construction site.

36. Caponey holds all right, title, and interest in the '400 Patent.

37. The '400 Patent was duly and legally issued and is still in full force and effect.

38. A refuse removal recycling service business that is based on a refuse removal process covered by the '400 Patent was developed by Caponey.

39. Upon information and belief, ADA and Aranda offer and provide refuse removal services using Infringing Containers and rotating fork lift trucks as part of ADA's and Aranda's business.

40. Upon information and belief, ADA and Aranda remove refuse from a construction site by transporting containers in an inverted stack to the construction site, lifting a container from the stack with a rotating fork lift truck, rotating the container with the rotating fork lift truck, lowering the container to the ground, collecting refuse in the container, lifting the container with the rotating fork lift truck and inverting the container such that refuse enters a collection bin of a collection truck.

41. ADA's and Aranda's activities have caused and will continue to cause irreparable harm to Caponey, for which it has no adequate remedy at law, in that: (i) if ADA's and Aranda's wrongful conduct is permitted to continue, Caponey's ability to license the '400 Patent to potential licensees and develop business relationships with the same is severely limited and constitutes an interference with Caponey's licensee relationships and customer relationships; (ii) if ADA's and Aranda's wrongful conduct is permitted to continue, the value in the '400 Patent is substantially diminished; (iii) ADA's and Aranda's wrongful conduct, and the damages resulting to Caponey, are continuing; and (iv) if ADA's and Aranda's wrongful conduct is permitted to continue, Caponey's ability to license the '400 Patent for a reasonable royalty and develop future business relationships is substantially diminished.

42. Upon information and belief, alternative methods of refuse removal are available to ADA and Aranda to use. If ADA's and Aranda's wrongful conduct is permitted to continue, Caponey's business, including the ability to maintain existing licensee relationships and develop future business relationships based on his refuse removal process, will be minimized.

43. ADA's and Aranda's infringement has been deliberate, willful, intentional and with full knowledge of the existence of the '400 Patent.

44. Aranda has been and is infringing the '400 Patent under 35 U.S.C. §271(a) & (b) without license in this district and elsewhere in the United States.

45. By offering for sale, selling, and providing refuse removal services using the Infringing Containers and rotating fork lift trucks to remove refuse in the aforementioned manner, ADA and Aranda have infringed and are now infringing one or more of claims 1-8 of the '400 Patent within this district pursuant to 35 U.S.C. §271(a).

46. Upon information and believe, ADA and Aranda have made unlawful gains and profits from that infringement.

47. Caponey is entitled to a preliminary injunction enjoining ADA and Aranda from making, using, offering for sale and selling refuse removal services using the Infringing Containers and rotating fork lift trucks in the aforementioned manner, pursuant to 35 U.S.C. § 283.

48. As a direct and proximate result of ADA's and Aranda's infringement, as alleged above, Caponey has suffered and continues to suffer substantial monetary damage, including without limitation loss of sales, profits and damages, in an amount not yet determined. Caponey is entitled to damages, including interest and costs, adequate to compensate for ADA's misconduct, pursuant to 35 U.S.C. § 284.



### **THIRD CLAIM FOR RELIEF**

#### **(Accounting)**

49. Caponey realleges and incorporates by reference herein the allegations of paragraphs 1 through 48 of this Complaint.

50. Pursuant to 35 U.S.C. §289, Caponey is entitled to recover total profits of the Defendants' from any article of manufacture to which the patented design, or any colorable imitation thereof, of the '854 Patent is applied for the purpose of sale or sells or exposes for sale.

51. Pursuant to 35 U.S.C. §284, Caponey is entitled to recover damages, but not less than a reasonable royalty for the use made of the refuse removal method of the '400 Patent, including interest and costs, adequate to compensate for Defendants' misconduct.

52. The amount of money due from Defendants to Caponey is unknown to Caponey and cannot be ascertained without an accounting of the amount of Infringing Containers and substantially similar containers that were used or sold by ADA and Aranda and the extent of use by ADA and Aranda of the aforementioned refuse removal method.

### **FOURTH CLAIM FOR RELIEF**

#### **(Exceptional Case)**

53. Caponey realleges and incorporates by reference herein the allegations of paragraphs 1 through 52 of this Complaint.

54. Defendants have committed acts, and will continue to commit acts, that make this case exceptional under 35 U.S.C. § 285.

WHEREFORE, Caponey prays:

- (1) That the Court treat this Verified Complaint as an affidavit;
- (2) That the Court enters an order requiring ADA and Artemio to provide Caponey with a full and complete accounting of all amounts due and owing to Caponey as ADA's and Aranda's profits from its infringing sales of refuse removal services using Infringing Containers and substantially similar containers;
- (3) That the Court enters judgment declaring that Defendants have infringed Caponey's rights in the license to U.S. Patent Nos. D475,854 and 6,616,400 under 35 U.S.C. §271;
- (4) That the Court enters judgment awarding to Caponey's general, special, actual, and statutory damages from Defendants, as follows: Caponey's damages adequate to compensate Plaintiff for Defendants' infringement, in an amount not less than a reasonable royalty, pursuant to 35 U.S.C. §284 and 35 U.S.C. §289.
- (5) That the Court enters an order requiring ADA and Aranda to hold in trust, for the benefit of Caponey, all profits obtained from its infringing sales of the Infringing Containers and substantially similar containers;
- (6) That the Court enters judgment awarding to Caponey increased damages in an amount of not less than three times the amount of damages found by the jury or assessed by this Court, for Defendants' willful infringement, pursuant to 35 U.S.C. § 284;
- (7) That Caponey recovers from Defendants the costs of this action pursuant to 35 U.S.C. § 284 and Caponey's reasonable attorneys' fees incurred in prosecuting this action, pursuant to 35 U.S.C. § 285;
- (8) That Caponey have a trial by jury of all issues so triable of right; and
- (9) That the Court award such other and further relief as the Court deems appropriate.

Respectfully submitted,


s/John B. Hardaway, III  
John B. Hardaway, III (Fed. Bar No. 1710)  
NEXSEN PRUET, LLC  
201 W. McBee Avenue, Fourth Floor  
Post Office Drawer 10648  
Greenville, South Carolina 29603  
(864) 370-2211

Greenville, South Carolina  
Date: April 23, 2007

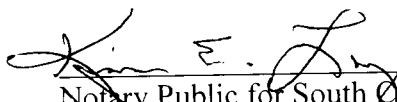
Attorneys for Plaintiff

**VERIFICATION**

Victor J. Caponey, personally appearing before me being duly sworn, deposes and says that he is the plaintiff in the foregoing action; that he has read the foregoing Verified Complaint and knows the contents thereof; and that the same are true of his own knowledge, except as to those matters therein stated to be on information and belief, and as to those matters, he believes them to be true.

  
Victor J. Caponey

Sworn to and subscribed  
before me this 23<sup>rd</sup> day  
of April, 2007.

  
Notary Public for South Carolina

My commission expires: 3-31-11