

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

)	
COT'N WASH, INC. and)	
)	
BIG 3 PACKAGING, LLC,)	
)	
Plaintiffs,)	
)	
v.)	
)	
)	
HENKEL CORPORATION,)	
)	
DIAL CORPORATION, and)	
)	
HENKEL CONSUMER GOODS, INC.,)	
)	
Defendants.)	
)	

Civil Action No.
JURY TRIAL DEMANDED

**COT'N WASH, INC.'S AND BIG 3 PACKAGING, LLC'S COMPLAINT FOR
PATENT INFRINGEMENT AGAINST HENKEL CORPORATION, DIAL
CORPORATION, AND HENKEL CONSUMER GOODS, INC.**

Plaintiffs, Cot'N Wash, Inc. ("Cot'n Wash") and Big 3 Packaging, LLC. ("B3P"), by counsel, for its Complaint against Defendants, Henkel Corporation ("Henkel Corp."), Dial Corporation ("Dial"), and Henkel Consumer Goods, Inc. ("Henkel Consumer Goods") (collectively, Dial, Henkel Corp, and Henkel Consumer Goods are referred to as "Henkel") state:

JURISDICTION & VENUE

1. This is an action for patent infringement arising under the patent laws of the United States, including 35 U.S.C. §§ 271, 281, 283, 284 and 285.
2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1338(a), 2201, and 2202.

3. This Court has personal jurisdiction over Defendants because Defendants: a) are incorporated in this District; b) committed acts of patent infringement such as selling and offering for sale the infringing products described herein within this District and/or contributed to or induced (*e.g.*, instructing and supplying others with infringing products and instructions for use) of patent infringement by others (*e.g.*, using the infringing products defined herein) in this District; and c) regularly do business, solicit business, engage in other persistent courses of conduct, and/or derive substantial revenue from products and/or services provided to individuals in the district in this State.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b) because a) Defendants are incorporated in this District; b) Defendants do business in the District; c) Defendants have committed acts of infringement in the District; and d) Defendants are subject to personal jurisdiction in this District.

THE PARTIES

5. B3P is New Jersey limited liability company with its principal place of business at 4201 Torresdale Avenue, Philadelphia, Pennsylvania, 19124. B3P is in the business of, *inter alia*, unit-dose, water-soluble packaging solutions for industrial and consumer applications. Dickler Chemical Laboratories, Inc., the original assignee, assigned U.S. Patent No. 6,037,319 (Ex. A) (the “’319 Patent”) to B3P.

6. Cot’N Wash is a Pennsylvania corporation with its principal place of business at 2 Logan Square, Suite 400, Philadelphia, Pennsylvania, 19103. Jonathan Propper (“Propper”) is the president of Cot’N Wash. Cot’N Wash is an exclusive licensee of the ’319 Patent in the laundry products field. Cot’N Wash is in the business of providing laundry products to consumers through various retail outlets. In particular, Cot’N Wash provides laundry packets

containing liquid detergent under the brand name Dropps. The packets are water-soluble, so that when a packet is placed in a washing machine, the packet dissolves and the detergent mixes with water for cleaning the laundry. Cot'N Wash has been selling its Dropps products since at least about 2006 under license from B3P and Dickler Chemical Laboratories, Inc. An example of Cot'N Wash's Dropps products is provided below.

Examples of Cot'N Wash's Dropps Products



7. Dial is a Henkel company that is incorporated in Delaware. Dial is a subsidiary of Henkel Consumer Goods and has a place of business at 15501 N. Dial Blvd., Scottsdale, Arizona, 85260. Upon information and belief, Dial is in the business of selling, in all fifty states including this district, water-soluble laundry packets under brand names, such as, but not limited to "Purex."

8. Henkel Consumer Goods is incorporated in Delaware and is a subsidiary of Henkel Corp. Henkel Consumer Goods has a principal place of business at 19001 N. Scottsdale Road, Scottsdale, Arizona, 85255. Upon information and belief, Henkel Consumer Goods is in the business of marketing and selling in all fifty states including this district, water-soluble laundry packets under brand names, such as, but not limited to "Purex."

9. Henkel Corp. is incorporated in Delaware and is a North American subsidiary of the German company Henkel AG & Co. KGaA. Henkel Corp. has a place of business at 1001 Trout Brook Crossing, Rocky Hill, Connecticut, 06067. Upon information and belief, Henkel Corp. is in the business of selling through its subsidiary Dial, in all fifty states including this district, water-soluble laundry packets under brand names, such as, but not limited to “Purex.”

'319 PATENT FACTUAL HISTORY

10. On March 14, 2000, the U.S. Patent and Trademark Office duly and legally issued U.S. Patent No. 6,037,319 (the “’319 Patent”), entitled “Water-Soluble Packets Containing Liquid Cleaning Concentrates,” in the names of Lawrence R. Dickler and J. Barry Ruck. The issued patent was assigned to Dickler Chemical Laboratories, Inc. (“Dickler Chemical”). A true and correct copy of the ’319 Patent is attached to this Complaint as Exhibit A.

11. In 2006, Cot’N Wash entered into a license with Dickler Chemical and began selling water-soluble laundry packets based on the ’319 patent under the trade name Dropps. In 2007, Cot’N Wash became the exclusive licensee for producing and selling laundry products covered by the ’319 patent.

12. Cot’N Wash’s Dropps products have received significant industry accolades. Cot’N Wash’s Dropps products have been praised in the New York Times, The Chicago Tribune, and The Wall Street Journal, as well as industry publications, such as Happi. An October 2010 news report in Happi quoted the Target laundry buyer as saying “Our guests look to Target to offer innovative solutions to everyday household chores, and Dropps certainly fits that description.” Further, an April 2012 article in Happi noted that “Propper’s “Aha!” moment led to the development of Dropps Laundry Pacs and the birth of an entirely new laundry category.”

13. In 2007, Pak-It LLC purchased all outstanding shares of Dickler Chemical, and Dickler Chemical became a wholly owned subsidiary of Pak-it LLC.

14. In 2009, 310 Holdings, Inc. acquired all outstanding shares of Pak-it LLC, Dickler Chemical remained a wholly owned subsidiary of Pak-it LLC.

15. In 2009, 310 Holdings changed its name to JBI, Inc.

16. In 2012, B3P acquired substantially all of the assets of Pak-It LLC and Dickler Chemical. Dickler Chemical assigned the '319 patent and any claims for past infringement of the '319 patent that Dickler Chemical had to B3P.

17. At all relevant times, Cot'N Wash has provided notice of the '319 Patent by marking the number of the patent on its Dropps' packaging in accordance with 35 U.S.C. §287.

18. At all relevant times, B3P has provided notice of the '319 Patent by marking the number of the patent on its relevant product packaging in accordance with 35 U.S.C. § 287.

HENKEL FACTUAL HISTORY

19. Since about 2006, Cot'n Wash has been selling water-soluble laundry packets under the Dropps tradename.

20. As of 2009, Henkel did not sell water-soluble laundry packets in North America.

21. In about 2009, Henkel became interested in selling water-soluble laundry packets.

22. In February of 2009, Eric Schwartz ("Schwartz"), the Marketing Director of Laundry Care for Henkel North America, contacted Proper, President of Cot'N Wash about a potential business opportunity in which Cot'N Wash would sell or license to Henkel its water-soluble packet technology. At about that time, Henkel and Cot'N Wash discussed the '319 Patent and Cot'N Wash's Dropps products.

23. In about March and April of 2009, Schwartz conducted market research of the Dropps branded concept while receiving information about the Dropps product from Lisa Hauswirth (“Hauswirth”), a shareholder and consultant of Cot’N Wash.

24. In May of 2009, Schwartz and Hauswirth arranged a telephonic meeting to discuss the market test results. During that telephonic meeting Schwartz, Hauswirth, Proper and Rich Baruch (“Baruch”) a shareholder and board member of Cot’N Wash discussed the results of the testing. Schwartz indicated that the results of the testing were not favorable for moving forward. However, Schwartz did not share the actual market research results with Dropps or Henkel’s analysis of those results.

25. Despite indicating in May 2009 that Henkel was not interested in water-soluble laundry packets, on about June 1, 2009, Schwartz followed up with Cot’N Wash, stating, “Selfishly, I hope you come to the same conclusion I have-that Dropps can go much farther much faster with an incumbent partner.” Thus, as of June 2009, Henkel believed that it could partner with Cot’N Wash to sell water-soluble laundry packets.

26. However, Henkel opted not to pursue a business partnership with Cot’N Wash. Henkel’s stated reason for terminating the discussion with Cot’N Wash was the alleged market test results and because Henkel wanted to focus on the development and launch of laundry products other than water-soluble laundry packets. Thus, as of 2009, Henkel had indicated to Cot’N Wash that it was not interested in water-soluble laundry packets despite its previous determination that Henkel could partner with Cot’N Wash and sell water-soluble laundry packets.

27. Over two years later, on about June 30, 2011, Schwartz contacted Cot’N Wash’s Baruch and stated that Henkel “might have more latitude to consider cooperation with Dropps

now, due to some internal changes. We'd still probably have a hard time coming to terms on valuations, but some kinds of limited co-operations might be attractive." Cot'N Wash proposed to Schwartz that Cot'N Wash's investment banker be contacted. Schwartz never contacted the banker, and the further discussions did not move forward.

28. On information and belief, at some point after learning of the '319 patent and the Dropps products, embodying the '319 patented technology, Henkel decided to secretly develop its own products that incorporate the teachings of the '319 patent and Cot'N Wash's Dropps' products. Henkel did not inform Cot'N Wash that it sought to use the '319 patented technology or that it would be selling water-soluble laundry packets.

29. In February of 2012, without any mention to Cot'N Wash, Henkel launched its own water-soluble laundry packets under brand names, including Purex, Purex UltraPacks, Mountain Breeze and Purex UltraPacks, free and clear, based on the '319 patent and Cot'N Wash's Dropps products. Henkel's products embody the '319 patented technology. An example of Henkel's Purex UltraPacks are set forth below.

Henkel's Purex Water-Soluble Laundry Products





COUNT I – HENKEL’S INFRINGEMENT OF THE ’319 PATENT

30. B3P and Cot’N Wash repeat the allegations in paragraphs 1-29 of this Complaint as if fully set forth herein.

31. Henkel has made, sold, and offered to sell, and continues to make, sell and offer to sell, within the United States, water-soluble laundry packets.

32. Henkel has directly infringed and is directly infringing claims 1 and 3-7 of the ’319 Patent under 35 U.S.C. § 271(a) by, *inter alia*, making, using, selling, and offering for sale water-soluble laundry packets, including without limitation, Purex UltraPacks, Mountain Breeze and Purex UltraPacks, free and clear, each of which is encompassed by at least claims 1 and 3-7 of the ’319 Patent.

33. Henkel has indirectly infringed and is indirectly infringing at least claims 1 and 3-7 of the ’319 Patent under 35 U.S.C. § 271(b) by, *inter alia*, having knowledge of the ’319 patent and knowing its packet laundry packets would infringe claims 1 and 3-7 of the ’319 patent, inducing its customers within the United States to use its packet laundry products in a manner that directly infringes claims 1 and 3-7 of the ’319 patent, including without limitation, Purex UltraPacks, Mountain Breeze and Purex UltraPacks, free and clear, each of which is encompassed by at least claims 1 and 3-7 of the ’319 Patent.

34. On information and belief, Henkel has infringed and is infringing at least claims 1 and 3-7 of the ’319 Patent under 35 U.S.C. § 271(f) by exporting packet laundry products from

the United States, including without limitation, Purex UltraPacks, Mountain Breeze and Purex UltraPacks, free and clear, each of which is encompassed by at least claims 1 and 3-7 of the '319 Patent.

35. On information and belief, Henkel has known of the '319 Patent since at least 2009 including at least issued claims 1 and 3-7 of the '319 Patent.

36. On information and belief, Henkel has been and is intentionally and willfully infringing at least claims 1 and 3-7 of the '319 Patent, and this case is exceptional under 35 U.S.C. § 285. On information and belief, Henkel has acted despite an objectively high likelihood that their actions constituted infringement of the '319 patent. Henkel has been aware of the '319 Patent since at least 2009. Henkel was aware that Cot'N Wash's Dropps products were manufactured under the '319 patent. Henkel was aware of Cot'N Wash's Dropps products. Henkel disregarded the '319 Patent and developed its own infringing water-soluble products using the technology claimed in the '319 Patent and with knowledge of the '319 patent and Cot'N Wash's Dropps products that are covered by the '319 Patent. The objective risk of infringement under these facts is extremely high.

37. On information and belief, Henkel either knew that it was infringing the '319 patent or the risk of infringing the '319 patent was so high that Henkel should have known the '319 patent was being infringed. Henkel specifically inquired into the patents that covered Cot'N Wash's Dropps products. Cot'N Wash provided Henkel with information about the '319 patent and Cot'N Wash's Dropps product. Henkel performed market testing of the Dropps products. Henkel was aware of the Dropps product, the '319 patent and claims 1 and 3-7 of the '319 patent during the time Henkel developed the infringing products and committed the

infringing acts. Henkel either knew that it was infringing the '319 patent or the risk of infringing the '319 Patent was so high that Henkel should have known it was infringing the '319 patent.

38. Henkel's infringing acts have been the actual and proximate cause of damage to Cot'N Wash and B3P. B3P and Cot'N Wash have sustained substantial damages and will continue to sustain monetary damages as a result of Henkel's infringement of the '319 Patent. Henkel is using the '319 Patent's technology without authorization causing Cot'N Wash to suffer lost profits damages. Alternatively and/or additionally, Henkel's unauthorized use of the '319 patent has caused at least damages to Cot'N Wash and/or B3P measured according to a reasonable royalty.

39. B3P and Cot'N Wash have no adequate remedy at law and Henkel should be enjoined from infringing the '319 Patent. Henkel has caused Cot'N Wash and B3P irreparable harm. Unless enjoined, Henkel will continue to cause Cot'N Wash and B3P irreparable harm, loss, and injury.

JURY DEMAND

40. Plaintiffs B3P and Cot'N Wash demand a trial by jury.

PRAYER FOR RELIEF

Wherefore, B3P and Cot'N Wash request that the Court enter judgment:

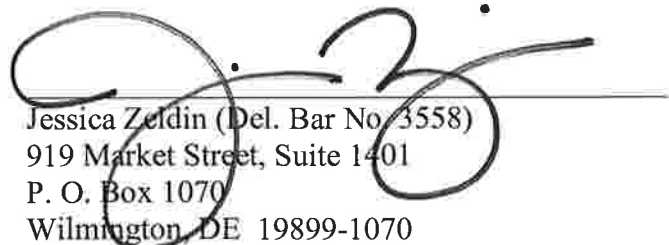
A. permanently enjoining the Defendants, and those in active concert with them, from further infringement of the '319 Patent;

B. declaring that Defendants have directly infringed and are directly infringing claims 1 and 3-7 of the '319 Patent;

C. declaring that Defendants have indirectly infringed and are indirectly infringing claims 1 and 3-7 of the '319 Patent;

- D. awarding B3P and Cot'N Wash damages adequate to compensate B3P and Cot'N Wash for Defendants' direct and indirect infringement, but in no event less than a reasonable royalty for the Defendants' use of the patented inventions, together with prejudgment and post-judgment interest and costs, as fixed by the Court and as provided by 35 U.S.C. § 284;
- E. declaring that Defendants' infringement is willful;
- F. finding that, as to the Defendants this is an exceptional case under 35 U.S.C. §285;
- G. awarding treble damages against Defendants for their willful infringement of the '319 patent, as provided by 35 U.S.C. § 284;
- H. awarding Cot'N Wash and B3P their attorneys' fees incurred in prosecuting this action against Defendants, as provided by 35 U.S.C. § 285; and
- I. awarding Cot'N Wash and B3P such other relief as the Court deems just and proper.

ROSENTHAL, MONHAIT & GODDESS, P.A.



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