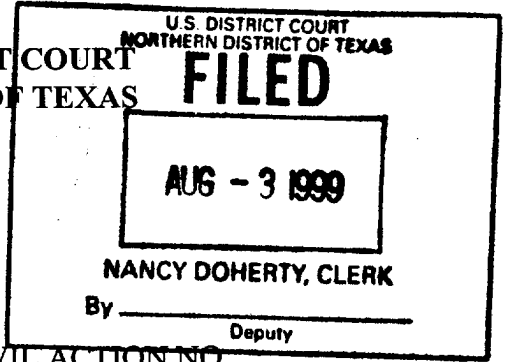


10/11/99
CTS ✓

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



CIVIL ACTION NO. _____

3 - 99 C V 1749 - D

NORTH AMERICAN CONTAINER, INC., §

Plaintiff, §

v. §

- PLASTIPAK PACKAGING INC., CROWN §
- CORK & SEAL COMPANY, INC., §
- CONSTAR INTERNATIONAL, INC., §
- CONSTAR PLASTICS, INC., §
- SCHMALBACH-LUBECA PLASTIC §
- CONTAINERS USA, INC.; OWENS- §
- ILLINOIS, INC.; OWENS-BROCKWAY §
- PLASTICS, INC.; CONTINENTAL PET §
- TECHNOLOGIES, INC.; WIS-PAK §
- PLASTICS, INC.; CNC CONTAINERS §
- CORPORATION; AMERICAN §
- NATIONAL CAN GROUP, INC., §
- SOUTHEASTERN CONTAINER, INC., §
- WESTERN CONTAINER, INC.; SUIZA §
- FOODS CORPORATION; BUFFALO §
- ROCK COMPANY; COTT USA CORP., §
- AMERICAN BOTTLING COMPANY, §
- NATIONAL BEVERAGE §
- CORPORATION; COCA-COLA §
- ENTERPRISES, INC.; COCA-COLA §
- BOTTLING COMPANY §
- CONSOLIDATED; THE QUAKER OATS §
- COMPANY; OCEAN SPRAY §
- CRANBERRIES, INC.; TROPICANA §
- PRODUCTS, INC.; KNOUSE FOODS §
- COOP, INC.; THE PERRIER GROUP OF §
- AMERICA, INC.; DANONE, INC.; GREAT §
- BRANDS OF EUROPE, INC.; DANONE §
- INTERNATIONAL BRANDS, INC., §
- UNITED DISTILLERS AND VINEYARDS, §
- JOSEPH E. SEAGRAM & SONS, INC., §
- BARTON BRANDS, LTD., THE §
- CAMPBELL SOUP COMPANY, §
- HERSHEY FOODS CORPORATION, THE §

JURY DEMANDED

J.M. SMUCKER CO., KRAFT FOODS, §
INC., THOMAS J. LIPTON COMPANY, §
HEINZ USA CO., RECKITT & §
COLEMAN, INC., §
COLGATE/PALMOLIVE COMPANY, §
CLOROX COMPANY, HELENE CURTIS, §
INC., THE KROGER CO., SAFEWAY, §
INC. and ALBERTSONS, INC., §
§
§
Defendants. §

**NORTH AMERICAN CONTAINER, INC.'S ORIGINAL COMPLAINT FOR PATENT
INFRINGEMENT AND JURY DEMAND**

Plaintiff, North American Container, Inc. ("NAC"), complains of defendants Plastipak Packaging Inc. ("Plastipak"), Crown Cork & Seal Company, Inc. ("CC&S") and its subsidiaries Constar International, Inc. ("CII") and Constar Plastics, Inc. ("CPI") (collectively "Crown"), Schmalbach-Lubeca Plastic Containers USA, Inc. ("Schmalbach"), Owens-Illinois, Inc. ("OI") and its subsidiaries Owens-Brockway Plastics, Inc. ("OB") and Continental PET Technologies, Inc. ("CPT") (collectively "Owens"), Wis-Pak Plastics, Inc. ("Wis-Pak"), CNC Containers Corporation ("CNC"), American National Can Group, Inc. ("ANC"), Southeastern Container, Inc. ("SEC"), Western Container, Inc. ("Western"), Suiza Foods Corporation ("Suiza"), Buffalo Rock Company ("BRC"), Cott USA Corporation ("Cott"), American Bottling Company ("ABC"), National Beverage Corporation ("NBC"), Coca-Cola Enterprises, Inc. ("CCE"), Coca-Cola Bottling Company Consolidated ("CCBC"), The Quaker Oats Company ("Quaker"), Ocean Spray Cranberries, Inc. ("Ocean Spray"), Tropicana Products, Inc. ("Tropicana"), Knouse Foods Coop, Inc. ("Knouse"), The Perrier Group of America, Inc. ("Perrier"), Danone, Inc., together with its North American import, manufacturing and marketing associates Great Brands of Europe, Inc. ("GBE") and Danone International Brands, Inc. ("DIB") (collectively "Danone"),

United Distillers and Vineyards ("UDV"), Joseph E. Seagram & Sons, Inc. ("Seagram"), Barton Brands, Ltd. ("Barton"), The Campbell Soup Company ("Campbell"), Hershey Foods Corporation ("Hershey"), The J.M. Smucker Co. ("Smucker"), Kraft Foods, Inc. ("Kraft"), Thomas J. Lipton Company ("Lipton"), Heinz USA Co. ("Heinz"), Reckitt & Coleman, Inc. ("Reckitt"), Colgate/Palmolive Company ("Colgate"), Clorox Company ("Clorox"), Helene Curtis, Inc. ("HCI"), The Kroger Co. ("Kroger"), Safeway, Inc. ("Safeway") and Albertsons, Inc. ("Albertsons") (globally, "Defendants") as follows:

JURISDICTION AND VENUE

1. Jurisdiction exists under 28 U.S.C. §§ 1331 and 1338(a) because the Defendants are each charged with patent infringement under 35 U.S.C. §§ 271, et seq.

2. Venue is proper under 28 U.S.C. §§ 1391(b), 1391(c), 1391(d) and 1400(b) because each Defendant resides in this judicial district and a substantial part of the events or omissions giving rise to the claim occurred here.

3. Within this judicial district, each Defendant:

- a) manufactures, uses, sells or offers to sell polyethylene terephthalate ("PET") containers that infringe the patent at issue;
- b) practices methods covered by the patent;
- c) induces others to infringe the patent; or
- d) transacts other business.

PARTIES

4. NAC is a Texas corporation having a place of business at 1110 South Airport Circle, Suite 110, Euless, Tarrant County, Texas.

5. Plastipak is a Delaware corporation having a place of business in Plymouth, Michigan and may be served with process by serving its registered agent CT Corporation System at 811 Dallas Avenue, Houston, Texas.

6. CC&S is a Delaware corporation having a place of business in Philadelphia, Pennsylvania and may be served with process by serving its registered agent CT Corporation System at 350 North St. Paul Street, Dallas, Texas 75201. CII is a Massachusetts corporation having a place of business in Philadelphia, Pennsylvania and may be served with process by serving its registered agent CT Corporation System at 350 North St. Paul Street, Dallas, Texas 75201. CPI is a Georgia corporation having a place of business in Dallas, Texas and may be served with process by serving its registered agent CT Corporation System at 350 North St. Paul Street, Dallas, Texas 75201.

7. Schmalbach is a Delaware corporation having a place of business in Manchester, Michigan and may be served with process by serving its registered agent CT Corporation System at 350 North St. Paul Street, Dallas, Texas 75201.

8. OI is a Delaware corporation having a place of business in Toledo, Ohio and may be served with process by serving its registered agent CT Corporation System at 815 Superior Avenue, NE, Cleveland, Ohio 44114. OB is a Delaware corporation having a place of business in Dallas, Texas and may be served with process by serving its registered agent CT Corporation System at 350 North St. Paul Street, Dallas, Texas 75201. CPT is a Delaware corporation having a place of business in Rockwall, Texas and may be served with process by serving its registered agent CT Corporation System at 350 North St. Paul Street, Dallas, Texas 75201.

9. Wis-Pak is a Wisconsin corporation having a place of business in Watertown, Wisconsin and may be served with process by serving its registered agent Frank Filson at 2651 Murray Street, Sioux City, Iowa 51111. Wis-Pak is amenable to service of process under Rule 108 of the Texas Rules of Civil Procedure, as made applicable by Rule 4(e)(1) of the Federal Rules of Civil Procedure, and the Court's exercise of jurisdiction is consistent with constitutional due process requirements.

10. CNC is a Washington corporation having a place of business in Tumwater, Washington and may be served with process by serving its registered agent Tim Stewart at 3025 32nd Avenue Southwest, Tumwater, Washington, 98512. CNC is amenable to service of process under Rule 108 of the Texas Rules of Civil Procedure, as made applicable by Rule 4(e)(1) of the Federal Rules of Civil Procedure, and the Court's exercise of jurisdiction is consistent with constitutional due process requirements.

11. ANC is a Delaware corporation having a place of business in Chicago, Illinois and may be served with process by serving its registered agent CT Corporation System at 350 N. St. Paul Street, Dallas, Texas 75201.

12. SEC is a Delaware corporation having a place of business in Enka, North Carolina and may be served with process by serving its registered agent Corporation Service Company, 800 Brazos, Austin, Texas 78701.

13. Western is a Texas corporation having a place of business in Big Spring, Texas and may be served with process by serving its registered agent Robert T. Tremblay at PO Box 6096, Big Spring, Texas 79720.

14. Suiza is a Delaware corporation having a place of business in Dallas, Texas and may be served with process by serving Gregg L. Engles or another officer and/or director of the company at 2515 McKinney Avenue, Dallas, Texas 75201.

15. BRC is an Alabama corporation having a place of business in Birmingham, Alabama and may be served with process by serving its registered agent Floyd Owens at 2377 Sherman Avenue, Panama City, Florida 32405. BRC is amenable to service of process under Rule 108 of the Texas Rules of Civil Procedure, as made applicable by Rule 4(e)(1) of the Federal Rules of Civil Procedure, and the Court's exercise of jurisdiction is consistent with constitutional due process requirements.

16. Cott is a Georgia corporation having a place of business in Columbus, Georgia and may be served with process by serving its registered agent Marcus B. Calhoun, Jr. at 828 Broadway, Columbus, Georgia 31901. Cott is amenable to service of process under Rule 108 of the Texas Rules of Civil Procedure, as made applicable by Rule 4(e)(1) of the Federal Rules of Civil Procedure, and the Court's exercise of jurisdiction is consistent with constitutional due process requirements.

17. ABC is a Delaware corporation having a place of business in Darien, Illinois and may be served with process by serving its registered agent CT Corporations System at 208 South Lasalle Street, Chicago, Illinois 60604. ABC is amenable to service of process under Rule 108 of the Texas Rules of Civil Procedure, as made applicable by Rule 4(e)(1) of the Federal Rules of Civil Procedure, and the Court's exercise of jurisdiction is consistent with constitutional due process requirements.

18. NBC is a Massachusetts corporation having a place of business in Canton, Massachusetts and may be served with process by serving its registered agent Floyd Owens at 2377 Sherman Avenue, Panama City, Florida 32405. NBC is amenable to service of process under Rule 108 of the Texas Rules of Civil Procedure, as made applicable by Rule 4(e)(1) of the Federal Rules of Civil Procedure, and the Court's exercise of jurisdiction is consistent with constitutional due process requirements.

19. CCE is a Delaware corporation having a place of business in Atlanta, Georgia and may be served with process by serving its registered agent Corporation Service Company at 800 Brazos, Austin, Texas 78701.

20. CCBC is a Delaware corporation having a place of business in Charlotte, North Carolina and may be served with process by serving its registered agent CT Corporation System at 225 Hillsborough Street, Raleigh, North Carolina 27603. CCB is amenable to service of process under Rule 108 of the Texas Rules of Civil Procedure, as made applicable by Rule 4(e)(1) of the Federal Rules of Civil Procedure, and the Court's exercise of jurisdiction is consistent with constitutional due process requirements.

21. Quaker is a New Jersey corporation having a place of business in Dallas, Texas and may be served with process by serving its registered agent CT Corporation System at 350 N. St. Paul Street, Dallas, Texas 75201.

22. Ocean Spray is a Delaware corporation having a place of business in Sulpher Springs, Texas and may be served with process by serving CT Corporation System at 350 N. St. Paul Street, Dallas, Texas 75201.

23. Tropicana is a Delaware corporation having a place of business in Brandenton, Florida and may be served with process by serving its registered agent CT Corporation System at 1200 South Pine Island Road, Plantation, Florida 33324. Tropicana is amenable to service of process under Rule 108 of the Texas Rules of Civil Procedure, as made applicable by Rule 4(e)(1) of the Federal Rules of Civil Procedure, and the Court's exercise of jurisdiction is consistent with constitutional due process requirements.

24. Knouse is a Pennsylvania corporation having a place of business in Peach Glen, Pennsylvania and may served with process by serving an officer and/or director of the company at the corporation's principal place of business, 800 Peach Glen Idaville Road, Peach Glen, Pennsylvania 17375. Knouse is amenable to service of process under Rule 108 of the Texas Rules of Civil Procedure, as made applicable by Rule 4(e)(1) of the Federal Rules of Civil Procedure, and the Court's exercise of jurisdiction is consistent with constitutional due process requirements.

25. Perrier is a Delaware corporation having a place of business in Greenwich, Connecticut and may be served with process by serving its registered agent CT Corporation System at 350 N. St. Paul Street, Dallas, Texas 75201. Perrier's associated brands include Ozarka/Oasis Spring Water, Poland Springs, Great Bear Natural Spring Water, Ice Mountain Spring Water, Deer Park Spring Water, Calistoga Mineral Water, Arrowhead Mountain Spring Water and Zephyrhills Natural Spring Water.

26. Danone, Inc. is a Delaware corporation having a place of business in Glenside, Pennsylvania and may served with process by serving an officer and/or director of the company at the corporation's principal place of business, 2204-2206 East Mount Carmel, Glenside,

Pennsylvania 19038. GBE is a New York corporation having a place of business in Stamford, Connecticut and may be served with process by serving its registered agent CT Corporation System at 350 N. St. Paul Street, Dallas, Texas 75201. DIB is a Delaware corporation having a place of business in New York, New York and may be served with process by serving its registered agent CT Corporation System at 818 West Seventh Street, Los Angeles, California 90017. Danone, Inc. and DIB are amenable to service of process under Rule 108 of the Texas Rules of Civil Procedure, as made applicable by Rule 4(e)(1) of the Federal Rules of Civil Procedure, and the Court's exercise of jurisdiction is consistent with constitutional due process requirements. Danone's associated brands include Evian Natural Spring Water, Dannon Spring Water and AquaPenn Natural Spring Water.

27. UDV is a Delaware corporation having a place of business in Stamford, Connecticut and may be served with process by serving its registered agent CT Corporation System at 1200 South Pine Island Road, Plantation, Florida 33324. UDV is amenable to service of process under Rule 108 of the Texas Rules of Civil Procedure, as made applicable by Rule 4(e)(1) of the Federal Rules of Civil Procedure, and the Court's exercise of jurisdiction is consistent with constitutional due process requirements.

28. Seagram is an Indiana corporation having a place of business in New York, New York and may be served with process by serving its registered agent The Prentice-Hall Corporation System, Inc., at 50 South Meridian Street, Suite 700, Indianapolis, Indiana 46204. Seagram is amenable to service of process under Rule 108 of the Texas Rules of Civil Procedure, as made applicable by Rule 4(e)(1) of the Federal Rules of Civil Procedure, and the Court's exercise of jurisdiction is consistent with constitutional due process requirements.

29. Barton is a Delaware corporation having a place of business in Chicago, Illinois and may be served with process by serving its registered agent CT Corporation System at 818 West Seventh Street, Los Angeles, California 90017. Barton is amenable to service of process under Rule 108 of the Texas Rules of Civil Procedure, as made applicable by Rule 4(e)(1) of the Federal Rules of Civil Procedure, and the Court's exercise of jurisdiction is consistent with constitutional due process requirements.

30. Campbell is a New Jersey corporation having a place of business in Camden, New Jersey and may be served with process by serving its registered agent CT Corporation System at 350 N. St. Paul Street, Dallas, Texas 75201.

31. Hershey is a Delaware corporation having a place of business in Hershey, Pennsylvania and may be served with process by serving CT Corporation System at 350 North St. Paul Street, Dallas, Texas 75201.

32. Smucker is an Ohio corporation having a place of business in Orrville, Ohio and may be served with process by serving its registered agent CT Corporation System at 530 Gay Street, Knoxville, Tennessee 37902. Smucker is amenable to service of process under Rule 108 of the Texas Rules of Civil Procedure, as made applicable by Rule 4(e)(1) of the Federal Rules of Civil Procedure, and the Court's exercise of jurisdiction is consistent with constitutional due process requirements.

33. Kraft is a Delaware corporation having a place of business in Northfield, Illinois and may be served with process by serving its registered agent CT Corporation System at 350 N. St. Paul Street, Dallas, Texas 75201.

34. Lipton is a Delaware corporation having a place of business in Englewood Cliffs, New Jersey and may be served with process by serving its registered agent U.S. Corporation Company at 84 State Street, Boston, Massachusetts 02109. Lipton is amenable to service of process under Rule 108 of the Texas Rules of Civil Procedure, as made applicable by Rule 4(e)(1) of the Federal Rules of Civil Procedure, and the Court's exercise of jurisdiction is consistent with constitutional due process requirements.

35. Heinz is a Pennsylvania corporation having a place of business in Grand Prairie, Texas and may be served with process by serving its registered agent CT Corporation System at 350 N. St. Paul Street, Dallas, Texas 75201.

36. Reckitt is a Delaware corporation having a place of business in Wayne, New Jersey and may be served with process by serving its registered agent CT Corporation System at 350 N. St. Paul Street, Dallas, Texas 75201.

37. Colgate is a Delaware corporation having a place of business in New York, New York and may be served with process by serving its registered agent CT Corporation System at 350 N. St. Paul Street, Dallas, Texas 75201.

38. Clorox is a Delaware corporation having a place of business in Oakland, California and may be served with process by serving its registered agent CT Corporation System at 350 N. St. Paul Street, Dallas, Texas 75201.

39. HCI is an Illinois corporation having a place of business in Chicago, Illinois and may be served with process by serving its registered agent CT Corporation System at 2222 Grand Avenue, Des Moines, Iowa 50312. HCI is amenable to service of process under Rule 108 of the Texas Rules of Civil Procedure, as made applicable by Rule 4(e)(1) of the Federal Rules of Civil

Procedure, and the Court's exercise of jurisdiction is consistent with constitutional due process requirements.

40. Kroger is a Ohio corporation having a place of business in Cincinnati, Ohio and may be served with process by serving its registered agent CT Corporation System at 811 Dallas Avenue, Houston, Texas.

41. Safeway is a Delaware corporation having a place of business in Pleasanton, California and may be served with process by serving its registered agent United States Corporation System at 800 Brazos, Austin, Texas 78701.

42. Albertsons is an Idaho corporation having a place of business in Boise, Idaho and may be served with process by serving its registered agent CT Corporation System at 350 N. St. Paul Street, Dallas, Texas 75201.

PATENT ALLEGATIONS

43. On December 17, 1991, the United States Patent and Trademark Office issued United States Patent No. 5,072,841 (the '841 Patent") for plastic containers naming Dr. Aziz Okhai as inventor and Norderney Investments Limited as assignee. A true and correct copy of the '841 Patent is attached hereto as Exhibit "A."

44. The '841 Patent and the rights to recovery thereunder have been assigned to NAC. NAC owns the rights to enforce the '841 Patent and to receive any damages due from infringement of the Patent.

COUNT I - PATENT INFRINGEMENT

45. Upon information and belief, Defendants have each infringed and continue to infringe the '841 Patent, either directly or indirectly through acts of contributory infringement or inducement, in violation of 35 U.S.C. § 271 *et seq.* by making, selling, offering to sell, and/or using plastic PET containers embodying the patented invention without license.

46. Upon information and belief, Defendants have known of the '841 Patent and Defendants' infringement of the '841 Patent has been and will continue to be willful.

47. Upon information and belief, Defendants will continue to infringe the '841 Patent unless and until restrained by the Court.

48. NAC has been damaged in an amount to be proved at trial and which should be trebled based on Defendants' willful conduct. NAC has also been irreparably injured by Defendants' infringement, and will continue to be damaged and irreparably injured unless Defendants' infringement is enjoined by the Court.

JURY DEMAND

49. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, NAC hereby demands a jury on all issues triable of right by a jury.

WHEREFORE, PREMISES CONSIDERED, NAC respectfully demands judgment against Defendants as follows:

- a) Finding that Defendants have infringed, and in all likelihood will continue to infringe, United States Patent No. 5,072,841.
- b) Finding that such infringement has been willful.
- c) Finding that this is an exceptional case as defined in 35 U.S.C. § 271 *et seq.*

- d) Awarding NAC compensatory damages caused by Defendants' infringement of United States Patent No. 5,072,841 in an amount to be determined at trial, and then trebled.
- e) Awarding NAC the full costs of suit, NAC's reasonable attorneys' fees, and pre-judgment and post-judgment interest.
- f) Ordering that Defendants and their officers, employees, agents and all persons in active concert or participation with any of them be enjoined from continued infringement of United States Patent No. 5,072,841.
- g) Ordering that Defendants destroy all infringing bottles and containers in their possession and destroy all machinery, fixtures and the like used for manufacturing those bottles and containers.
- h) Such other and further relief as this Court or a jury may deem proper and just.

Respectfully submitted,

GIBSON DUNN & CRUTCHER LLP

By: 

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