

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**SCOTT ALAN WHITE,**

Plaintiff,

v.

**H.J. HEINZ COMPANY, L.P.,**

Defendant.

**Case No. 1:12-cv-6074**

**PATENT CASE**

**JURY TRIAL DEMANDED**

**UN-REDACTED COMPLAINT FOR PATENT INFRINGEMENT**

Scott Alan White (“Scott White” or “Scott”) files this Complaint against H.J. Heinz Company L.P. (“Heinz” or “Defendant”) for willful infringement of United States Patent No. 8,231,026 (“the ‘026 patent”), a true and correct copy of which is attached hereto as Exhibit A.

**THE PARTIES**

1. Scott White is an independent inventor and a resident of Cook County in the State of Illinois.
2. Upon information and belief, Heinz is a Delaware limited partnership with its principal place of business in Pittsburgh, Pennsylvania.
3. Upon information and belief, Heinz conducts the business of selling “HEINZ” branded products, including the ketchup and condiment business, which includes the accused Dip & Squeeze™ product.
4. Upon information and belief, Heinz conducts the business of selling and making available for purchase “HEINZ” branded products, including Dip & Squeeze™ product, throughout the United States and Illinois.

## **JURISDICTION AND VENUE**

5. This is an action for patent infringement under Title 35 of the United States Code. White is seeking injunctive relief as well as damages.

6. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this is a civil action for patent infringement arising under the 35 U.S.C. § 101, *et seq.*

7. Venue is proper under 28 U.S.C. §§ 1391(c) and 1400(b) because Heinz has committed acts of infringement in this district and/or is deemed to reside in this district.

8. This Court has personal jurisdiction over Heinz and venue is proper in this district because Heinz has committed, and continues to commit, acts of willful infringement in the State of Illinois, including in this district and/or has engaged in continuous and systematic activities in the State of Illinois, including in this district.

## **GENERAL ALLEGATIONS**

### **I. Scott White's Flash of Genius**

9. More than seventy million Americans purchase a "fast food" meal on any given day. Up to two-thirds of these customers visit such establishments by way of drive-thru windows. For all the convenience and flexibility that drive-thru windows afford, they also pose a conundrum for consumers that want to neatly and safely eat their meals without creating a mess. Condiments, such as ketchup or other sauces, are especially difficult to enjoy due to antiquated packaging designs. For instance, enjoying french fries and ketchup in a vehicle is nearly impossible given traditional ketchup "packets." Traditional packets are difficult to open, their contents often squeezed on to some sort of disposable surface – perhaps a sandwich wrapper or container, and hopefully not the consumer's pants. Other tub style containers

facilitate dipping of finger foods, but do not afford consumers the flexibility of squeezing condiments on to their meals.

10. Scott White is a fellow fast food and drive-thru window customer. For years, he too was frustrated by the obstacles of neatly consuming fast food and its attendant condiments in the comfort of his vehicle. Others had attempted to solve this problem but none had been practically or commercially successful. For example, some proposals called for creating condiment reservoirs in the lids of soft drink cups, but such solutions were disfavored because they could affect the temperature of the condiments and risked the beverage or condiment spilling into the other or even on to the consumer. In short, there remained a need for a revolutionary condiment holder.

11. From Scott White's frustration was born a flash of inspiration. Scott realized that an ideal condiment package would be flexible, allowing consumers to choose between dipping finger foods and squeezing condiments on to sandwiches or other foods. Additionally, this flexibility would be a benefit to retailers as they could utilize a common source of condiment packaging for both drive-thru and dine-in diners.

12. Scott invented a condiment container that came to be known as the CondiCup™. To protect his invention, on October 21, 2005, Scott White filed United States Patent Application No. 11/255,367 for a condiment container. Scott also established CondiCup™ LLC to further develop and market his novel condiment cup. His patent application published on April 26, 2007, as Publication No. US 2007/0090107 A1 ("CondiCup™ Application"). Finally, on July 31, 2012, Scott's condiment container patent issued as United States Patent No. 8,231,026.

## **II. Heinz's Consideration of the CondiCup™**

13. Upon information and belief, in the summer of 2006, Heinz was at a pivotal crossroads and subject to a proxy fight by investor Nelson Peltz, who was apparently unhappy with the company's falling market share in key areas, slumping dividends, and falling stock price. Among Mr. Peltz's complaints was his opinion that Heinz had not done enough to win the business of McDonald's Corporation's domestic restaurants. Recounting Heinz's efforts to rekindle a relationship with the world's largest hamburger fast food retailer, the Wall Street Journal reported that Michael Hasco – Heinz's Vice President of Global Accounts – tried to sell McDonald's on the Heinz brand by offering innovative packaging solutions, such as larger dine-in self-serve ketchup reservoirs, as well as “a ketchup pot that attaches to a french fry cup that would make it easier for customers to dip fries while eating in cars.” Although these pitches were unsuccessful, they illustrate the importance of packaging design in the condiment industry, and further demonstrate Heinz's desire to find the next generation of condiment containers.

14. In July 2006, Scott White read about Heinz's packaging woes in the Wall Street Journal and instantly recognized an opportunity to market his invention to a potential client in need of a new condiment container. Scott emailed Michael Hasco and told him about his idea for “a revolutionary package design for condiments that may ultimately replace the inconvenient ketchup packet.” He described CondiCup™'s then-patent-pending design that would “maximize consumer convenience through multiple product distribution options, and increase[] usability for today's mobile society.” He also foretold that more appropriately sized CondiCup™ would “eliminate[e] drive-thru distribution waste, resulting in more accurate expense forecasting” and “help [Heinz] increase sales of ketchup . . . resulting in a higher bottom line for all.”

15. Upon information and belief, Heinz was interested. Some twenty minutes after Scott sent his email, Mr. Hasco phoned Scott to further discuss the CondiCup™. Mr. Hasco invited Scott to Heinz's headquarters in Pittsburgh and tasked Dave Keuthe to coordinate the details. On July 13, 2006, Kuethe – a Senior Manager of Packaging Research & Development at Heinz North America's Innovation Center – contacted Scott White about possible further discussions regarding the CondiCup. Shortly thereafter, the parties executed a mutually binding Confidentiality Agreement and arranged for Scott to visit Heinz and present his invention.

### **III. Scott White's Presentation to Heinz**

16. On August 3, 2006, at Heinz headquarters in Pittsburgh, Pennsylvania, Scott presented the CondiCup™ to: Dave Kuethe, Senior Manager - Packaging R&D; Craid Caldwell, Packaging Technologist - Packaging R&D; Becky Serafini, Senior Brand Manager - Marketing; Michael Hasco, Vice President - Global Accounts; and Carley Hodges, Senior Buyer - Packaging Procurement. At that meeting, Scott presented the unique features of his CondiCup™ Application, including detailed features of the invention and marketing and selling points to promote the product. As discussed below, these same points would later be echoed in Heinz's own marketing materials.

17. Scott began his presentation by reporting his findings that more than 80% of the fast food consumer population uses ketchup with french fries when they are dining in. However, less than two-fifths of those same ketchup consumers use ketchup during drive-thru purchases. With drive-thru purchases constituting an ever-growing percentage of fast food restaurant sales, it was in the interest of a condiment supplier such as Heinz to find a modern condiment container designed for today's eating patterns.

18. Fortunately for Heinz, Scott White introduced them to the CondiCup™ – including confidential illustrations from his then-unpublished CondiCup™ Application. Scott illustrated a non-exhaustive variety of design options for the CondiCup™. The CondiCup™ was specifically both “dip-able” and “squirt-able.” It would be a complete packaging solution, replacing traditional ketchup packets not only for drive-thru customers but also in-store diners. It was, in short, exactly what consumers were looking for and the answer to Heinz’s ketchup packaging problems.

19. Scott further illustrated that the CondiCup™ made financial sense for Heinz: its current ketchup package serving size was only a third of an ounce, but the typical consumer was using one-and-two-thirds ounces (equal to five traditional ketchup packets) of ketchup per meal. Consequently, consumers were often given random handfuls of ketchup packets, many of which went unused and then discarded. Scott explained that the CondiCup could optionally hold two ounces of ketchup, thereby eliminating the waste of multiple packages and unused containers.

20. Of course, Scott realized his invention was bigger than just ketchup at the drive-thru. The CondiCup™ is a “[r]evolutionary approach to [a] 40+ year old issue.” It could be adapted to “multiple condiment applications, not just ketchup,” and it would provide Heinz with a “[u]nique edge in the market place.” Quoting Heinz’s own annual report – “Innovation is the Way Forward for Heinz” – Scott appealed to Heinz to join in co-development efforts to bring the CondiCup™ to the consumer.

#### **IV. Heinz “Passes” On the CondiCup™**

21. On September 4, 2006, Heinz turned down Scott’s co-development proposal. Although his “designs clearly have some unique features,” Heinz vaguely declared Scott’s invention not novel or worth pursuing. When asked what supposed prior art was similar to the

CondiCup™ concept, Heinz demurred. Scott was disappointed in the response, but continued in his quest to bring the CondiCup™ to the masses.

22. Upon information and belief, Heinz saw Scott's vision for a revolutionary new condiment container that would become as ubiquitous as the traditional ketchup packet. Upon information and belief, they also saw a novel container that would transform drive-thru condiment sales, and perhaps put Heinz in a position to regain the desperately-sought McDonald's domestic restaurant business.

23. Rather than deal fairly with Scott White and CondiCup™ LLC, the endeavor he established to develop and bring his invention to market, Heinz cut him out. The behemoth international company could not be bothered to contract with a start-up American small business.

#### **V. Heinz Introduces "Its" Dip & Squeeze Condiment Cup**

24. Scott heard nothing further from Heinz for nearly four years. During that time, he continued to pursue patent protection with the United States Patent and Trademark Office and to seek avenues for developing and marketing the CondiCup™. Given the dismissive skepticism with which Heinz treated his invention, he was surprised to discover in 2010 that Heinz was on the cusp of launching a substantial marketing push centered on a familiar looking condiment container.

25. In its 2010 Annual Report, Heinz introduced the "Dip & Squeeze" condiment cup to its shareholders. A true and correct representation of Heinz's Dip & Squeeze condiment cup is attached hereto as Exhibit B. The Dip & Squeeze was prominently featured on the cover of the report. Heinz heralded the arrival of Dip & Squeeze as an example of "its" tradition for innovation:

Innovation is a Heinz hallmark and a key to unlocking growth in our core brands. A great example is Dip & Squeeze™ Ketchup,

the new dual-function foodservice package that we announced in February 2010. Dip & Squeeze gives consumers two ways to enjoy Heinz Ketchup – you can peel back the lid for easy dipping or tear off the tip to squeeze it out. This **revolutionary package** holds three times as much ketchup as a traditional packet. It will be available to U.S. consumers later this year.

26. Likewise, in a February 4, 2010, press release, Heinz described the Dip & Squeeze as “[a] true packaging breakthrough.” Again echoing Scott’s original marketing ideas and rationale for the CondiCup™, Heinz noted that the new design “mark[ed] the first ketchup packet makeover for the foodservice industry in 42 years” and that it “holds three times as much Heinz Ketchup as the traditional packet. That means more ketchup when it’s wanted and where it’s wanted with less mess.” Scott’s CondiCup™ pitch was evident even in Heinz’s introductory marketing materials.

27. As described in Heinz’s 2011 Annual Report, the Dip & Squeeze was kicked off with a nationwide marketing tour:

During Fiscal 2011, we launched Heinz Dip & Squeeze® Ketchup, an **innovative** dual-function package that enables consumers to peel away the lid for dipping or tear off the tip to neatly squeeze the ketchup onto their favorite foods. U.S. consumers are responding very favorably to Dip & Squeeze, which contains three time more ketchup than our traditional packets and is much convenient.

28. Heinz wrapped up its promotional tour and kicked off the availability of the Dip & Squeeze at Chick-Fil-A restaurants by ordaining Friday, March 4, 2011, as Free FryDay. In a February 28, 2011, press release announcing the event, Heinz declared, “Today, the way Americans eat on the go **will change forever** as Heinz announces the national availability of Heinz® Dip & Squeeze® Ketchup, the new packaging **innovation** that allows for dipping and squeezing and holds three times as much Heinz® Ketchup as the traditional packet. After **42 years** of messing with ketchup packets, people can now eat *American’s Favorite Ketchup*® with



ease.” Summing up reactions received during the nationwide tour, Heinz confirmed that Scott’s design was a hit with consumers:

“The response from consumers who have had the chance to experience the new Dip & Squeeze Ketchup package has been overwhelmingly positive,” said John Bennett, Vice President of Marketing at Heinz. “People have been telling us that they love the convenience and functionality of the new package, and we are thrilled that it is now available to people nationwide.”

29. The media took notice of “Heinz’s” innovative new condiment cup. On September 19, 2011, in an article entitled “Old Ketchup Packet Heads for Trash,” the Wall Street Journal reported that Heinz had rolled out Scott’s invention across the United States with the biggest names in retail fast food:

[T]he new “Dip and Squeeze” packets[, which] will begin replacing the traditional rectangular ketchup packets later this year at Wendy’s Co. restaurants. Smaller chains including Chick-fil-A Inc., Smashburger Master LLC, and International Dairy Queen Inc. started carrying the packets earlier this year. McDonald’s Corp. and Burger King Holdings Inc. are testing the packets but declined to comment on the results.

30. According to the Wall Street Journal article, Heinz purportedly began developing the Dip & Squeeze three years prior, *i.e.*, in 2008 – approximately two years *after* Heinz claimed to have passed on Scott’s invention and a year *after* his CondiCup™ Application was published. In a refrain particularly familiar to Scott, the Journal praised the dual-function aspect of the package and its three-times greater capacity: “The red, bottle-shaped packets hold three times the ketchup as traditional packets. The new containers are more expensive than the old sleeves, but Heinz hopes customers learn not to grab more than one or two.” Similarly, the Journal reported that the new condiment cup was designed to address consumers’ challenges with eating their french fries with ketchup: “Heinz believes traditional ketchup packets are so annoying that they stop people from ordering fries at drive-thrus.” And Heinz acknowledged that the innovative

package might help rekindle its long-strained relationship with McDonalds: “Though Heinz didn’t design the new packet to get back in McDonald’s good graces, ‘that would be a wonderful side benefit,’ says Heinz’s Mr. Bennett.” In sum, the Dip & Squeeze was the end of “decades” long search for a revolutionary condiment cup. Paraphrasing Scott White’s pitch presentation, Michael Okoroafor, Vice President of Heinz Packaging Research & Development, observed that the new condiment cup is “the most significant packaging innovation for the ketchup packet in more than 42 years.”

31. The innovative design received similar praise from the packaging and restaurant industries. On June 13, 2011, the Dip & Squeeze “was honored with a Silver award in Innovation from the prestigious DuPont Awards for Packaging Innovation.” “‘The Packaging Awards program is an opportunity to celebrate how collaborating throughout the value chain can bring cost-effective innovation to the market to help solve the big issues,’ said Shanna Moore, global director sustainable packaging, DuPont Packaging & Industrial Polymers. ‘The Heinz® Dip & Squeeze® Ketchup package captures the spirit of innovation to resolve customer challenges.’” The Dip & Squeeze was also praised by the National Restaurant Association during its first Food & Beverage Product Innovations Awards as an innovative product that addressed the evolving needs of consumers.

## **VI. Scott White’s CondiCup™ is a Huge Success**

32. In its 2012 Annual Report, Heinz reported the Dip & Squeeze as a key component in the company’s continued growth:

[P]ackaging innovation [is] a key global growth in Ketchup & Sauces. We have a number of exciting initiatives underway, including . . . Heinz® Dip & Squeeze® Ketchup, our dual-function foodservice package. We sold **more than one billion packets** of the Dip & Squeeze® in the United States during the year, and **it is a global priority for the Company.**

33. The condiment cup design has been so successful that Heinz decided to bring it direct to the consumer:

The packets, which had previously only been available at Chick-fil-A and Dairy Queen, are part of the Pittsburgh-based food company's efforts to make a more user- (and mom-) friendly and less messy experience for ketchup lovers on the go. It costs \$1.99 for the 10-pack, Heinz said Monday.

"Consumer demand for this product has been tremendous, as there is a universal need for convenient, portable packaging," said Noel Geoffroy, vice president - global brands, in a prepared statement. "We are thrilled to help consumers make it easier and more fun to dip or squeeze Heinz Ketchup no matter where they are."

34. The full scope of the CondiCup™'s financial success is presently unknown, but conservative estimates project a reasonable royalty in excess of millions of dollars per year.

#### **V. The Dip & Squeeze Is the CondiCup™**

35. On July 31, 2012, the United States Patent and Trademark Office issued the CondiCup™ Application as the '026 patent. The Dip & Squeeze infringes one or more claims of the '026 patent. For example, claim 14, which protects Scott's CondiCup™ invention, reads directly on the Dip & Squeeze.

36. Claim 14 claims a continuous sidewall with a peripheral shoulder portion extending outwardly from the continuous sidewall. The Dip & Squeeze likewise has a continuous sidewall and peripheral shoulder portion:

37. Claim 14 further recites an open end formed by the peripheral shoulder portion – *e.g.*, the open "top" of the container bowl that is covered by the decorative wrapper – and a closed end forming the bottom floor. The Dip & Squeeze clearly has an open top end and a closed bottom end.

38. Claim 14 goes on: “the container forming a wide and a narrow end.” The Dip & Squeeze also has a wide end and a narrow end:

39. Claim 14 includes “a removable cover over the open end, the removable cover attached to the peripheral shoulder portion,” which is also clearly visible in the Dip & Squeeze packaging.

40. Finally, claim 14 provides that the cover should be totally removable from the wide end of the container to access the wide end – *e.g.*, for dipping – as well as removable from the narrow end “to squirt or squeeze a condiment from the container.” Indeed, the Dip & Squeeze has a cover that is removable such that consumer can “dip” or “squeeze” ketchup.

41. The foregoing infringement analysis is exemplary only and Scott reserves the right to assert other claims of the ‘026 patent and to make additional infringement arguments pending fact discovery, claim construction, and expert analysis.

## **VI. Heinz Had Notice of the CondiCup™ Application**

42. As discussed above, Scott disclosed his then-unpublished and confidential CondiCup™ Application to Heinz in 2006. Heinz was admittedly aware of the CondiCup™ given its comments about the “defensibility of the claims within the patent application” when passing on Scott’s invention.

43. After Scott learned that Heinz had nonetheless launched the Dip & Squeeze without him, Heinz was reminded of the pending CondiCup™ Application. On April 5, 2011, counsel for Scott wrote Heinz and reminded Heinz that the CondiCup™ Application, by then published and available to the public, was still pending and would protect Scott’s invention.

44. In a response dated June 1, 2011, Heinz again denied the patentability of the CondiCup™. After acknowledging it had reviewed and considered the CondiCup™

Application, Heinz argued the invention was anticipated or rendered obvious by two of their patents: U.S. Patent No. 7,703,619, which did not issue until April 27, 2010, but which claimed priority to a Dutch patent application (PCT Pub. No. WO2004/063048).

45. Scott, however, believed his invention was still patentable and submitted supplemental Information Disclosure Sheets to the United States Patent and Trademark Office to expressly disclose these additional references. The Patent Office considered the materials and agreed with Scott, ultimately allowing the CondiCup™ Application to issue as the '026 patent.

## **VII. Heinz Willfully Misappropriated Scott's Invention**

46. The history between the parties, Heinz's prior notice of the CondiCup™ Application, and the coincidental "development" of a condiment cup identical to Scott's invention and encompassed by one or more claims of the '026 patent is an intentional, willful, and wanton infringement of Scott White's intellectual property rights.

### **COUNT I**

47. Scott White incorporates paragraphs 1 through 46 herein by reference.

48. This cause of action arises under the patent laws of the United States.

49. Scott White is the sole inventor and owner of the '026 patent, entitled "Condiment Container." A true and correct copy of the '026 patent is attached hereto as Exhibit A.

50. The '026 patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

51. Heinz has directly and continues to directly, has indirectly and continues to indirectly, including contributorily and by inducement, infringed one or more claims of the '026 patent in this judicial district and elsewhere in Illinois and the United States, including at least

claims 1 and 14, without the consent or authorization of Scott White, by or through its making, having made, offered for sale, sold, imported, and/or used the patented condiment container.

52. Scott White has been damaged as a result of Heinz's infringing conduct described in this Court. Heinz is, thus, liable to Scott White in an amount that adequately compensates him for its infringement, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

53. Heinz's infringement has been intentional, willful, and wanton, entitling Scott White to enhanced damages. Heinz had notice of Scott White's patent application and, on information and belief, intentionally and knowingly misappropriated the subject matter of the patent application despite an objectively high likelihood that its actions would constitute infringement once the patent issued.

54. This case is exceptional pursuant to the provisions of 35 U.S.C. § 285.

#### **JURY DEMAND**

Scott White hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

#### **PRAYER FOR RELIEF**

Scott White requests that this Court find in his favor and against Heinz, and that this Court grant Scott White the following relief:

- a. Enter judgment for Scott White on this Complaint;
- b. Enter judgment that one or more claims of the '026 patent have been infringed, either directly or indirectly by Heinz;

- c. Enter judgment that Heinz account for and pay to Scott White all damages to and costs incurred by Scott White because of Heinz’s infringing activities and other conduct complained of herein;
- d. Award Scott White damages resulting from Heinz’s infringement in accordance with 35 U.S.C. § 284;
- e. Enter a permanent injunction enjoining Heinz and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all other acting in active concert or participation with them, from infringing or inducing infringement of the ‘026 patent, or, in the alternative, for a judgment that Heinz account for and pay to Scott White a reasonable royalty and an ongoing post-judgment royalty because of Heinz’s past, present, and future infringing activities and other conduct complained of herein;
- f. Grant Scott White pre-judgment and post-judgment interest on the damages caused by Heinz’s infringing activities and other conduct complained of herein;
- g. Enter judgment that Heinz’s infringement was willful;
- h. Award treble damages in accordance with the provisions of 35 U.S.C. § 284;
- i. Find the case exceptional under 35 U.S.C. § 285; and
- j. Grant all other and further relief as the Court may deem just and proper.

                  /s/ John A. Leja                    
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