

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
(Eastern Division)**

A.R. ARENA PRODUCTS, INC.,)
)
 Plaintiff,)
)
 v.)
)
)
 GRAYLING INDUSTRIES, INC.)
)
 Defendant.)
 _____)

Civil Action No. 5:11-cv-01911
Judge John R. Adams
JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT

Pursuant to Rule 15(a)(1)(B) of the Federal Rules of Civil Procedure, Plaintiff A.R. Arena Products, Inc. (“Arena”), by and through its undersigned counsel, hereby files the following First Amended Complaint against Defendant, Grayling Industries, Inc. (“Grayling”), and alleges as follows:

NATURE OF CLAIMS

1. This is an action for patent infringement of Arena’s U.S. Patent Nos. 6,234,351, 6,427,873, and 6,467,652 (“the `351, `873, and `652 patents”). Arena asserts the `351, `873, and `652 patents against Grayling for making, using, offering to sell, selling, and/or importing various products for the containment and dispensing of viscous materials from intermediate bulk containers, including pressure dispense liners under the trade name “Guardian Pressure Dispense Liner” (collectively, “the Accused Products”), or contributing to and/or inducing others to infringe the `351, `873, and `652 patents.

PARTIES

2. Arena is a corporation organized under the laws of New York, with its principal place of business located at 2101 Mt. Read Blvd., Rochester, NY 14615.

3. Upon information and belief, Grayling is a corporation organized under the laws of Georgia, with its principal place of business located at 1008 Branch Drive, Alpharetta, Georgia 30004.

JURISDICTION AND VENUE

4. This action arises under the laws of the United States prohibiting infringement of United States patents, 35 U.S.C. § 271.

5. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over Grayling by reason of the business that Grayling has transacted and continues to transact in this judicial district and division. In particular, Grayling has made and continues to make, has offered to sell and continues to offer to sell, has sold and continues to sell, has used and continues to use, and has imported and continues to import pressure dispense liners for dispensing viscous materials that infringe valid and enforceable claims of the `351, `873, and `652 patents.

7. In addition, this Court has personal jurisdiction over Grayling because Grayling has knowingly and actively engaged in acts that have infringed, will infringe, and/or aid and abet in the direct infringement of claims of the `351, `873, and `652 patents in this judicial district and division.

8. Venue is proper in this district and division pursuant to 28 U.S.C. § 1391, 28 U.S.C. § 1400 and Local Rule 3.8.

FACTUAL BACKGROUND

9. On May 22, 2001, the United States Patent and Trademark Office duly and legally issued the `351 patent, entitled, “Apparatus and Method for Enhancing Evacuation of Bulk Material Shipper Bags.” A copy of the `351 patent is attached as Exhibit A.

10. On August 6, 2002, the United States Patent and Trademark Office duly and legally issued the `873 patent, entitled, “Method and Apparatus for Enhancing Evacuation of Bulk Material Shipper Bags.” A copy of the `873 patent is attached as Exhibit B.

11. On October 22, 2002, the United States Patent and Trademark Office duly and legally issued the `652 patent, entitled, “Discharge of Pumpable Material from Shipper Bags.” A copy of the `652 patent is attached as Exhibit C.

12. Arena owns all right, title and interest in the `351, `873, and `652 patents, including the right to use and enforce the patents.

13. Arena designs, manufactures, markets, and sells liners for storage, transportation, and dispensing of food and chemical products, including viscous materials in intermediate bulk containers. Liners for the storage, transportation, and dispensing of viscous materials are designed, manufactured, sold, and distributed throughout the United States and in this judicial district and division by Arena.

14. Upon information and belief, Grayling is in the business of designing, manufacturing, distributing, selling, and handling liners for dispensing viscous materials.

15. Upon information and belief, Grayling makes, uses, offers to sell, sells, and/or imports various liners for dispensing viscous materials, including liners sold under the trade name “Guardian Pressure Dispense Liner.” Grayling, either directly or through intermediaries (including distributors, retailers, and others), ships, distributes, offers for sale, sells and

advertises products within the United States, the State of Ohio, and this judicial district and division. Grayling has purposefully and voluntarily placed the Accused Products into the stream of commerce with the expectation that they will be purchased by consumers in Ohio and this judicial district and division.

16. Grayling has committed and continues to commit acts of patent infringement within the United States, in the State of Ohio and in this judicial district and division. For example, upon information and belief, Grayling has offered for sale, provided to, and/or sold various liners for dispensing viscous materials, including the “Guardian Pressure Dispense Liner,” to the J.M. Smucker Company (“Smuckers”) in Orrville, Ohio. On further information and belief, Grayling has, in conjunction with Smuckers, conducted testing on various liners for dispensing viscous materials, including the “Guardian Pressure Dispense Liner” for the purpose of inducing Smuckers to use Grayling’s infringing Accused Products.

COUNT I: INFRINGEMENT OF THE `351 PATENT

17. Arena restates and realleges the foregoing allegations as if fully stated herein.

18. Grayling, in violation of 35 U.S.C. § 271, has infringed and continues to infringe the `351 patent.

19. Arena, under 35 U.S.C. § 284, may recover damages adequate to compensate for the infringement of Grayling.

20. Arena has been, and continues to be, damaged and irreparably harmed by the infringement of Grayling, which will continue unless this Court enjoins Grayling.

21. The infringement of the `351 patent by Grayling has been, and continues to be, deliberate, willful and knowing.

22. The Court should declare this an exceptional case under 35 U.S.C. § 285, entitling Arena to recover treble damages and attorneys' fees.

COUNT II: CONTRIBUTORY/INDUCED INFRINGEMENT OF THE `351 PATENT

23. Arena restates and realleges the foregoing allegations as if fully stated herein.

24. Grayling, in violation of 35 U.S.C. § 271, has and continues to contribute to and/or induce others, including at least Smuckers, to directly infringe the `351 patent.

25. Arena, under 35 U.S.C. § 284, may recover damages adequate to compensate for the infringement of Grayling.

26. Arena has been, and continues to be, damaged and irreparably harmed by the infringement of Grayling, which will continue unless this Court enjoins Grayling.

27. The infringement of the `351 patent by Grayling has been, and continues to be, deliberate, willful, and knowing.

28. The Court should declare this an exceptional case under 35 U.S.C. § 285, entitling Arena to recover treble damages and attorneys' fees.

COUNT III: INFRINGEMENT OF THE `873 PATENT

29. Arena restates and realleges the foregoing allegations as if fully stated herein.

30. Grayling, in violation of 35 U.S.C. § 271, has infringed and continues to infringe the `873 patent.

31. Arena, under 35 U.S.C. § 284, may recover damages adequate to compensate for the infringement of Grayling.

32. Arena has been, and continues to be, damaged and irreparably harmed by the infringement of Grayling, which will continue unless this Court enjoins Grayling.

33. The infringement of the `873 patent by Grayling has been, and continues to be,

deliberate, willful and knowing.

34. The Court should declare this an exceptional case under 35 U.S.C. § 285, entitling Arena to recover treble damages and attorneys' fees.

COUNT IV: CONTRIBUTORY/INDUCED INFRINGEMENT OF THE `873 PATENT

35. Arena restates and realleges the foregoing allegations as if fully stated herein.

36. Grayling, in violation of 35 U.S.C. § 271, has and continues to contribute to and/or induce others, including at least Smuckers, to directly infringe the `873 patent.

37. Arena, under 35 U.S.C. § 284, may recover damages adequate to compensate for the infringement of Grayling.

38. Arena has been, and continues to be, damaged and irreparably harmed by the infringement of Grayling, which will continue unless this Court enjoins Grayling.

39. The infringement of the `873 patent by Grayling has been, and continues to be, deliberate, willful, and knowing.

40. The Court should declare this an exceptional case under 35 U.S.C. § 285, entitling Arena to recover treble damages and attorneys' fees.

COUNT V: INFRINGEMENT OF THE `652 PATENT

41. Arena restates and realleges the foregoing allegations as if fully stated herein.

42. Grayling, in violation of 35 U.S.C. § 271, has infringed and continues to infringe the `652 patent.

43. Arena, under 35 U.S.C. § 284, may recover damages adequate to compensate for the infringement of Grayling.

44. Arena has been, and continues to be, damaged and irreparably harmed by the infringement of Grayling, which will continue unless this Court enjoins Grayling.

45. The infringement of the `652 patent by Grayling has been, and continues to be, deliberate, willful and knowing.

46. The Court should declare this an exceptional case under 35 U.S.C. § 285, entitling Arena to recover treble damages and attorneys' fees.

COUNT VI: CONTRIBUTORY/INDUCED INFRINGEMENT OF THE `652 PATENT

47. Arena restates and realleges the foregoing allegations as if fully stated herein.

48. Grayling, in violation of 35 U.S.C. § 271, has and continues to contribute to and/or induce others, including at least Smuckers, to directly infringe the `652 patent.

49. Arena, under 35 U.S.C. § 284, may recover damages adequate to compensate for the infringement of Grayling.

50. Arena has been, and continues to be, damaged and irreparably harmed by the infringement of Grayling, which will continue unless this Court enjoins Grayling.

51. The infringement of the `652 patent by Grayling has been, and continues to be, deliberate, willful, and knowing.

52. The Court should declare this an exceptional case under 35 U.S.C. § 285, entitling Arena to recover treble damages and attorneys' fees.

DEMAND FOR JURY TRIAL

53. Arena demands a trial by jury under Federal Rule of Civil Procedure 39 for all issues triable by jury.

PRAYER FOR RELIEF

Arena prays for judgment in its favor and against Grayling as follows:

- (a) That Grayling has infringed, contributed to, and/or induced the infringement of one or more claims of the `351, `873, and `652 patents;
- (b) That Graylings' infringement has been willful;
- (c) That this case be declared an exceptional case under 35 U.S.C. § 285;
- (d) That Arena be awarded damages adequate to compensate Arena for Grayling's infringement of the `351, `873, and `652 patents, including lost profits, but in no event less than a reasonable royalty;
- (e) That Arena's damages be trebled;
- (f) That Arena be awarded its attorney's fees and costs;
- (g) That this Court enjoin Grayling, its officers, directors, principals, agents, servants, employees, successors, assigns, affiliates, and all that are in active concert or participation with them, or any of them, from further infringement of the `351, `873, and `652 patents;
- (h) That Arena be awarded pre- and post-judgment interest on all damages;
- (i) That Arena be awarded all its costs and expenses in this action; and
- (j) Such further and other relief as the Court may deem just and proper.

Dated: November 7, 2011

/s/ Michael L. Fortney
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