

FILED IN CLERK'S OFFICE  
U S D C Atlanta

**ORIGINAL**

**JAN 11 2007**

JAMES M. HATTEN, CLERK  
By: *JMA* Deputy Clerk

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

PGI POLYMER, INC., )  
a Delaware Corporation, and )

CHICOPEE, INC., )  
a Delaware Corporation, )

Plaintiffs, )

v. )

ROCKLINE INDUSTRIES, INC. )  
a Wisconsin Corporation, )

DELHAIZE AMERICA, INC. d/b/a )  
FOOD LION and d/b/a BLOOM )  
a North Carolina Corporation, and )

H.E. BUTT GROCERY COMPANY )  
a Texas Corporation, )

Defendants. )  
\_\_\_\_\_ )

) Civil Action File  
) No.: 1:07-CV-0082

) **JURY TRIAL DEMANDED** *E. 11*

**COMPLAINT**

Plaintiffs, PGI Polymer, Inc. and Chicopee, Inc., state their Complaint as follows:

## **I. JURISDICTION AND VENUE**

1. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code.

2. This Court has subject matter jurisdiction over the cause of action set forth herein pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. Venue is proper in this judicial district and division pursuant to 28 U.S.C. §§1391(b) and (c).

## **II. THE PARTIES**

4. Plaintiff, PGI Polymer, Inc., is a Delaware Corporation, with its registered office at 103 Foulk Road, Suite 200, Wilmington, Delaware 19803.

5. Plaintiff, Chicopee, Inc., is a Delaware Corporation, with a place of business at 2100 Atlanta Road, Gainesville, Georgia 30504. Chicopee, Inc. is a wholly-owned subsidiary of PGI Polymer, Inc.

6. Plaintiffs PGI Polymer, Inc. and Chicopee, Inc. shall hereinafter be referred to collectively as "PGI."

7. PGI is the owner, by assignment, of all right, title, and interest in and to United States Patent No. RE 38,505 ("the '505 Patent"). A copy of PGI's '505 Patent is attached as Exhibit "A."

8. Upon information and belief, Defendant, Rockline Industries, Inc. (“Rockline”), is a Wisconsin Corporation with a principal place of business at 1113 Maryland Avenue, Sheboygan, Wisconsin 53081.

9. Upon information and belief, Rockline’s registered agent is Susan K. Zimmermann, 1113 Maryland Avenue, Sheboygan, Wisconsin 53082.

10. Upon information and belief, Rockline has and continues to infringe PGI’s ‘505 Patent in the State of Georgia, within this judicial district, and elsewhere throughout the United States. Upon information and belief, Rockline is subject to personal jurisdiction in this Court.

11. Upon information and belief, Defendant, Delhaize America, Inc. (“Delhaize”), formerly known as Food Lion LLC, is a North Carolina Corporation with a principal place of business at 2110 Executive Drive, Salisbury, North Carolina 28145.

12. Upon information and belief, Delhaize owns and operates grocery stores under the name, and does business as, Food Lion. Upon information and belief, Delhaize also owns and operates grocery stores under the name, and does business as, Bloom.

13. Upon information and belief, Delhaize's registered agent in the State of Georgia is Corporation Service Company, 40 Technology Parkway South, Suite 300, Norcross, Georgia 30092.

14. Upon information and belief, Delhaize has and continues to infringe PGI's '505 Patent in the State of Georgia, within this judicial district, and elsewhere throughout the United States. Upon information and belief, Delhaize is subject to personal jurisdiction in this Court.

15. Upon information and belief, Defendant H.E. Butt Grocery Company ("HEB"), is a Texas Corporation with a business address at P.O. Box 839986, 646 South Main Street, San Antonio, Texas 78283-3986.

16. Upon information and belief, HEB's registered agent is Abel Martinez, 646 South Main Street, San Antonio, Texas 78204.

17. Upon information and belief, HEB has and continues to conduct business in the State of Georgia and within this judicial district. Upon information and belief, HEB is subject to personal jurisdiction in this Court.

### **III. THE CONTROVERSY**

#### **A. The Patented Technology**

18. The general subject matter of the patented technology relates to new and novel nonwoven fabrics that have a three dimensional pattern. The three dimensional pattern generally comprises a background portion and a raised portion.

19. PGI invested significant resources into the research, development, and creation of the nonwoven fabrics described and claimed in the '505 Patent.

20. PGI makes nonwoven fabrics covered by the claims of the '505 Patent (the "patented fabric").

21. PGI also sells its patented fabric. For example, PGI has sold its patented fabric to Proctor & Gamble. Upon information and belief, Proctor & Gamble sells a product comprising PGI's patented fabric, such as Proctor & Gamble's Swiffer® wipes.

22. PGI's patented fabric and Proctor & Gamble's Swiffer® product created a market for household dusting wipes.

23. PGI's patented fabric and Proctor & Gamble's Swiffer® product have been commercially successful.

**B. The '505 Patent**

24. PGI's predecessor-in-interest availed itself of the protections afforded by the United States Patent Office on September 16, 1994 to protect its novel nonwoven fabric. On October 7, 1997 PGI was awarded U.S. Patent No. 5,674,591.

25. On October 7, 1999 a reissue patent application was filed with the United States Patent Office. The '505 Patent was reissued by the United States Patent Office on April 20, 2004. Thus, the subject matter of PGI's '505 Patent has been examined by the United States Patent Office twice, and twice deemed patentable.

26. The subject matter claimed in PGI's '505 Patent is valid.

27. PGI's '505 Patent is enforceable.

**C. The Defendants' Infringing Activity**

28. Upon information and belief, Defendant Rockline has and continues to offer for sale and sell dry floor mop and dust cloth products in the United States.

29. Upon information and belief, Rockline has and continues to manufacture fabric for its dry floor mop and dust cloth products and/or purchase fabric for its dry floor mop and dust cloth products from sources other than PGI.

30. Upon information and belief, the fabrics manufactured by Rockline and/or purchased from Rockline have in the past and continue to infringe one or more claims of PGI's '505 Patent.

31. Upon information and belief, Rockline also offers for sale and sells the infringing fabrics and/or dry floor mop and dust cloth products comprising the infringing fabric to the public, including Defendant Delhaize and Defendant HEB.

32. Upon information and belief, Defendant Delhaize purchases from Rockline infringing fabric and/or dry floor mop and dust cloth product and offers for sale and sells the same as Defendant Delhaize's "Food Lion Disposable Cloths," which are dry floor mop & dust cloths and "Bloom Disposable Cloths," which are dry floor mop & dust cloths.

33. Upon information and belief, the "Food Lion Disposable Cloths" and the "Bloom Disposable Cloths" offered for sale and sold by Defendant Delhaize have and continue to infringe PGI's '505 Patent.

34. Upon information and belief, Defendant HEB purchases from Rockline infringing fabric and/or dry floor mop and dust cloth product and offers for sale and sells the same as Defendant HEB's "Hill Country Fare Disposable Wipes Dry Floor Mop & Dust Cloths."

35. Upon information and belief, the “Hill Country Fare Disposable Wipes Dry Floor Mop & Dust Cloths” offered for sale and sold by Defendant HEB have and continue to infringe PGI’s ‘505 Patent.

36. The infringing fabric and/or dry floor mop and dust cloth products imported, made, used, offered for sale, and/or sold by the Defendants are nonwoven fabrics that have a three dimensional pattern.

37. The infringing fabric and/or dry floor mop and dust cloth products imported, made, used, offered for sale, and/or sold by the Defendants comprise a background portion.

38. The infringing fabric and/or dry floor mop and dust cloth products imported, made, used, offered for sale, and/or sold by the Defendants comprise a raised portion.

39. The infringing fabric and/or dry floor mop and dust cloth products imported, made, used, offered for sale, and/or sold by the Defendants comprise a transition region.

40. In the infringing fabric and/or dry floor mop and dust cloth products imported, made, used, offered for sale, and/or sold by the Defendants, the basis weight of the raised portion is greater than the basis weight of the background portion.



41. In the infringing fabric and/or dry floor mop and dust cloth products imported, made, used, offered for sale, and/or sold by the Defendants, the background portion comprises a plurality of substantially parallel fiber bundles.

42. In the infringing fabric and/or dry floor mop and dust cloth products imported, made, used, offered for sale, and/or sold by the Defendants, the background portion comprises fiber bundles that are comprised of fibers that are twisted and turned upon each other.

**D. PGI's Irreparable Harm**

43. As set forth above, PGI invested significant resources into the research, development, and creation of the nonwoven fabrics of the '505 Patent. PGI also has invested significant resources into creating and developing a market for its patented fabric.

44. Defendants have entered the market with a low cost, store brand nonwoven fabric product that infringes PGI's '505 Patent. As Defendants did not incur the significant research and development costs that PGI did incur, Defendants are able to import, make, use, offer for sale, and/or sell their infringing product at a price that is substantially less than PGI's and Proctor & Gamble's sales prices. Defendants, therefore, are reaping the benefit of the substantial investment by PGI

into its patented fabric product and into the development of a market for PGI's patented fabric.

45. As a result, PGI is at a significant competitive disadvantage. Without the exclusive rights and protections afforded by PGI's '505 Patent, PGI may not be able to compete with Defendants' infringing fabric and/or dry floor mop and dust cloth product.

46. Due to Defendants' importation, manufacture, use, offer for sale, and/or sale of their infringing fabric and/or dry floor mop and dust cloth product, PGI has irreparably lost market share.

47. Due to Defendants' importation, manufacture, use, offer for sale, and/or sale of their infringing fabric and/or dry floor mop and dust cloth product, price erosion has occurred and will continue to occur.

48. Due to Defendants' importation, manufacture, use, offer for sale, and/or sale of their infringing fabric and/or dry floor mop and dust cloth product, PGI's past, present, and future customers have and will become acclimated to paying significantly less for the '505 patented products, *e.g.*, the fabric comprising the Swiffer® cloths, than PGI would otherwise charge and receive as payment.

49. Upon information and belief, Defendants sell their infringing fabric and/or dry floor mop and dust cloth product at sales prices that are substantially less

than the sales price of PGI's and Proctor & Gamble's patented Swiffer® product. Due to customer acclimation, PGI believes that customers will be unwilling to pay full price after they become acclimated to paying a substantially smaller price. As a result, the market for PGI's patented fabric is in jeopardy.

50. Upon information and belief, if the Defendants' products remain on the market, the reputation of PGI's patented fabric will be damaged due to PGI's inability to control the standards by which Defendants' infringing fabric and/or dry floor mop and dust cloth products are manufactured.

51. Upon information and belief, Defendants' sales of its infringing fabric and/or dry floor mop and dust cloth product is a strong encouragement for others to enter the market with other infringing products.

52. Upon information and belief, if Defendants are preliminarily enjoined from selling their infringing fabric and/or dry floor mop and dust cloth products, any harm to Defendants will be negligible.

53. Upon information and belief, Defendant Rockline's sales of its infringing fabric and/or dry floor mop and dust cloth product constitutes only a very small portion of Defendant Rockline's total sales.

54. Upon information and belief, Defendant Delhaize's sales of its infringing fabric and/or dry floor mop and dust cloth product constitutes only a very small portion of Defendant Delhaize's total sales.

55. Upon information and belief, Defendant HEB's sales of its infringing fabric and/or dry floor mop and dust cloth product constitutes only a very small portion of Defendant HEB's total sales.

56. For the reasons set forth herein, the balance of hardships favors PGI and the imposition of a preliminary injunction.

57. The public has a strong interest in protecting, enforcing, and upholding United States patents, including PGI's '505 patent.

58. For the reasons set forth herein, it is in the public's interest to preliminarily and permanently enjoin Defendants from infringing PGI's '505 Patent.

**E. PGI's Attempt To Resolve Short Of Court Involvement**

59. PGI attempted to resolve this matter short of Court involvement. PGI placed Defendants Rockline and Delhaize on notice of its past, present, and future infringement of PGI's '505 Patent in or about August of 2006. A copy of PGI's August 11, 2006 notice letter addressed to Defendant Delhaize (Food Lion) is attached as Exhibit "B."

60. Upon information and belief, Defendants failed to comply with their respective affirmative duty of care with respect to PGI's '505 Patent and Defendants' respective importation, manufacture, offers for sale, and/or sales of their infringing fabric and/or dry floor mop and dust cloth product.

#### **IV. THE COUNT – PATENT INFRINGEMENT**

61. PGI realleges and incorporates herein the allegations of paragraphs 1 through 60 of this Complaint as if fully set forth herein.

62. Upon information and belief, Defendants have engaged in the importation, manufacture, use, offer for sale, and/or sale of products that infringe one or more claims of the '505 Patent in violation of 35 U.S.C. §271. The infringing products imported, made, used, offered for sale, and/or sold by Defendants include, but are not necessarily limited to, Defendant Rockline's fabric and dry floor mop and dust cloth product, Defendant Delhaize's dry floor mop and dust cloth product, and Defendant HEB's dry floor mop and dust cloth product.

63. Upon information and belief, Defendants' infringement of PGI's '505 Patent has been, and continues to be, willful.

64. PGI has and continues to suffer damages as a direct and proximate result of Defendants' infringement and will suffer additional and irreparable damages

unless Defendants are preliminarily and permanently enjoined by this Court from continuing their infringement. PGI has no adequate remedy at law.

65. PGI is entitled to: (a) damages adequate to compensate it for each Defendant's infringement; (b) treble damages; (c) its attorneys' fees and costs; (d) a preliminary injunction; and (e) a permanent injunction.

**V. PRAYER FOR RELIEF**

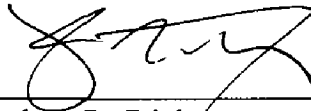
WHEREFORE, Plaintiffs seek the following relief:

- a. That each Defendant be enjoined from further infringement of PGI's '505 Patent pursuant to 35 U.S.C. §283;
  - b. That Defendants be ordered to pay damages adequate to compensate PGI for each Defendant's infringement of PGI's '505 Patent pursuant to 35 U.S.C. §284;
  - c. That each Defendant be ordered to pay treble damages and attorneys' fees pursuant to 35 U.S.C. §§284 and 285;
  - d. That each Defendant be ordered to pay prejudgment interest;
  - e. That Defendants be ordered to pay all costs associated with this action;
- and
- f. That PGI be granted such other and additional relief as the Court deems just and proper.

**VI. PLAINTIFFS' DEMAND FOR JURY TRIAL**

Pursuant to Fed. R. Civ. P. 38(b), Plaintiffs demand a jury trial of all issues so triable.

THIS 11th day of January, 2007.



---

Stephen R. Risley  
Georgia State Bar No. 606545  
J. Scott Culpepper  
Georgia State Bar No. 200950  
**ROBINS, KAPLAN, MILLER &  
CIRESI L.L.P.**  
2600 One Atlanta Plaza  
950 East Paces Ferry Road, N.E.  
Atlanta, Georgia 30326-1386  
Telephone: (404) 760-4300  
Facsimile: (404) 233-1267

Attorneys for Plaintiffs,  
PGI Polymer, Inc. and  
Chicopee, Inc.