

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

H.J. HEINZ COMPANY & H.J. HEINZ
COMPANY, L.P.

Plaintiffs,

v.

DAVID WAWRZYNSKI,

Defendant.

CIVIL ACTION NO. _____

COMPLAINT

JURISDICTION

1. Plaintiffs seek declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202, declaring that United States Letters Patent No. 5,676,990 to be not infringed and to be invalid or unenforceable. This Court has subject matter jurisdiction under 28 U.S.C. § 1338

THE PARTIES

2. H.J. Heinz Company is a Pennsylvania corporation with its principal place of business in Pittsburgh, Pennsylvania.

3. H.J. Heinz Company, L.P. is a Delaware limited partnership.

4. David Wawrzynski (“Wawrzynski”) is a Michigan resident.

FACTS

5. Wawrzynski is the owner of U.S. Patent No. 5,676,990 entitled “Method of Food Article Dipping and Wiping in a Condiment Container” issued October 14, 1997 to David W. Wawrzynski (“the Wawrzynski Patent”).

6. On October 19, 2010, Wawrzynski served H.J. Heinz Company with a Summons and Complaint filed in the Wayne County Circuit Court of the State of Michigan. A copy of Wawrzynski's Complaint (the "Wawrzynski Complaint") is attached as Exhibit "1" (Although Wawrzynski erroneously captioned his Complaint in the Macomb County Circuit Court, the Summons and File Stamp show that Wawrzynski actually filed it in the Wayne County Circuit Court).

7. The Wawrzynski Complaint alleges that based on the Wawrzynski Patent, Wawrzynski began to market an idea for a new condiment package called the "Little Dipper." *See* Wawrzynski Complaint at ¶ 8.

8. The Wawrzynski Complaint further alleges, among other things, breach of an implied contract (which would have to be in the nature of a license) regarding the ideas set forth in the Wawrzynski Patent and promotional materials related to the "Little Dipper."

9. Wawrzynski does not manufacture condiment containers and is not a competitor of H.J. Heinz Company or H.J. Heinz Company, L.P.

10. The only way Wawrzynski would profit from the Wawrzynski Patent is by licensing it to third-parties.

11. Wawrzynski claims that on March 13, 2008, Wawrzynski wrote to an employee of H.J. Heinz Company, providing that employee with a set of promotional materials for the "Little Dipper." *See* Wawrzynski Complaint at ¶ 9.

12. Wawrzynski's March 13, 2008 letter identifies the Wawrzynski Patent by its patent number. *See* Wawrzynski Complaint at Ex. A.

13. Wawrzynski's March 13, 2008 letter states that "I would like to bring to your attention my innovative and novel idea for ketchup packaging that I have since patented." *See*

Wawrzynski Complaint at Ex. A. The letter further states that Wawrzynski allegedly spoke to several other individuals who Wawrzynski describes as employees of “your company.” *See* Wawrzynski Complaint at Ex. A.

14. Wawrzynski alleges that he sent similar letters to two other individuals at “Heinz” on March 13, 2008 (although the letters attached to the Wawrzynski Complaint are dated March 11, 2008). *See* Wawrzynski Complaint at ¶ 11 & Ex. B.

15. In one of his March 11, 2008 letters, Wawrzynski identifies himself as the “inventor and sole owner of [the Wawrzynski Patent].” *See* Wawrzynski Complaint at Ex. B. In the other letter, Wawrzynski states that “I own a method patent that can be very useful for H.J. Heinz.” *See* Wawrzynski Complaint at Ex. B.

16. Wawrzynski’s Complaint alleges that in April of 2008 he met with two individuals who he alleges were members of “Heinz’s marketing department” and “Heinz’s Innovation Center.” *See* Wawrzynski Complaint at ¶ 12.

17. Wawrzynski claims that meeting was undertaken “in the pursuit of profit and economic benefit,” and that it was “understood” that if “Heinz” used the ideas embodied in the Wawrzynski Patent, “Heinz” would compensate Wawrzynski. *See* Wawrzynski Complaint at ¶¶ 13-14.

18. Wawrzynski alleges that when he did not hear back from “Heinz,” after the April 2008 meeting, he decided to send another letter on October 28, 2009. *See* Wawrzynski Complaint at ¶ 17.

19. Like Wawrzynski’s March 13, 2008 letter, the October 28, 2009 letter identified the Wawrzynski Patent by number and provided materials regarding the “Little Dipper.” *See* Wawrzynski Complaint at Ex. D.

20. Wawrzynski's Complaint alleges that in February 2010, "Heinz" unveiled a re-design for condiment packaging – the "Dip & Squeeze." *See* Wawrzynski Complaint at ¶ 19.

21. Wawrzynski claims that the "Dip & Squeeze" product relies upon ideas embodied in the Wawrzynski Patent and claims, which Wawrzynski refers to as the "Little Dipper."

22. Wawrzynski's Complaint claims that "Heinz" has failed to compensate him for allegedly using the ideas embodied in the Wawrzynski Patent, thereby breaching an implied license (contract) related to the patent. *See* Wawrzynski Complaint at ¶¶ 24-31.

23. Wawrzynski filed suit against H.J. Heinz Company. However, H.J. Heinz Company does not manufacture or sell the "Dip & Squeeze" product or any other product that Wawrzynski claims uses the ideas embodied in the Wawrzynski Patent.

24. The "Dip & Squeeze" is a product of H.J. Heinz Company, L.P.

COUNT I
Declaratory Judgment of NonInfringement of Patent

25. H.J. Heinz Company and H.J. Heinz Company, L.P. incorporate paragraphs 1 through 24, above.

26. Wawrzynski's claim for breach of an implied license is baseless. The product Wawrzynski's Complaint refers to as the "Dip & Squeeze" does not rely upon any ideas embodied in the Wawrzynski patent and claims.

27. Accordingly, the "Dip & Squeeze" does not practice or infringe the Wawrzynski Patent, and H.J. Heinz Company, L.P., therefore, has not infringed the Wawrzynski Patent.

28. Additionally, H.J. Heinz Company does not manufacture or sell the "Dip & Squeeze" or any other product that Wawrzynski claims uses the ideas embodied in the Wawrzynski Patent and, therefore, has not infringed the Wawrzynski Patent.

29. By reason of the allegations in the Wawrzynski Complaint, an actual controversy has arisen and exists between the parties concerning whether H.J. Heinz Company and H.J. Heinz Company, L.P. practice or infringe the Wawrzynski patent, and H.J. Heinz Company and H.J. Heinz Company, L.P. seek a declaratory judgment that they do not.

COUNT II
Declaratory Judgment of Invalidity of Patent

30. H.J. Heinz Company and H.J. Heinz Company, L.P. incorporate paragraphs 1 through 24 and 29, above.

31. The subject matter claimed in the Wawrzynski patent would have been known or obvious to a person of ordinary skill in the art at the time of the alleged invention.

32. The Wawrzynski patent is invalid and unenforceable because the identified inventor did not in fact invent the subject matter claimed.

33. The Wawrzynski patent is invalid because the claimed subject matter is not disclosed sufficiently in the written description to enable a person of ordinary skill to make and use the subject matter claimed, or fails to demonstrate the best mode for practicing such subject matter.

34. By reason of the foregoing, an actual controversy has arisen and exists between the parties as to the validity or enforceability of the Wawrzynski patent.

WHEREFORE Plaintiffs, H.J. Heinz Company and H.J. Heinz Company, L.P., request that the Court enter judgment declaring that U.S. Patent No. 5,676,990 is not infringed by Plaintiff Heinz and is invalid or unenforceable.

/s/ Robert L. Byer

Robert L. Byer
Pa. ID No. 25447
rlbyer@duanemorris.com
Andrew J. Kozusko, III

Pa. ID No. 88172
ajkozusko@duanemorris.com
DUANE MORRIS LLP
600 Grant Street, Suite 5010
Pittsburgh, PA 15219
Telephone: 412.497.1083

Of counsel:

Samuel W. Apicelli
Pennsylvania 1997 - #79476
swapicelli@duanemorris.com
Jeffrey S. Pollack
Pennsylvania 2003 - #91888
jspollack@duanemorris.com
Duane Morris LLP
30 South 17th Street
Philadelphia, PA 19103-4196
Telephone: 215.979.1000
Counsel for Plaintiffs

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