

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

	)	
<b>COT'N WASH, INC. &amp;</b>	)	
	)	
<b>BIG 3 PACKAGING, LLC,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>THE SUN PRODUCTS</b>	)	
<b>CORPORATION,</b>	)	
	)	
<b>Defendant.</b>	)	
	)	

Civil Action No. \_\_\_\_\_

**JURY TRIAL DEMANDED**

**COT'N WASH, INC.'S AND BIG 3 PACKAGING, LLC'S COMPLAINT FOR  
PATENT INFRINGEMENT BY THE SUN PRODUCTS CORPORATION**

Plaintiffs, Cot'N Wash, Inc. ("Cot'n Wash") and Big 3 Packaging, LLC. ("B3P"), by counsel, for its Complaint against Defendant, The Sun Products Corporation ("Sun Products") 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 Sun Products because Sun Products: a) is 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 does business, solicits business, engages in other persistent courses of conduct, and/or derives 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) Sun Products is incorporated in this District; b) Sun Products does business in the District; c) Sun Products has committed acts of infringement in the District; and d) Sun Products is subject to personal jurisdiction in this District.

### **THE PARTIES**

5. B3P is a 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. Sun Products is a private company incorporated in Delaware and has its principal place of business at 60 Danbury Rd., Wilton, Connecticut, 06897. Upon information and belief, Sun Products 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, “All.”

8. Upon information and belief, Sun Products is also in the business of selling water-soluble laundry packets to retailers who sell the packets under private label brand names.

9. Upon information and belief, Sun Products is also in the business of exporting water-soluble laundry packets to foreign retailers who sell the packets under brand names, such as, but not limited to, “Sunlight.”

**‘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 manufacturing and supply agreement 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. In the interest of protecting its rights, 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. In the interest of protecting its rights, at all relevant times, B3P has provided notice of the '319 Patent by marking the number of the patent on the packaging of the relevant products manufactured and sold by B3P in accordance with 35 U.S.C. § 287.

### **SUN PRODUCTS FACTUAL HISTORY**

19. Cot'N Wash has been selling its Dropps laundry products since about 2006.

20. In about 2010, Sun Products did not sell water-soluble laundry packets that contained liquid detergent. In about 2010, Sun Products became interested in developing water-soluble laundry packet technology. Sun Products' interest in obtaining water-soluble laundry packet technology was generated by the market including Wal-Mart's expressed intent to start selling water-soluble laundry packets. Because of Wal-Mart's interest in selling water-soluble laundry packets, Sun Products felt pressure to obtain water-soluble laundry packet technology.

21. In 2011, Sun Products and Cot'N Wash began discussions regarding Cot'N Wash's water soluble laundry packet technology and the possibility of Cot'N Wash developing or providing water-soluble laundry packets for Sun Products to fulfill Sun Products need for water-soluble laundry packets.

22. On about March 30, 2011, Sun Products entered into a mutual Confidential Disclosure Agreement with Cot'N Wash to discuss a possible business relationship regarding Cot'N Wash's water-soluble laundry packet technology. The stated purpose of that agreement was "to discuss and explore the possibility of entering into a business transaction between" Cot'N Wash and Sun Products "relating to certain products in the laundry product category." Propper executed the agreement on behalf of Cot'N Wash and Ms. Beth Hecht, Sun Product's

Senior Vice President, General Counsel, and Secretary, executed the agreement on behalf of Sun Products. Pursuant to that confidential disclosure agreement, Cot'N Wash supplied material information to Sun Products including information regarding Cot'N Wash's manufacturing processes, financial information, market information, and technical information regarding Cot'N Wash's Dropps products.

23. On about April 5, 2011, Cot'N Wash's senior executives met with Sun Product's senior executives at Sun Products' Danbury, Connecticut corporate offices. Jonathan Propper, President of Cot'N Wash, Rich Baruch ("Baruch") a shareholder and board member of Cot'N Wash, and Remy Wildrick ("Wildrick"), the Marketing Director and a shareholder of Cot'N Wash attended the meeting on behalf of Cot'N Wash. Neil Difeo ("Difeo"), Sun Products' departing CEO and current Chairman, Jeff Ansel ("Ansel"), CEO of Sun Products, Ms. Hecht, and Troy Graham, ("Graham"), Innovation Group Leader and Senior Scientist at Sun Products, and Craig Slavtcheff ("Slavtcheff"), Senior Vice President, R&D, QA at Sun Products attended the meeting on behalf of Sun Products. During the meeting, the parties discussed Cot'n Wash's Dropps products, including its specifications, and manufacturing, Cot'N Wash's supply chain, as well as the '319 patent. One of the agenda topics for the meeting was an overview of intellectual property. As a result of that meeting, Sun Products learned about Cot'N Wash's business, its Dropps products, and the '319 patent. Sun Products expressed interested in partnering with Cot'N Wash, and established a due diligence team that included some of its most senior executives, including Hecht, to further discussions with Cot'N Wash.

24. On April 9, 2011, Hecht informed Propper that Brian Del Buono ("Del Buono"), Vice President and Chief IP Counsel for Sun Products, would shortly be providing a list of Sun Products' due diligence requirements. Hecht expressed eagerness for a relationship in an email

to Propper, stating “We are prepared to move quickly and from our call together it sounds like you are as well.”

25. On April 11, 2011, Del Buono sent a due diligence request to Propper. On April 13, 2011, Del Buono sent an updated due diligence request to Propper. Del Buono requested a list of all issued patents that contain at least one claim that encompassed Cot’N Wash’s products. Del Buono also requested, *inter alia*, Cot’N Wash’s Dropps “Marketing and Sales” information, “R&D and Manufacturing” information, “QA, Regulatory and Related Documents,” “Competition” information, “Intellectual Property,” as well as other information. In response to Sun Products’ request, Cot’N Wash again disclosed the ’319 patent, as well as technical, financial and marketing information regarding its Dropps products.

26. On or about April 27, 2011, Sun Product’s team visited Cot’N Wash’s offices to conduct due diligence. For most of the day, Del Buono, Hecht, Lisa Nichols (“Nichols”), Vice President and Treasurer for Sun Products, and Scott Perry (“Perry”), Director of External Manufacturing at Sun Products, conducted due diligence at Cot’N Wash’s offices and received information regarding the ’319 patent, technical information regarding Dropps, manufacturing information, Dropps’ supply chain, market information regarding Dropps, and financial information regarding Dropps and Cot’N Wash.

27. On or about April 28, 2011, Propper responded to a request from Del Bruno regarding documents referred to in Cot’N Wash’s agreement with Dickler Chemical. Propper also provided a link to the ownership history of Dickler Chemical and a brochure with a list of the patents that are licensed.

28. On or about May 9, 2011, Del Bruno demanded highly sensitive information, such as Cot’N Wash’s supply contracts. Propper provided detailed information regarding Cot’N

Wash's suppliers, but was reluctant to hand over Cot'N Wash's supply contracts to Sun Products without a firm commitment to a deal. Accordingly, Propper's representatives informed Del Bruno that Cot'N Wash was not prepared to disclose the supply contacts until it has a better understanding of a deal between Cot'N Wash and Sun Products. Del Bruno did not provide any parameters regarding a deal.

29. On May 17, 2011, Hecht sent Propper a request for an update and whether Wal-Mart would be soon offering water-soluble laundry packets for sale. Propper informed Hecht of Wal-Mart's intention to delay their sale of water soluble laundry packets until the first quarter of 2012 and that Wal-Mart would purchase Dropps for a February 2012 set. Propper reminded Hecht that Cot'N Wash's packets were licensed under the '319 Patent.

30. Due to Wal-Mart's delay, Sun Product's eagerness to enter into a business relationship with Cot'N Wash began to fade, and Sun Products terminated its discussions with Cot'N Wash in May 2011 indicating that it was no longer interested in water-soluble packet technology. Upon terminating the discussions, Sun Products did not express any intent to develop water-soluble laundry packets.

31. Unbeknownst to Cot'N Wash, Sun Products secretly began developing water-soluble packets based on Cot'N Wash's Dropps products, the information provided by Cot'N Wash to Sun Products, and the '319 patent. As the market pressure created by Wal-Mart had been removed, Sun Products opted to disregard Cot'N Wash and the '319 patent, and simply generate its own products that infringe the '319 patent.

32. Having not heard from Sun Products since May 2011, Propper followed up with Hecht on about January 3, 2012 by sending a message to Hecht regarding the upcoming



American Cleaning Institute conference asking whether Hecht would meet with Propper at the conference.

33. Nearly a month after Propper's query, on January 25, 2012, Hecht responded to Propper's inquiry by alleging that she had not received Propper's January 3, 2012 email because it had been caught in Sun Product's spam filter. Hecht never indicated that any other communications from Propper had been caught in Sun Products' spam filter. Hecht further stated that she was not available to meet, but she may be able to "chat" at one of the receptions.

34. Hecht briefly spoke with Propper during the January conference. Nothing of substance was discussed, and there were no further discussions between them at the conference. Hecht did not mention that Sun Products had been secretly developing its own products based on the information provided by Cot'N Wash. Nor did Hecht mention any interest in Sun Products in selling water-soluble laundry packets.

35. At least as early as February 2012, Sun Products began selling water-soluble laundry detergent packets under various brand names including the "All" brand that encompass the teachings of the '319 patent. Sun Products developed its water-soluble packets based on Cot'N Wash's Dropps products, the information provided by Cot'N Wash to Sun Products, and the '319 patent. For example, Sun Products has offered for sale and sold All Mighty Pacs, original and All Mighty Pacs, free and clear.

**Sun Products All Brand Mighty Pacs, Original and Free and Clear**





36. On information and belief, Sun Products is also supplying and selling water-soluble laundry packets that encompass the '319 patented technology to retailers, including SUPERVALU, who sell the packets under their own brand names. Sun Products also developed these products based on Cot'N Wash's Dropps products, the information provided by Cot'N Wash to Sun Products, and the '319 patent.

37. On information and belief, Sun Products is also exporting and selling water-soluble laundry packets that encompass the '319 patented technology under various brand names including "Sunlight triple clean Pacs."

**Sunlight Triple Clean Pacs**



**COUNT I – SUN PRODUCT’S INFRINGEMENT OF THE ’319 PATENT**

38. B3P and Cot’N Wash repeat the allegations in paragraphs 1-37 of this Complaint as if fully set forth herein.

39. Sun Products has, *inter alia*, made, sold, used, and offered to sell, and continues to make, sell, use, and offer to sell, within the United States, water-soluble laundry packets.

40. Sun Products has directly infringed and is directly infringing at least claims 1, 3, 6 and 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, All Mighty Pacs, original and All Mighty Pacs, free and clear, each of which is encompassed by at least claims 1, 3, 6 and 7 of the ’319 Patent.

41. On information and belief, Sun Products has directly and is directly infringing at least claims 1, 3, 6 and 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 to retailers, who sell and offer for sale the packets under private brand names, each of which is encompassed by at least claims 1, 3, 6 and 7 of the ’319 Patent.

42. Sun Products has indirectly infringed and is indirectly infringing at least claims 1, 3, 6 and 7 of the ’319 Patent under 35 U.S.C. §271(b) by, *inter alia*, having knowledge of the ’319 patent and knowing its laundry packets would infringe at least claims 1, 3, 6 and 7 of the ’319 patent, inducing its customers within the United States to directly infringe claims 1, 3, 6, and 7 of the ’319 patent by using Sun Products’ infringing water-soluble laundry packets, including without limitation, All Mighty Pacs, original and All Mighty Pacs, free and clear, each of which is encompassed by at least claims 1, 3, 6 and 7 of the ’319 Patent.

43. Sun Products has indirectly infringed and is indirectly infringing at least claims 1, 3, 6 and 7 of the '319 Patent under 35 U.S.C. §271(b) by, *inter alia*, having knowledge of the '319 patent and knowing its laundry packets would infringe at least claims 1, 3, 6 and 7 of the '319 patent, by inducing retailers within the United States to directly infringe claims 1, 3, 6, and 7 of the '319 patent by making, using, selling, and offering for sale water-soluble laundry packets to retailers, who sell and offer for sale the packets under private brand names, each of which is encompassed by at least claims 1, 3, 6 and 7 of the '319 Patent.

44. Sun Products has infringed and is infringing at least claims 1, 3, 6 and 7 of the '319 Patent under 35 U.S.C. § 271(f) by exporting packet laundry products from the United States, including without limitation, Sunlight triple clean Pacs, All Mighty Pacs, original and All Mighty Pacs, free and clear, each of which is encompassed by at least claims 1, 3, 6 and 7 of the of the '319 Patent.

45. As explained above, Sun Products communicated with Cot'N Wash regarding a potential relationship involving the '319 Patent and Cot'N Wash Dropps products. Sun Products took measures to actively learn about Cot'N Wash, its Dropps product, and the '319 patent.

46. On information and belief, Sun Products has been and is aware of the '319 Patent since at least the spring of 2011 including claims 1, 3, 6 and 7 of the '319 patent as Sun Products and Cot'n Wash discussed the patent.

47. On information and belief, Sun Products has been and is intentionally and willfully infringing at least claims 1, 3, 6 and 7 of the '319 Patent, and this case is exceptional under 35 U.S.C. § 285. On information and belief, Sun Products has acted despite an objectively high likelihood that its actions constituted infringement. Sun Products has been aware of the '319 Patent since at least early 2011. Sun Products was aware that Cot'N Wash's Dropps

products were manufactured and sold under the '319 patent. Sun Products was aware of Cot'N Wash's Dropps products. Sun Products disregarded the '319 Patent and developed its own infringing water-soluble products using the technology claimed in the '319 Patent and with knowledge of Cot'N Wash's Dropps products that are covered by the '319 Patent. The objective risk of infringement under these facts was extremely high.

48. On information and belief, Sun Products either knew that it was and is infringing the '319 patent or knew the risk of infringing the '319 patent was so high that Sun Products should have known the '319 patent was being infringed. Sun Products was aware of Cot'N Wash's Dropps product since at least spring of 2011. In spring of 2011, as part of due diligence, Sun Products specifically requested from Cot'N Wash any patents having at least one claim covering Cot'N Wash's Dropps products. In response to the due diligence requests, Sun Products' Chief IP counsel, Del Buono, received from Cot'N Wash, or already had in his possession, a copy of the '319 patent and Dropps product samples, which embody the '319 patented technology. Sun Products' Hecht received information from Cot'N Wash that the Dropps product was exclusively licensed. Sun Products was aware of the Dropps product, the '319 patent and claims 1, 3, 6 and 7 of the '319 patent during the time it developed its infringing products and committed its infringing acts. Under these facts, it is extremely likely that Sun Products either that it was infringing when it launched its products or knew the risk of infringing the '319 patent was so high that Sun Products should have known the '319 patent was being infringed.

49. The infringing acts of Sun Products 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 Sun Product's infringement of the '319

Patent. Sun Products is using the '319 Patent's technology without authorization causing Cot'N Wash to suffer lost profits damages. Alternatively and/or additionally, Sun Products' unauthorized use of the '319 patent has caused at least damages to Cot'N Wash and/or B3P measured according to a reasonable royalty.

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

**JURY DEMAND**

51. 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 Sun Products, and those in active concert with it, from further infringement of the '319 Patent;

B. declaring that Sun Products has directly infringed and is directly infringing claims 1, 3, 6 and 7 of the '319 Patent;

C. declaring that Sun Products has indirectly infringed and is indirectly infringing claims 1, 3, 6 and 7 of the '319 Patent;

D. awarding B3P and Cot'N Wash damages adequate to compensate B3P and Cot'N Wash for Sun Products' direct and indirect infringement, but in no event less than a reasonable royalty for the Sun Products' 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 Sun Products' infringement is willful;

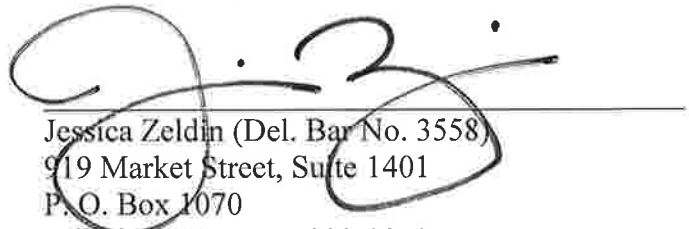
F. finding that, as to the Sun Products this is an exceptional case under 35 U.S.C. § 285;

G. awarding treble damages against Sun Products for 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 Sun Products, 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.

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