

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

C.A.P.S., INC.)	
a Missouri Corporation)	
)	
Plaintiff,)	
)	
v.)	Case No.
)	
Gateway PLASTICS, INC.)	
a Wisconsin Corporation,)	JURY TRIAL DEMANDED
)	
Defendant.)	

VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, C.A.P.S., Inc. (*hereafter* "CAPS"), by and through its attorneys, seeks a Declaratory Judgment that certain closures for containers made and sold by CAPS do not and have not infringed U. S. Patent 7,134,575 (referred to as the " '575 patent") owned by Defendant, Gateway Plastics, Inc. (*hereafter* "GATEWAY"). A copy of the '575 patent is attached hereto as Exhibit A. CAPS also seeks a Declaratory Judgment that the '575 patent is invalid. In support of this action, CAPS alleges that:

1. Plaintiff, CAPS, is a Missouri corporation with a principal place of business at 13080 Hollenberg Drive, Bridgeton, Missouri 63044.
2. Defendant, GATEWAY, is a Wisconsin Business Corporation with a principal place of business at 5650 West County Line Road, Mequon, Wisconsin 53092. GATEWAY is engaged in the business of making and selling closures for containers throughout the United States.

3. This is a Complaint for Declaratory Judgment under 28 U.S.C. §§2201 and 2202, in respect to an actual controversy of which this Court has jurisdiction under the Patent Laws of the United States (35 U.S.C. §1 et seq.) and 28 U.S.C. §1338(a) and 28 U.S.C. §1332. Venue is appropriate under 28 U.S.C. §1391(b) and (c).

4. CAPS has for a number of years made and sold closures for containers in the United States.

5. On or about March 18, 2009, Mr. Keith D. Lindenbaum, an attorney representing GATEWAY and acting in GATEWAY's behalf, sent a letter into this District to Mr. James F. Kick, Chief Executive Officer of CAPS, which stated that GATEWAY owns the '575 patent. A copy of the March 18, 2009. letter is attached hereto as Exhibit B.

6. In the March 18th letter (Exhibit B), Mr. Lindenbaum threatened CAPS by stating that "C.A.P.S., Inc., is making, offering for sale, and selling a line of flip top closures under the name "Dispensing Tops", and that "Our review indicates that the Dispensing Tops infringe the '575 patent." Mr. Lindenbaum demanded that CAPS "cease and desist from making, offering for sale and selling the Dispensing Tops."

7. In the March 18th letter (Exhibit B), Mr. Lindenbaum further requested that "To the extent you believe that the Dispensing Tops avoid infringement of the '575 patent, please provide us with the basis for your belief."

8. On April 8, 2009, Mr. David L. Howard, an attorney representing CAPS, sent Mr. Keith Lindenbaum a reply letter (attached hereto as Exhibit C), that provided GATEWAY with the basis for which CAPS does not infringe the '575 patent as requested in the March 18th letter (Exhibit B).

9. On May 8, 2009, Mr. Lindenbaum, acting on GATEWAY's behalf, mailed a second letter into this District to Mr. David L. Howard. A copy of that May 8, 2009, letter is attached hereto as Exhibit D. In the May 8, 2009, letter (Exhibit D, as redacted), Mr. Lindenbaum stated that "We maintain that the CAPS Dispensing Tops infringes the claims of the '575 patent and that the claims of the '575 patent are valid."

10. The closures accused by GATEWAY do not infringe the '575 Patent.

11. The claims of the '575 Patent that GATEWAY has alleged are infringed by CAPS' making and selling the accused closures, are invalid, void and unenforceable for one or more of the following reasons:

- (a) the said claims are invalid under 35 U.S.C. § 101;
- (b) the said claims are invalid under 35 U.S.C. § 102;
- (c) the alleged invention on said claims would have been obvious to a person having ordinary skill in the art in view of the prior art at the time of the alleged invention and was not patentable under 35 U.S.C. §103; and

- (d) the patent and/or claims do not comply with the requirements of 35 U.S. C. §112.

12. GATEWAY's threats of infringement of the '575 Patent and GATEWAY's demands for CAPS to cease and desist making, marketing, importing, distributing, selling or using the CAPS closures that GATEWAY has alleged infringes the '575 patent constitute a grave and wrongful interference with the business of CAPS in this District in violation of the Patent Laws of the United States. Further, the foregoing threats and actions taken by GATEWAY create an actual controversy within the scope of 28 U.S.C. §2201 and § 2202.

WHEREFORE, CAPS prays that this Court enter judgment:

I. Declaring the '575 patent to be invalid, unenforceable, void and/or not infringed by CAPS.

II. That CAPS be awarded its damages including attorneys fees for GATEWAY's wrongful assertion that CAPS infringes the '575 patent.

III. Defendant GATEWAY be taxed with the full cost of the suit and full amount of CAPS' attorneys fees expended for defending itself against GATEWAY's charge of patent infringement.

IV. The damages awarded to CAPS be trebled.

V. The Court grant CAPS any such other relief as the Court deems just and proper.

JURY TRIAL DEMAND

In accordance with Rules 5 and 38, Federal Rules of Civil Procedure, CAPS hereby demands a jury trial.

Dated: May 18, 2009

POLSTER, LIEDER, WOODRUFF & LUCCHESI

By: s/William B. Cunningham

William B. Cunningham, E.D. Mo. #2915

McPherson D. Moore, E.D. Mo. # 3890

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ATTORNEYS FOR PLAINTIFF

Attachments:

Exhibit A - U. S. Patent 7,134,575

Exhibit B - Letter from Keith D. Lindenbaum dated March 18, 2009

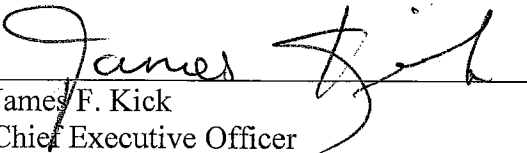
Exhibit C - Letter from D. L. Howard dated April 8, 2009

Exhibit D - Letter from Keith D. Lindenbaum dated May 8, 2009, as redacted

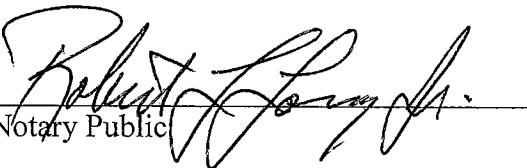
VERIFICATION

STATE OF MISSOURI)
) SS
COUNTY OF ST. LOUIS)

I, James F. Kick, being duly sworn, depose and says that I am Chief Executive Officer of Plaintiff, C.A.P.S., Inc., and that I have read the foregoing Verified Complaint for Declaratory Judgment and know the factual contents thereof and that the same facts are true of my own knowledge except as to those factual matters stated as to be on information and belief, and as to those matters I believe them to be true.


James F. Kick
Chief Executive Officer
C.A.P.S., Inc.

SUBSCRIBED AND SWORN before me this 18th day of May, 2009.


Notary Public

My Commission Expires: September 23, 2011

