

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
SPARTANBURG DIVISION

EXOPACK-TECHNOLOGY LLC,  
  
Plaintiff,  
  
v.  
  
GRAPHIC PACKAGING HOLDING CO.;  
and GRAPHIC PACKAGING  
INTERNATIONAL INC.,  
  
Defendants.

No. 7:11 cv 00337-HFF  
  
FIRST AMENDED COMPLAINT  
AND DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 15(a)(1)(B), Plaintiff Exopack-Technology L.L.C. (hereinafter “Exopack”) files this First Amended Complaint against Defendants Graphic Packaging Holding Co. and Graphic Packaging International, Inc. and alleges as follows:

**NATURE OF THE ACTION**

1. This action is based on the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*
2. This action arises out of Defendants making, using, selling, and offering to sell, as well as Defendants’ inducement of and contribution to the use and purchase by others, of multiwall slider zipper bags, which infringe valid and enforceable patents owned by Exopack.

**THE PARTIES**

3. Plaintiff Exopack is a limited liability company organized and existing under the laws of the State of Delaware and having a place of business at 3070 Southport Road, Spartanburg, South Carolina 29304. Exopack is in the flexible packaging, film, and paper products business with customers in, *inter alia*, the pet food, food and beverage, lawn and garden, home improvement, cement, agricultural, industrial, and consumer products markets.

4. Defendant Graphic Packaging Holding Co. (“GPH”) is a corporation organized and existing under the laws of the State of Delaware and has a place of business at 814 Livingston Court, Marietta, Georgia 30067. GPH is in the packaging business for, *inter alia*, the food, beverage, and consumer products markets. GPH regularly conducts business in this Judicial District.

5. Defendant Graphic Packaging International, Inc. (“GPI”), a wholly owned subsidiary of Graphic Packaging Holding Co., is a corporation organized and existing under the laws of the State of Delaware and has a place of business at 814 Livingston Court, Marietta, Georgia 30067. GPI is in the packaging business for, *inter alia*, the food, beverage, and consumer products markets. GPI regularly conducts business in this Judicial District.

#### **JURISDICTION AND VENUE**

6. This action arises under the Patent Act, 35 U.S.C. § 1, *et seq.* The Court has original subject matter jurisdiction over such claims pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. The Court has personal jurisdiction over the parties, and venue in this Judicial District is proper under 28 U.S.C. §§ 139 1(b) and (c), and/or 1400(b).

8. GPH and GPI conduct significant business in the State of South Carolina with South Carolina businesses. GPH and GPI sell the patent infringing products described herein in South Carolina and also ship them into South Carolina. GPH and GPI further knowingly and intentionally inject the patent infringing products described herein into the South Carolina stream of commerce for sale by South Carolina customers to South Carolina end users.

#### **PLAINTIFF AND ITS RIGHTS**

9. Exopack and its predecessors have been in the packaging business since 1852. Exopack has developed, made, used, and sold innovative product configurations for improving the strength, durability, user-friendliness, efficiency, reliability, convenience, versatility, safety, and tamper-resistance of packaging, including multiwall slider zipper bags, in the United States and worldwide.

10. Exopack has developed innovative technology relating to multiwall slider zipper bags. The United States Patent and Trademark Office (“PTO”) has recognized Exopack’s innovation by awarding numerous United States patents covering Exopack’s multiwall slider zipper bags.

11. On December 27, 2005, the PTO duly and lawfully issued United States Patent No. 6,979,482 (“the ’482 patent”), entitled *Multiwall Bag With Zipper and Fin*. Exopack is the assignee and sole owner of the ’482 patent, a true and correct copy of which is attached hereto as Exhibit 1.

12. On August 15, 2006, the PTO duly and lawfully issued United States Patent No. 7,090,904 (“the ’904 patent”), entitled *Enhanced Slider Zipper Multiwall Bag and Associated Methods*. Exopack is the assignee and sole owner of the ’904 patent, a true and correct copy of which is attached hereto as Exhibit 2.

13. On June 9, 2009, the PTO duly and lawfully issued United States Patent No. 7,544,403 (“the ’403 patent”), entitled *Bag Having an Improved Heat Seal Closure and Associated Methods*. Exopack is the assignee and sole owner of the ’403 patent, a true and correct copy of which is attached hereto as Exhibit 3.

#### **DEFENDANTS AND THEIR UNLAWFUL ACTIVITIES**

14. Graphic Packaging Holding Co. and Graphic Packaging International, Inc. (collectively “Graphic Packaging”) have been making, using, selling, and offering to sell multiwall slider zipper bags—such as the bag configuration used for, *inter alia*, KIBBLES 'N BITS® dog food (pictured below)—that infringe, at least, claims 1 and 9 of Exopack’s ’482 patent, claims 1, 16, 33, 41, and 46 of Exopack’s ’904 patent, and claim 1 of Exopack’s ’403 patent. Graphic Packaging’s infringing multiwall bags include, *inter alia*, the following patent elements: a tube body, an inner polymeric layer, an outer paper layer, a pair of opposing tube ends, an outer front wall region, an outer back wall region, a bag seal zone, a heat seal, a fin

member, fin strips, a zipper track, track strips, a zipper block, an external reinforcement, and gussets (as pictured).



15. On information and belief, GPI has been actively and knowingly selling and offering to sell to GPH and third parties (or GPH has been actively and knowingly selling and offering to sell to GPI and third parties) components of multiwall slider zipper bags constituting material parts of the invention of one or more of Exopack's '482, '904, and/or '403 patents. On information and belief, Defendants sold and offered to sell such structural components of the infringing multiwall slider zipper bags, after being informed about Exopack's '482, '904, and/or '403 patents by, *inter alia*, former Exopack employees, including Chris Cardew who was recruited away from Exopack by Defendants and Roseann Woodham-Grant, a named inventor of Exopack's '482, '904, and/or '403 patents, who was hired by Defendants after leaving employment with Exopack. Defendants acted with knowledge of Exopack's '482, '904, and '403 patents and with knowledge that such structural components of the infringing multiwall slider zipper bags are made or adapted specifically for use in products, including those made by one or more of Defendants, that infringe at least claims 1 and 9 of Exopack's '482 patent, claims

1, 16, 33, 41, and 46 of Exopack's '904 patent, and claim 1 of Exopack's '403 patent. Defendants were also aware that such structural components of the infringing multiwall slider zipper bags are not staple articles of commerce suitable for a substantial noninfringing use. Thus, Defendants have been contributing to the direct infringement by one another and third parties of, at least, claims 1 and 9 of Exopack's '482 patent, claims 1, 16, 33, 41, and 46 of Exopack's '904 patent, and claim 1 of Exopack's '403 patent.

16. On information and belief, GPI has been actively and knowingly aiding and abetting the direct infringement of Exopack's '482, '904, and '403 patents with knowledge thereof by designing, encouraging, and instructing GPH and third parties (or GPH has been actively and knowingly aiding and abetting the direct infringement of Exopack's '482, '904, and '403 patents with knowledge thereof by designing, encouraging, and instructing GPI and third parties) to make, use, and purchase multiwall slider zipper bags that infringe Exopack's patent rights. At the time Defendants engaged in the acts herein, Defendants had actual knowledge of and had been informed about Exopack's '482, '904, and '403 patents by, *inter alia*, Mr. Cardew and Ms. Woodham-Grant and knew that Defendants' acts of designing, promoting, and instructing would result in direct infringement of Exopack's '482, '904, and '403 patents. Thus, Defendants have been inducing the direct infringement by others of, at least, claims 1 and 9 of Exopack's '482 patent, claims 1, 16, 33, 41, and 46 of Exopack's '904 patent, and claim 1 of Exopack's '403 patent.

17. Mr. Cardew was employed by Exopack between approximately August 1989 and February 2010 including as a National Account Manager. Upon information and belief, Defendants actively recruited Mr. Cardew away from Exopack to join Defendants as an employee in early 2010. Ms. Woodham-Grant was employed by Exopack between approximately September 1998 and October 2003, including as Exopack's Product Development Manager. Upon information and belief, Defendants recruited and hired Ms. Woodham-Grant in early 2011.

18. Defendants have had actual knowledge of Exopack's '482, '904, and '403 patents including, *inter alia*, as a result of having been notified about those patents by Mr. Cardew and/or Ms. Woodham-Grant but have persisted in making, using, selling, and offering to sell multiwall slider zipper bags that infringe, at least, claims 1 and 9 of Exopack's '482 patent, claims 1, 16, 33, 41, and 46 of Exopack's '904 patent, and claim 1 of Exopack's '403 patent, even after receiving actual notice from Exopack that its multiwall slider zipper bags are patented and that Defendants acts constitute patent infringement. Defendants acts of infringement have been willful.

19. At no time has Plaintiff granted Defendants authorization, license, or permission to practice the inventions claimed in Exopack's '482, '904, or '403 patent.

**COUNT I: PATENT INFRINGEMENT**  
**UNITED STATES PATENT NO. 6,979,482**

20. Exopack repeats and realleges each of the allegations contained in the above paragraphs of this First Amended Complaint as if fully set forth herein.

21. On information and belief, Defendants have been, and are, infringing—directly, contributorily, and by inducement—at least, claims 1 and 9 of Exopack's '482 patent in the United States and in this Judicial District.

22. By infringing—directly, contributorily, and by inducement—at least, claims 1 and 9 of Exopack's '482 patent, Defendants have unfairly reaped a substantial commercial and competitive advantage and savings in research, development, operational time and cost, all to Exopack's detriment.

23. Defendants' activities with respect to their multiwall bags constitute willful infringement of Exopack's '482 patent.

24. Exopack has been, and will continue to be, damaged by such direct, contributory, and induced infringement in an amount to be proven at trial, in a manner and amount that cannot

be fully measured or compensated in economic terms, and for which there is no adequate remedy at law. The actions of Defendants have damaged, and will continue to damage, Exopack's business, market, reputation, and goodwill. Such irreparable damage will continue unless Defendants' acts are enjoined during the pendency of this action and thereafter. Exopack is, therefore, entitled to the remedies provided by 35 U.S.C. §§ 283-285.

**COUNT II: PATENT INFRINGEMENT**  
**UNITED STATES PATENT NO. 7,090,904**

25. Exopack repeats and realleges each of the allegations contained in the above paragraphs of this First Amended Complaint as if fully set forth herein.

26. On information and belief, Defendants have been, and are, infringing—directly, contributorily, and by inducement—at least, claims 1, 16, 33, 41, and 46 of Exopack's '904 patent in the United States and in this Judicial District.

27. By infringing—directly, contributorily, and by inducement—at least, claims 1, 16, 33, 41, and 46 of Exopack's '904 patent, Defendants have unfairly reaped a substantial commercial and competitive advantage and savings in research, development, operational time and cost, all to Exopack's detriment.

28. Defendants' activities with respect to their multiwall bags constitute willful infringement of Exopack's '904 patent.

29. Exopack has been, and will continue to be, damaged by such direct, contributory, and induced infringement in an amount to be proven at trial, in a manner and amount that cannot be fully measured or compensated in economic terms, and for which there is no adequate remedy at law. The actions of Defendants have damaged, and will continue to damage, Exopack's business, market, reputation, and goodwill. Such irreparable damage will continue unless Defendants' acts are enjoined during the pendency of this action and thereafter. Exopack is, therefore, entitled to the remedies provided by 35 U.S.C. §§ 283-285.

**COUNT III: PATENT INFRINGEMENT**  
**UNITED STATES PATENT NO. 7,544,403**

30. Exopack repeats and realleges each of the allegations contained in the above paragraphs of this First Amended Complaint as if fully set forth herein.

31. On information and belief, Defendants have been, and are, infringing—directly, contributorily, and by inducement—at least, claim 1 of Exopack’s ’403 patent in the United States and in this Judicial District.

32. By infringing—directly, contributorily, and by inducement—at least, claim 1 of Exopack’s ’403 patent, Defendants have unfairly reaped a substantial commercial and competitive advantage and savings in research, development, operational time and cost, all to Exopack’s detriment.

33. Defendants’ activities with respect to their multiwall bags constitute willful infringement of Exopack’s ’403 patent.

34. Exopack has been, and will continue to be, damaged by such direct, contributory, and induced infringement in an amount to be proven at trial, in a manner and amount that cannot be fully measured or compensated in economic terms, and for which there is no adequate remedy at law. The actions of Defendants have damaged, and will continue to damage, Exopack’s business, market, reputation, and goodwill. Such irreparable damage will continue unless Defendants’ acts are enjoined during the pendency of this action and thereafter. Exopack is, therefore, entitled to the remedies provided by 35 U.S.C. §§ 283-285.

**PRAYER FOR RELIEF**

WHEREFORE, Exopack, prays for judgment as follows

1. That Defendants and their officers, agents, servants, employees, attorneys, and all other persons and entities acting in concert or participation with any of them, be preliminarily and permanently enjoined and restrained during the pendency of this action and thereafter from infringing any claim of Exopack’s ’482, ’904, and ’403 patents.



2. That Defendants be ordered to pay Exopack such damages as Exopack has sustained, as adequate to compensate for the patent infringement, including Exopack's lost profits, but in no event less than a reasonable royalty, as provided by 35 U.S.C. § 284.

3. That Defendants' infringement of the '482, '904, and '403 patents be found to have been willfully committed and that the damages be increased three-fold, as provided by 35 U.S.C. § 284.

4. That Defendants be ordered to pay Exopack the costs of this action and its reasonable attorneys' fees and interest, as provided by 35 U.S.C. §§ 284 and 285.

5. That Defendants be ordered to pay Exopack's pre-judgment interest on all sums awarded.

6. That Exopack recover such other and further relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury as to all issues so triable.

DATED this 24th day of June, 2011.

Respectfully submitted,

SMITH MOORE LEATHERWOOD LLP

/s/ Steven E. Farrar

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