

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. _____

SMURFIT-STONE CONTAINER
ENTERPRISES, INC.,

Plaintiff,

vs.

TIN, INC. d/b/a TEMPLE-INLAND,

Defendant.

COMPLAINT AND JURY DEMAND

For its cause of action against Defendant TIN, INC. d/b/a Temple Inland (“TIN”), Plaintiff Smurfit-Stone Container Enterprises, Inc. (“Smurfit-Stone”), by its attorneys, states and alleges as follows:

1. This is an action for patent infringement under 35 U.S.C. § 271. A patent owned by Smurfit-Stone, U.S. Patent No. 5,979,746 (“the ‘746 Patent”), and sales of infringing products by Defendant within this State, form the basis of the claims made herein.

2. Smurfit-Stone is a corporation organized under the laws of the State of Delaware, with its principal place of business in Chicago, Illinois. Smurfit-Stone has manufacturing and sales facilities in Denver, Colorado.

3. Defendant TIN is a corporation organized under the laws of the State of Delaware. It operates a container business for its parent Temple-Inland, Inc. (“Temple”) in Wheat Ridge, Colorado. TIN manufactures and sells packaging, containers and the materials to form container trays used for, among other things, shipping, stacking and selling mushrooms, fruits and vegetables. TIN sells such packaging, containers and materials for use throughout the United

States, including in this judicial district. TIN has sold the infringing container trays at issue in this case to third parties located in, and for use in, this judicial district. To Smurfit's information and belief, consistent with FED. R. CIV. P. 11(b)(3), TIN also has sold infringing packaging, containers and materials to be formed into infringing container trays knowing the infringing container trays would be sold and used by others in Colorado and elsewhere in the United States.

4. Non-party Temple is a corporation organized under the laws of the State of Delaware, with its principal place of business in Austin, Texas. Temple is a holding company that owns various subsidiaries, which operate container and packaging businesses. TIN is one of those subsidiaries.

5. This Court has jurisdiction over the matter under 28 U.S.C. §§ 1331 and 1338.

6. Venue is proper in this district pursuant to 28 U.S.C. §1400.

7. Smurfit-Stone is a leader in the design, manufacture, sale and marketing of packaging and containers used to transport, stack and sell fruits and vegetables.

8. On November 9, 1999, the '746 Patent, "Tray Apparatus With Reinforced Corner Structure" was duly and legally issued as a continuation of U.S. Patent No. 5,853,120 to Stone Container Corporation as assignee of Michael B. McLeod, Russell A. Leavitt and Elizabeth G. Wilson, the inventors named in the application and in the '746 Patent. The '746 Patent was assigned to Smurfit-Stone on November 1, 2004, as recorded at the PTO. A true and accurate copy of the '746 Patent is attached hereto as Exhibit 1. A copy of the assignment of the '746 Patent is attached hereto as Exhibit 2.

9. Smurfit-Stone has sold container trays and the materials to form the trays for mushrooms as covered by the '746 Patent under the product identification "VPS.5".

10. Until April 2006, Smurfit-Stone had been supplying its VPS.5 container trays to Rakhra Mushroom, located in Alamos, Colorado. The VPS.5 product was sold to Rakhra to be used as container trays for transporting and stacking mushrooms. The VPS.5 container tray is covered by the Patent.

11. On information and belief, consistent with FED. R. CIV. P. 11(b)(3), in about April 2006, TIN began supplying container trays to Rakhra, and Rakhra stopped buying VPS.5 container trays from Smurfit-Stone. In about July 2006, Rakhra requested that Smurfit-Stone re-quote on supplying its VPS.5 container trays to Rakhra. Rakhra did not order any VPS.5 container trays from Smurfit-Stone in response to the re-quote, and TIN continued to supply Rakhra with container trays.

12. On information and belief, consistent with FED. R. CIV. P. 11(b)(3), the first container trays supplied by TIN to Rakhra based on TIN's bid were not covered by the '746 Patent. However, the first trays supplied by TIN to Rakhra did not satisfy Rakhra's packaging requirements. Because these first trays failed to satisfy Rakhra's packaging requirements, Rakhra requested that TIN provide an alternative tray design that would satisfy the packaging requirements. Upon information and belief, consistent with FED. R. CIV. P. 11(b)(3), in order to keep the business it had taken from Smurfit-Stone, TIN began making and supplying to Rakhra a new tray design that included corner structures. This new tray design, which corrected the deficiencies of the original tray sold by TIN, infringes at least claim 1 of the '746 Patent. TIN is therefore liable for direct and/or contributory infringement.

13. Defendant's infringement continues to occur even after its parent, Temple, received notice of infringement.

14. Defendant's infringement of the '746 Patent has caused, and will cause, damages to Smurfit-Stone, including, but not limited to, past and future lost profits and lost royalties.

15. Defendant's infringement is, has been and until stopped will continue to be, willful.

WHEREFORE, Smurfit-Stone respectfully requests that the Court enter judgment in its favor and against Defendant, and for all relief available under 35 U.S.C. Chapter 29, including the following:

- a. Injunctive relief precluding Defendant's further infringement of the Patent;
- b. An order requiring an accounting of damages by virtue of Defendant's infringement;
- c. Compensatory damages equal to lost profits resulting from Defendant's infringing activities or an amount at least equal to a reasonable royalty for Defendant's unauthorized use or contributing to the use of the Patent;
- d. Damages should be enhanced upon a finding of willfulness;
- e. Costs and attorneys' fees; and
- f. All other relief deemed by the Court to be just and proper.

A JURY TRIAL IS REQUESTED.

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