

United States District Court  
Southern District of Texas  
FILED

JAN 10 2003

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION

Michael N. Milby, Clerk of Court

**M-03-014**

Kenneth Fox Supply Company  
*plaintiff*

vs.

Polystar, Inc.

*defendant*

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CIVIL ACTION NO. M-\_\_\_\_\_

**PLAINTIFF'S ORIGINAL COMPLAINT AND  
APPLICATION FOR PRELIMINARY AND PERMANENT INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES KENNETH FOX SUPPLY COMPANY ("Fox"), the plaintiff in the above-styled and numbered cause, and files this, its Original Complaint and Application for Preliminary and Permanent Injunction, and complains of Polystar, Inc. ("Polystar"), and for such cause of action would respectfully show the court as follows:

I. Parties

- 1.1 Fox is a Texas corporation with its principal place of business in McAllen, Texas.
- 1.2 Polystar is a Florida corporation with its principal office in Longwood, Florida. It may be served with citation by personally serving its registered agent, Ralph V. Hadley, III, 1031 W. Morse Blvd., Winter Park, Florida 32789, or its president or any vice president. The plaintiff requests that Polystar be served pursuant to Rule 4 of the Federal Rules of Civil Procedure.

II. Jurisdiction and Venue

- 2.1 This court has jurisdiction pursuant to 28 U.S.C. § 1338 because this cause of action arises under the patent laws of the United States, more particularly 35 U.S.C. §§ 271, 281 and 283.

2.2 Venue is proper in this district and division pursuant to 28 U.S.C. § 1391(a) and (c) because a substantial part of the events or omissions giving rise to the claim occurred in this district and because the defendant corporation is subject to personal jurisdiction in this district.

### III. Facts

3.1 Fox is in the business of manufacturing and selling various types of bags, including bags for use in the fresh produce industry. In or about January 1996, Kenneth Fox and Keith Fox, officers of Fox, invented a new type of bag with one side comprised of a mesh-type fabric and the other comprised of a plastic film (the "Bag"). The Bag utilizes certain unique structural features (the "Features") that make it specially suited for the fresh produce industry and for use with automatic produce packing machines. The U.S. Patent and Trademark Office issued to Fox certain patents on inventions embodied in the Bag, specifically including U.S. Letters Patent No. 6,190,044 (the "'044 Patent") titled "Produce Bag with Improved Strength and Loading Features," which issued February 20, 2001 and U.S. Letters Patent No. 6,416,220 (the "'220 Patent"), titled "Produce Bag with Improved Strength and Loading Features," which issued July 9, 2002

3.2 Fox is the owner of all of the right, title and interest in, to and under the inventions embodied in the Bag, including the '044 and '220 Patents.

3.3 There has been recognition in the industry of the novelty, utility, value and patentability of the inventions covered by the '044 and '220 Patents.

3.4 Fox has given notice to Polystar and to the public generally that the Bags made and sold by it are covered by Letters Patent as required by 35 U.S.C. § 287. Further, certain licensees of Fox have similarly given notice to Polystar and to the public generally that the

Bags made and sold by them are covered and protected by Letters Patent. The Notice was given by suitably affixing or printing on each Bag a label containing the word "Patented" or "Patent", together with the patent(s) number(s). Polystar has therefore been duly notified of the Letters Patent as required by law.

3.5 On information and belief, Polystar has been and is still infringing the Letters Patent by making, selling and/or offering for sale bags embodying the patented invention. Such infringement includes sales and offers to sell bags to Mission Shippers, Inc., which is located in Mission, Texas in this Judicial District and Division. On information and belief, such infringement has been intentional and willful.

#### IV. Causes of Action and Damages

4.1 Polystar has been and still is infringing the Letters Patents by making, selling, offering to sell and using bags embodying the patented invention. Polystar's conduct has irreparably injured and will continue to irreparably injure the plaintiff unless the Polystar is immediately enjoined by this court.

4.2 Polystar has derived and will derive large gains, profits and advantages by its infringing conduct. The amount of profits or gains received by Polystar is at this time unknown and cannot be accurately estimated. Fox is entitled to an accounting of profits accrued by Polystar and is entitled to damages as a result of Polystar's infringing conduct. Fox requests an assessment of such damages, as well as prejudgment and postjudgment interest.

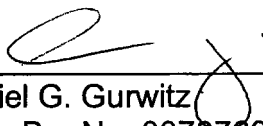
4.3 Because of the intentional and willful nature of the infringement by Polystar, Fox is entitled to three times the amount of damages found or assessed, pursuant to 35 U.S.C. § 284.

4.4 Fox further requests that the Court declare this an exceptional case and award Fox its attorneys' fees, pursuant to 35 U.S.C. § 285.

4.5 Fox is entitled to a preliminary and permanent injunction prohibiting Polystar or its agents from making, utilizing, selling, offering to sell or profiting from the patented invention in any fashion because of the conduct described above. In this connection, there is a substantial likelihood that Fox will prevail on the merits. Fox will suffer irreparable injury unless a preliminary injunction issues preventing the defendant from making, utilizing, selling offering to sell or profiting from the patented invention and the threat to Fox outweighs whatever damage the proposed injunction may cause the defendant. The injunction would not be adverse to the public interest. Moreover, upon final trial of this cause, the court should forever enjoin the defendant from making, utilizing, selling, offering to sell or profiting from the patented invention.

WHEREFORE, PREMISES CONSIDERED, Fox prays that the defendant be cited to appear and answer herein, and that Fox have the relief requested above, together with such other and further relief to which it may be justly entitled.

Respectfully submitted,



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