

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

THE PROCTER & GAMBLE COMPANY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action No. 1:12cv264
	)	Beckwith
BE WELL MARKETING, INC.,	)	
	)	
Defendant.	)	<b>COMPLAINT</b>
	)	<b>AND JURY DEMAND</b>
	)	

Plaintiff, The Procter & Gamble Company (“P&G”), for its claims against Defendant Be Well Marketing, Inc. (“Be Well”), hereby states and alleges the following:

**THE PARTIES AND JURISDICTION**

1. P&G is a corporation organized and existing under the laws of the State of Ohio that maintains its principal place of business at One Procter & Gamble Plaza, Cincinnati, Ohio 45201.
2. On information and belief, Be Well is a corporation organized and existing under the laws of the State of Georgia that maintains its principal place of business at 3195 7th St SE, Moultrie, Georgia 31788.
3. This Court has personal jurisdiction over Be Well under the Ohio long-arm statute (O.R.C. § 2307.382) because Be Well contracts to supply and has supplied tooth whitening strips that infringe P&G’s intellectual property in this State and in this District.
4. This action arises under the patent laws of the United States, Title 35, United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1338(a) and 1331.

5. Venue is proper in this Court under 28 U.S.C. §§ 1391(b)(2) and 1400(b).

### **THE PATENTS**

6. On April 13, 1999, United States Letters Patent No. 5,894,017 (“the ‘017 patent”) entitled “Delivery System For An Oral Care Substance Using A Strip Of Material Having Low Flexural Stiffness,” was duly and legally issued to P&G as the assignee of the named inventors. Since that date, P&G has been the owner of the ‘017 patent. A true and correct copy of the ‘017 patent is attached to this Complaint as Exhibit A.

7. On October 17, 2006, United States Letters Patent No. 7,122,199 (“the ‘199 patent”) entitled “Methods For Whitening Teeth,” was duly and legally issued to P&G as the assignee of the named inventors. Since that date, P&G has been the owner of the ‘199 patent. A true and correct copy of the ‘199 patent is attached to this Complaint as Exhibit B.

### **THE INFRINGING PRODUCTS**

8. Be Well currently manufactures a private label tooth whitening product called “Walgreens Dental Strips.” Be Well sells this product to The Walgreen Company (“Walgreens”) knowing that Walgreens sells the product in its Walgreens stores in this State and in this District.

9. On information and belief, Be Well knows and intends that Walgreens sells the Be Well tooth whitening products in its Walgreens stores to consumers to use for whitening their teeth. Photographs of the packaging of the Walgreens Dental Strips product are attached to this Complaint as Exhibit C.

10. The Walgreens Dental Strips Product includes instructions directing consumers to use the product to whiten their teeth. A copy of the instructions is attached to the Complaint as Exhibit D.

**COUNT I – INFRINGEMENT OF THE ‘017 PATENT**

11. P&G incorporates by reference the allegations set forth in paragraphs 1 through 10 as if fully rewritten herein.

12. Be Well is infringing the ‘017 patent by manufacturing, using, offering to sell and selling products that infringe the ‘017 patent, including the “Walgreens Dental Strips” products, without authority or license from P&G.

13. On information and belief, Be Well knows, should know, or is willfully blind to the fact that its infringing products are specially made or adapted for an infringing method. Nevertheless, it has sold, and continues to sell, a material component of the patented invention that is not a staple article of commerce capable of substantial noninfringing use.

14. Be Well has been and is currently actively inducing infringement of the ‘017 patent by others, without authority or license from P&G. Among other infringements induced, Be Well has actively induced others to use and perform, within the United States, the systems and methods recited by the claims of the ‘017 patent. Be Well provides instructions to consumers directing them to perform methods that infringe the claims of the ‘017 patent. On information and belief, Be Well knows that the induced acts constitute patent infringement.

15. As such, Be Well has knowingly, or with willful blindness, contributed to and induced, and continues to contribute to and induce, the infringement of the claims of the ‘017 patent in violation of 35 U.S.C. § 271.

16. P&G has been damaged, in an amount yet to be determined, by Be Well’s acts of infringement and will continue to be damaged by such acts in the future.

**COUNT II – INFRINGEMENT OF THE ‘199 PATENT**

17. P&G incorporates by reference the allegations set forth in paragraphs 1 through 16 as if fully rewritten herein.

18. Be Well is infringing the ‘199 patent by manufacturing, using, offering to sell and selling products that infringe the ‘199 patent, including the “Walgreens Dental Strips” products, without authority or license from P&G.

19. On information and belief, Be Well knows, should know, or is willfully blind to the fact that its infringing products are specially made or adapted for an infringing method. Nevertheless, it has sold, and continues to sell, a material component of the patented invention that is not a staple article of commerce capable of substantial noninfringing use.

20. Be Well has been and is currently actively inducing infringement of the ‘199 patent by others, without authority or license from P&G. Among other infringements induced, Be Well has actively induced others to perform, within the United States, the methods recited by the claims of the ‘199 patent. Be Well provides instructions to consumers directing them to perform methods that infringe the claims of the ‘199 patent. On information and belief, Be Well knows that the induced acts constitute patent infringement.

21. As such, Be Well has knowingly, or with willful blindness, contributed to and induced, and continues to contribute to and induce, the infringement of the claims of the ‘199 patent in violation of 35 U.S.C. § 271.

22. P&G has been damaged, in an amount yet to be determined, by Be Well’s acts of infringement and will continue to be damaged by such acts in the future.

**PRAYER FOR RELIEF**

P&G respectfully prays for the following relief:

A. That the Court adjudge and decree that Be Well has infringed and is infringing the '017 and '199 patents;

B. That the Court adjudge and decree that Be Well has contributed to and induced infringement and is actively contributing to and inducing infringement of the '017 and '199 patents;

C. That the Court enter preliminary and permanent injunctions enjoining Be Well, its officers, employees, agents, and all others acting in concert with it or participating with it from further acts that infringe the '017 and '199 patents;

D. That the Court enter permanent and preliminary injunctions enjoining Be Well, its officers, employees, agents, and all others acting in concert with it or participating with it from actively contributing to or inducing others to infringe the '017 and '199 patents;

E. That Be Well be ordered by this Court to account for and pay to P&G damages adequate to compensate P&G for Be Well's infringement, contribution to, and inducement of infringement of the '017 and '199 patents;

F. That the Court treble the damages for Be Well's willful infringement of the '017 and '199 patents.

G. That the Court award pre-judgment interest on the damages;

H. That the Court declare this an exceptional case under 35 U.S.C. § 285;

I. That the Court award P&G its costs and attorneys' fees incurred in this action;  
and

J. That the Court award such other relief as it deems just and proper.

**JURY TRIAL DEMAND**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, P&G demands a trial by jury of all issues triable of right by jury.

Dated: April 2, 2012

Respectfully submitted,

/s/ David M. Maiorana

David M. Maiorana (# 0071440)  
Email: dmaiorana@jonesday.com  
JONES DAY  
North Point  
901 Lakeside Avenue  
Cleveland, OH 44114  
Telephone: (216) 586-3939  
Facsimile: (216) 579-0212

*Attorney for Plaintiff  
The Procter & Gamble Company*