

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND

2003 OCT -2 A 11: 32

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION
CLERK'S OFFICE
AT GREENBELT
BY _____ DEPUTY

GRAFCO INDUSTRIES, L.P.
7447 Candlewood Drive
Hanover, MD 21076

Plaintiff

v.

Civil Action No.

RDB

03 CV 2806

PRETIUM PACKAGING, L.L.C.
8112 Maryland Avenue
St. Louis, MO 63105

Defendant

COMPLAINT

Plaintiff, Grafco Industries, L.P. ("Grafco"), sues Pretium Packaging, LLC and alleges as follows:

JURISDICTION AND VENUE

This is an action for infringement of a design patent pursuant to 35 U.S.C. § 271(a) and for unfair competition pursuant to 15 U.S.C. § 1125(a). Subject-matter jurisdiction is conferred by 15 U.S.C. § 1121, 28 U.S.C. §§ 1331 and 1338.

2. The actions of the Defendant complained of herein took place within this judicial district. Venue is proper under 28 U.S.C. §§ 1391 and 1400.

PARTIES

3 Grafco is a Maryland company that is in the business of creating, manufacturing, and distributing plastic containers.

4. Defendant, Pretium Packaging, L.L.C. ("Pretium"), is a Delaware Limited Liability Corporation with headquarters at 8112 Maryland Avenue, St. Louis, MO and is engaged in the business of creating, manufacturing, and distributing plastic containers.

5. Defendant does business in and may be found within this judicial district.

COUNT I
DESIGN PATENT INFRINGEMENT
[35 U.S.C. § 271(a)]

6. Grafco incorporates by reference as if fully alleged herein, Paragraphs 1-5 of the Complaint

7. Grafco is the owner of United States Letters Patent des 427,910 (hereinafter "the '910 patent"), issued July 11, 2000 for the ornamental, novel, and non-obvious appearance of a wide mouth container.

8. Defendant has infringed and continues to infringe the '910 patent in violation of 35 U.S.C. § 271 by its making, using, offering for sale, importing and selling of a wide mouth plastic container having a configuration that is substantially the same as and which appropriate the novel aspects of the design of the '910 patent.

9. The acts of infringement complained of herein are being carried out willfully and with full knowledge by the Defendant of the '910 patent.

10. As a result of Defendant's actions, Grafco has suffered, and will continue to suffer substantial injury including irreparable injury unless Defendant is enjoined by this Court.

1. Defendant's infringement as alleged is deliberate and willful and is believed to be likely to continue unless temporarily, preliminarily and permanently enjoined.

COUNT II
UNFAIR COMPETITION AND FALSE DESIGNATION OF ORIGIN
[15 U.S.C. § 1125(a)]

12. Grafc0 herein incorporates the facts contained with paragraphs 1-10 as if alleged herein.

13. Grafc0 has developed strong consumer demand for wide mouth containers that embody the design of the '910 patent through extensive publicity and significant advertising of the containers by Grafc0 in the United States. As a result of the widespread publicity, the Grafc0 wide mouth container shape, packaging and trade dress are widely recognized in the trade as indicating Grafc0 as the origin of the product, resulting in substantial good will of great importance and value to Grafc0.

14. Defendant has used the design of the Grafc0 wide mouth containers in commerce in connection with its containers thereby providing a false designation of origin, false or misleading misrepresentations of fact which are likely to cause confusion, or to cause mistake or to deceive as to the affiliation, connection or association of Defendant with Plaintiff as to the origin, sponsorship or approval of Defendant's goods. Defendant has copied Grafc0's distinctive shape and trade dress for its wide mouth containers. There is a strong likelihood that all prudent consumers will be misled or confused with respect to the origin of Defendant's wide mouth containers and will believe that such containers originate with and/or are manufactured, approved, supported, endorsed or guaranteed by Grafc0.

14. By deliberately and willfully copying and adopting confusingly similar packaging and trade dress for their wide mouth containers and their sale, offering for sale, distribution and advertising, Defendant has consciously and deliberately sought to capitalize on the distinctive quality and/or secondary meaning established by Grafc0 and has intended to capitalize upon and profit by the consumer confusion they have created.

15. Defendant's conduct as alleged is deliberate and willful, is likely to cause confusion, will injure Grafc0's reputation, unless temporarily, preliminarily and permanently enjoined, and constitutes

false designations of origin in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Grafco has no adequate remedy at law.

WHEREFORE, Grafco requests that the Court grant the following relief:

1 That Defendant, its agents, servants, employees, and those persons in active concert or participation with Defendant be:

- (a)** temporarily, preliminarily and permanently enjoined and restrained from infringing Grafco's design patents in any manner in the sale, offering for sale, distribution or advertising of plastic containers;
- (b)** subject to an ex parte order of seizure and impoundment of all wide mouth containers found to infringe Plaintiff's trademark and trade dress rights in wide mouth containers; and
- (c)** ordered:
 - (i)** to deliver up for destruction all infringing wide mouth containers in possession of Defendant that are not authorized by Grafco for sale or use within the United States:

to deliver up for destruction all unauthorized trade dress, advertising, marketing and promotional materials which bear the distinctive features of any of Grafco's trademarks or trade dress in wide mouth containers; and

to make a diligent effort to recall any of Defendant's infringing wide mouth containers and materials, and to file with this Court and serve upon

Grafco a report in writing under oath setting forth in detail the manner and form in which Defendant has complied with this injunction.

2. That an accounting and judgment be entered against Defendant for:
 - (a) All profits received by Defendant from the sale of infringing containers;
 - (b) All damages suffered by Grafco as a result of Defendant's acts complained of herein, such damages being trebled due to Defendant's willful infringement, as provided by 35 U.S.C. §284 and 15 U.S.C. § 1117(a) and (b);
3. That Grafco receive its costs in this action, including its reasonable attorneys' fees; and
4. That Grafco have such other and further relief as the Court deems just and proper.



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Attorneys for Defendant



US00D427910S

United States Patent [19]

Barnes et al.

[11] Patent Number: Des. 427,910

[45] Date of Patent: ** Jul. 11, 2000

[54] **WIDE MOUTH CONTAINER**[75] Inventors: **Brian Barnes**, Pasadena; **Kirk E. Maki**, Eldersburg, both of Md.[73] Assignee: **Grafco Industries LLP**, Hanover, Md.

[**] Term: 14 Years

[21] Appl. No.: 29/102,691

[22] Filed: Mar. 3, 1999

[51] LOC (7) Cl. 09-01

[52] U.S. Cl. D9/502

[58] Field of Search D9/502, 557, 500,
D9/503, 504, 538, 520; 215/382, 383, 384[56] **References Cited****U.S. PATENT DOCUMENTS**

D. 105,274	7/1937	Fuerst	D9/557
D. 199,869	12/1964	Trombley	D9/557
D. 292,378	10/1987	Brandt et al.	D9/557
D. 348,007	6/1994	Feen	D9/557
D. 348,837	7/1994	Feen	D9/502

D. 411,750	6/1999	Forecast et al.	D9/557
2,893,678	7/1959	Homan et al.	215/382
5,024,341	6/1991	Dekerle	D9/502
5,862,929	6/1999	Takeuchi et al.	215/384

OTHER PUBLICATIONS

Modern Packaging, p. 17, far right, Apr. 1976.

Primary Examiner—Lucy Lieberman

Attorney, Agent, or Firm—Brady, O'Boyle & Gates

[57] **CLAIM**

The ornamental design for a wide mouth container, as shown and described.

DESCRIPTION

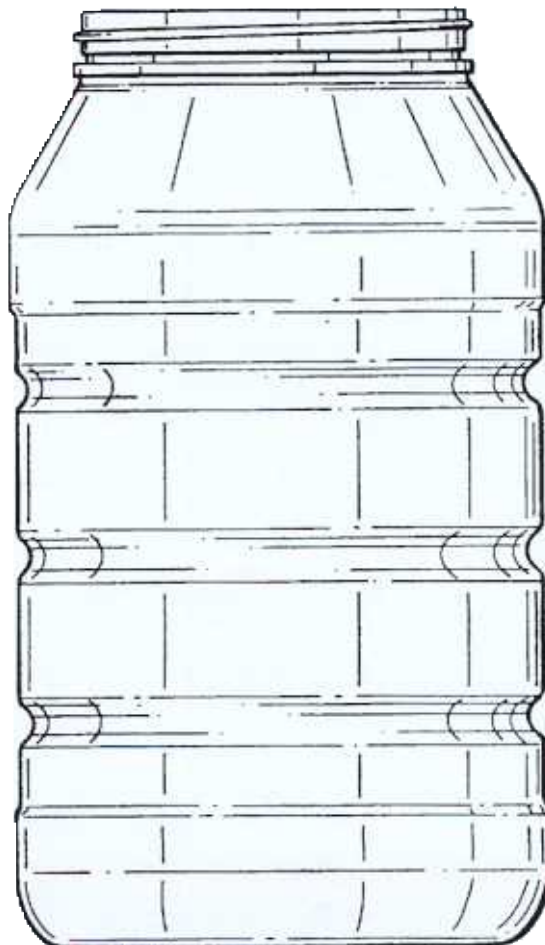
FIG. 1 is a top, front perspective view of a wide mouth container showing our new design;

FIG. 2 is a top plan view of the wide mouth container shown in FIG. 1;

FIG. 3 is a bottom plan view of the wide mouth container shown in FIG. 1; and,

FIG. 4 is a rear elevation thereof.

1 Claim, 2 Drawing Sheets



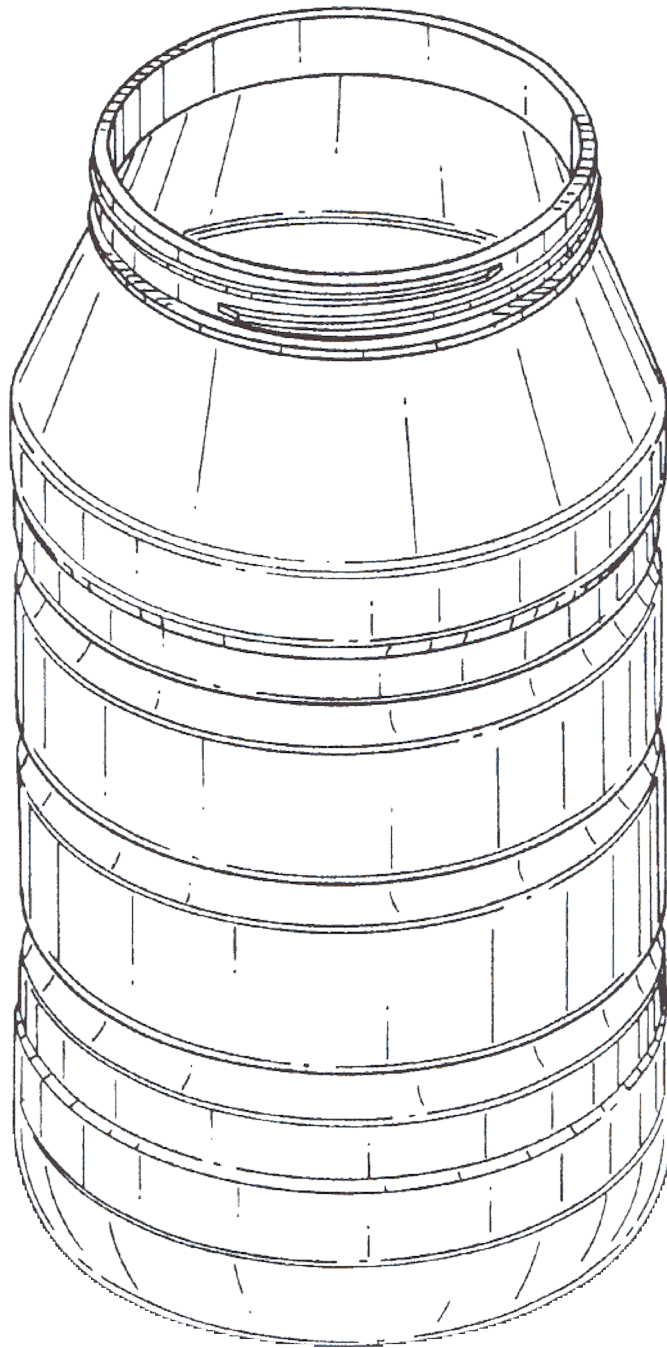
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FIG. 4

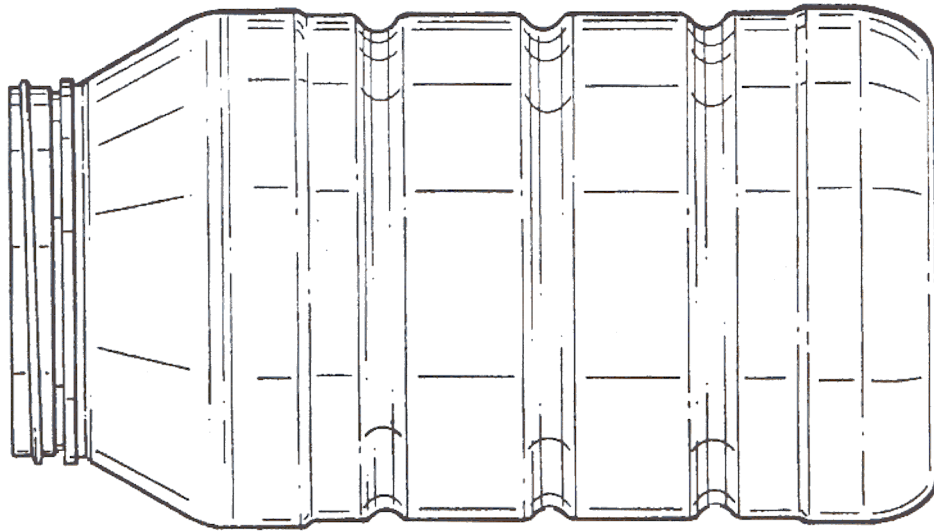


FIG. 2

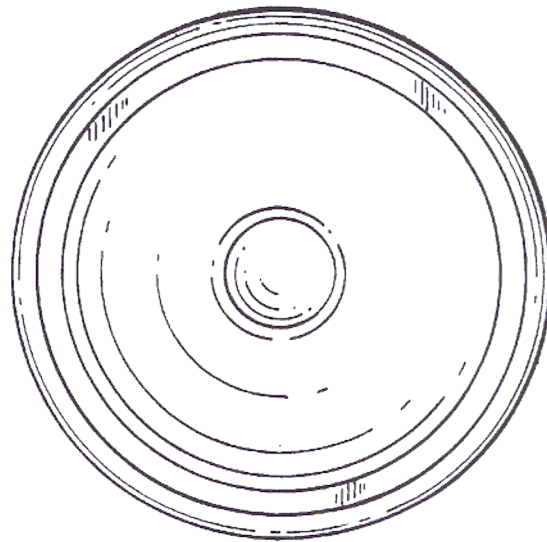
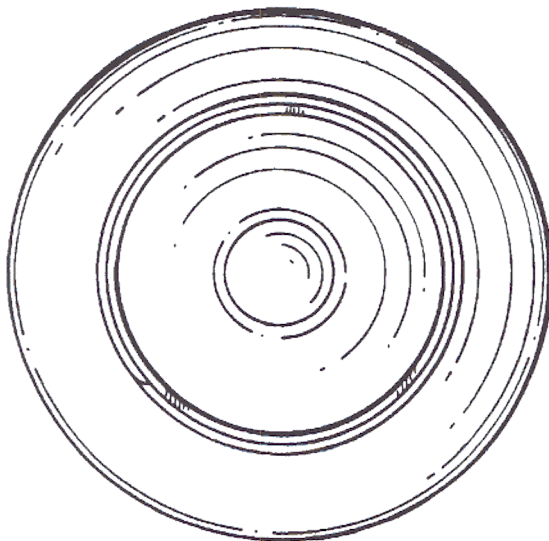


FIG. 3