

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

ZIP TOP, INC.

Plaintiff,

v.

S.C. JOHNSON & SON, INC.

Defendant.

Civil Action No.: 1:22-cv-05028

JURY TRIAL DEMANDED

PATENT CASE

AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Zip Top, Inc. (“Zip Top”) files this Original Complaint for Patent Infringement against Defendant S.C. Johnson & Son, Inc. (“SCJ”) and would respectfully show the Court as follows:

PARTIES

1. Plaintiff Zip Top is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 13501 Galleria Circle, Suite 220, Austin, Texas 78738.

2. Zip Top is the successor-in-interest to Zip Top, LLC, which was a Texas Limited Liability Company. Zip Top, LLC was converted to Zip Top, Inc., a Texas corporation. Zip Top, Inc. (TX) was converted to Zip Top, Inc., which is a Delaware corporation and the plaintiff.

3. On information and belief, Defendant SCJ is a Wisconsin corporation that maintains its principal place of business at 1525 Howe Street, Racine, Wisconsin 53403.

NATURE OF THE ACTION

4. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 1 et seq.

5. This action arise under 35 U.S.C. § 271, wherein Defendant SCJ infringes the Asserted Patents, U.S. Patent No. 11,358,755 (the “755 patent”) and U.S. Patent No. 11,383,890 (the “890 patent”), by making, using, offering for sale, selling, and/or importing Ziploc ENDURABLES containers.

JURISDICTION AND VENUE

6. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35 of the United States Code.

7. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

8. On information and belief, SCJ maintains an established place of business in the state of Illinois and this district, specifically including its North American regional headquarters located at 550 W Washington Blvd., Chicago, IL 60661. On information and belief, the activities conducted by SCJ and its employees at this facility located in Chicago, Illinois are substantially related to SCJ’s infringing activities conducted in this state.

9. On information and belief, SCJ sells and offers for sale infringing products through its interactive website – Ziploc.com – making that website available to persons in the State of Illinois, and facilitating the sale of infringing products through that website to those persons for delivery by Walmart, Target, Amazon, Kroger, and Meijer. In particular, the warehouse stores inventory used to fulfill SCJ’s digital sales, and along with free shipping and same day delivery, SCJ offers its e-commerce customers the opportunity for in-store pickup of products ordered

through Ziploc.com. On information and belief, SCJ operates and controls all content and software used on the Ziploc.com website.

10. Without limitation, on information and belief, SCJ has derived revenues from its infringing acts occurring within Illinois.

11. This Court has personal jurisdiction over Defendant, because Defendant has sufficient minimum contacts within the State of Illinois and this judicial district, pursuant to due process and/or the Illinois Long-Arm Statute, due at least to its business in this forum, including at least a portion of the infringements alleged herein. Defendant has purposefully availed itself of the privileges of conducting business in the State of Illinois by regularly conducting and soliciting business within the State of Illinois and within this judicial district, and because Plaintiff's causes of action arise directly from Defendant's business contacts and other activities in the State of Illinois and this judicial district.

12. SCJ is subject to the Court's general jurisdiction, including from regularly doing or soliciting business, engaging in other persistent courses of conduct, and deriving substantial revenue from goods and services provided to persons or entities in Illinois. Further, SCJ is subject to the Court's personal jurisdiction at least due to its sale of products and/or services within Illinois. SCJ has committed such purposeful acts and/or transactions in Illinois such that it reasonably should know and expect that it could be haled into this Court as a consequence of such activity.

13. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400(b).

ZIP TOP INVENTOR'S BACKGROUND

14. Zip Top's inventor and founder, Rebecca Finell, has proven herself as a product designer and brand strategist.

15. In 2004, she founded Boon Inc., and served as its president, principal designer, and chief brand strategist. Through Boon, she invented and marketed innovative and award winning baby products, including: the Boon™ green grass drying rack, the Boon™ squirt spoon, and the Boon™ “Frog Pod,” which is a stylish tool for scooping toys out of a bathtub and hanging them out of the way to dry.



16. Detailed information about these BOON™ products is available at www.booninc.com.

17. In 2008, Rebecca Finell started Keen Distribution and served as its CEO. Keen took other brand's baby products and distributed them into the U.S. market. It grew very fast, more than \$5M in year one. Keen elevated many products, including the Bumbo™ baby seat with branding, product redesigns, packaging, photography, marketing, copy, new line extensions. Rebecca Finell personally showed/sold each product line to big mass market buyers in the U.S. market.

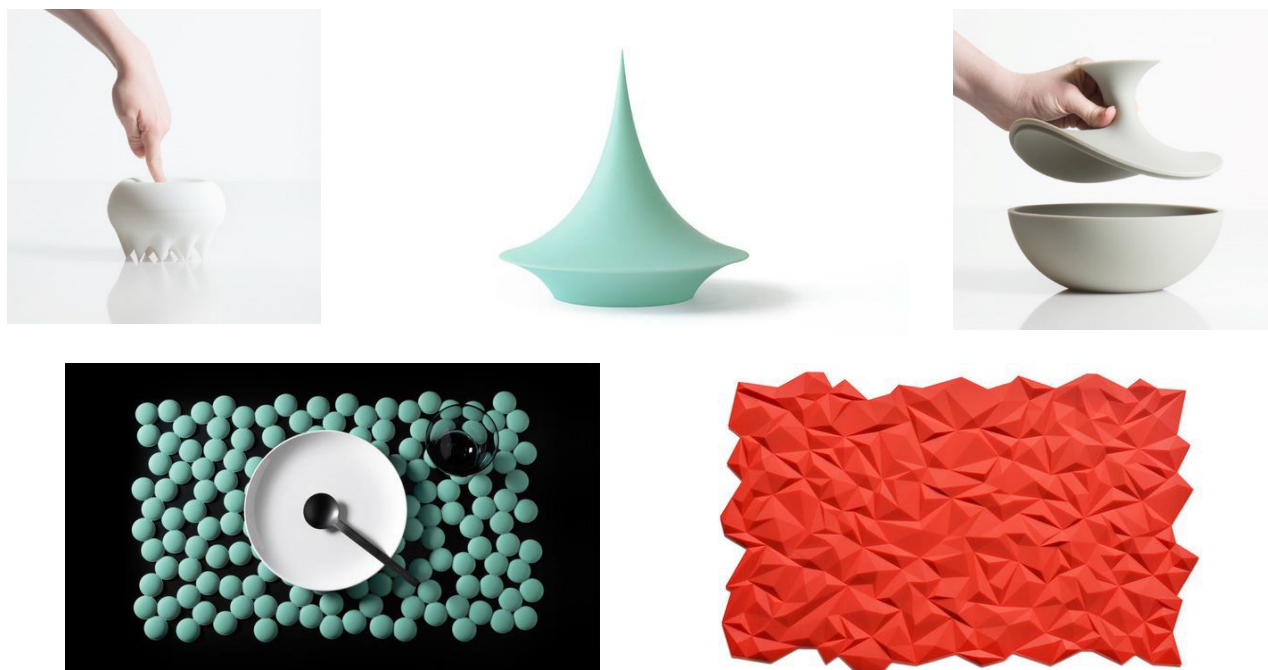


18. In 2011, Rebecca Finell sold Keen Distribution and Boon, Inc. as a package deal to TOMY for over \$31 million, while retaining an ownership piece of the TOMY company.

19. In 2013, Rebeca Finell launched Finell Co. LLC to develop FINELL® branded luxury products, including a line of tabletop accessories, serving trays, bowls, and even handbags. Finell Co. LLC quickly received international design recognition, awards, and the attention of top luxury stores. These products continue to be featured in high-profile press and movies.



20. Rebecca Finell invented and designed many FINELL® products made of silicone because of its strength, flexibility and versatility. For example, FINELL® silicone products include vessels and placemats/runners of different silicone shapes and colors.



THE ASSERTED PATENTS

21. Zip Top incorporates the above paragraphs herein by reference.

22. On June 14, 2022, United States Patent No. 11,358,755 (“the ’755 Patent”) was duly and legally issued by the United States Patent and Trademark Office. The ’755 Patent is titled “Flexible Foodstuff Container with Closure.” A true and correct copy of the ’755 Patent is attached hereto as Exhibit A and incorporated herein by reference.

23. On July 12, 2022, United States Patent No. 11,383,890 (“the ’890 Patent”) was duly and legally issued by the United States Patent and Trademark Office. The ’890 Patent is titled “Silicone Molding Process for Making a Container with Zipper Members Tapered at a Flexible Spout.” A true and correct copy of the ’890 Patent is attached hereto as Exhibit B and incorporated herein by reference.

24. Zip Top is the successor-in-interest of the assignee of all right, title, and interest in the Asserted Patents (the ’755 and ’890 Patents), including all rights to enforce and prosecute actions for infringement and to collect damages for all relevant times against infringers of the Asserted Patents. Accordingly, Zip Top possesses the exclusive right and standing to prosecute the present action for infringement of the Asserted Patents against SCJ.

ZIP TOP’S INNOVATION OF PATENTED INVENTIONS AND PRODUCTS

25. Zip Top incorporates the above paragraphs herein by reference.

26. In 2017, Rebecca Finell, as chief product designer for Finell Co LLC, began to develop her ideas for a silicone container.

27. Later, Zip Top LLC was formed as a Texas Limited Liability Company to spin the Zip Top™ products out of Finell Co.

28. During March 10-13, 2018 at the International Home + Housewares Show in Chicago, Illinois, Zip Top presented to prospective retail buyer representatives its Zip Top® line of endlessly reusable 100% platinum silicone containers that stand up, stay open and zip shut.



29. Zip Top's silicone container product innovations of the Asserted Patents have been widely praised and recognized in the industry.



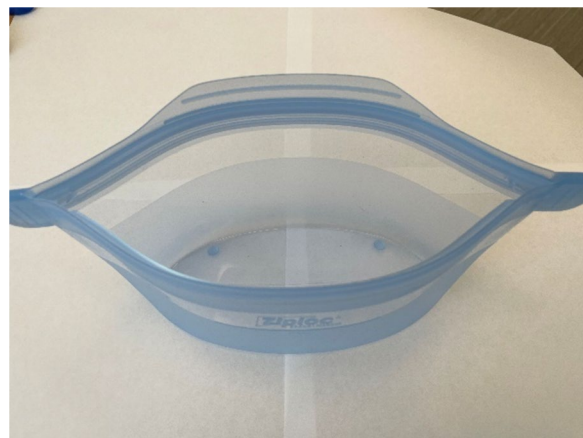
30. Since 2018, Zip Top has successfully marketed its Zip Top® silicone containers of the Asserted Patents through national retailers, ecommerce, direct-to-consumer marketing, and its website (www.ziptop.co).



ACCUSED INSTRUMENTALITIES—ZIPLOC ENDURABLES CONTAINERS

31. Zip Top incorporates the above paragraphs herein by reference.

32. Now and within the past six years, SCJ makes, uses, causes to be used, offers for sale, sells, and/or imports Ziploc ENDURABLES containers (Accused Instrumentalities).



33. Upon information and belief, the Accused Instrumentalities, now and within the past six years, are being distributed through retail stores including, but not limited to, Walmart, Target, Amazon, Kroger, HEB, and Meijer.

34. Upon information and belief, Plaintiff Zip Top's brand is being harmed by Defendant SCJ's Accused Instrumentalities entering the market. Plaintiff Zip Top was first to market and is substantially ahead of all other relevant companies in terms of brand equity, meaning that Plaintiff Zip Top has the greatest amount of brand equity to lose. SCJ's patent infringement will lead to Plaintiff Zip Top losing market share. Each sale of SCJ's product likely deprives Plaintiff Zip Top of market share, revenue, and brand recognition.

35. While still infringing the Asserted Patents, the Accused Instrumentalities introduced in the silicone container market by Defendant SCJ are of lesser quality and inferior design compared to Zip Top® silicone containers. Upon information and belief, Defendant SCJ's entry into the container market with an inferior silicone container is having an adverse effect on Plaintiff Zip Top's reputation and sales because customers assume all silicone containers are of inferior quality regardless of which entity has manufactured and marketed them.

COUNT I — PATENT INFRINGEMENT U.S. PAT. NO. 11,358,755

36. Zip Top incorporates the above paragraphs herein by reference.

37. Upon information and belief, SCJ has directly infringed under 35 U.S.C. § 271(a) at least claim 1 of the '755 Patent by making, using, selling, importing, offering for sale, providing, practicing, and causing to be used the Accused Instrumentalities that infringe the patented containers, as detailed in the preliminary claim chart attached hereto as Exhibit C and incorporated herein by reference.

38. SCJ was made aware of the '755 Patent and its infringement thereof at least as early as the original Complaint, which was filed on September 15, 2022 and served on September 22, 2022.

39. Upon information and belief, SCJ has induced and continues to induce others to infringe at least claim 1 of the '755 Patent under 35 U.S.C. § 271(b) by, among other things, and with specific intent or willful blindness, actively aiding and abetting others to infringe, including, but not limited to SCJ's partners, clients and customers, whose use of the Accused Instrumentalities constitutes direct infringement of at least claim 1 of the '755 Patent.

40. In particular, SCJ's actions that aid and abet others such as its partners, clients and customers to infringe include advertising and distributing the Accused Instrumentalities and providing instructional materials and services regarding the Accused Instrumentalities.

41. Any party, including SCJ's partners, clients and customers using the Accused Instrumentalities necessarily infringes the '755 Patent. SCJ thus induce others to infringe the '755 Patent. SCJ has knowingly induced infringement since at least the filing of this Complaint when SCJ was first made aware of the '755 Patent.

42. Upon information and belief, SCJ is liable as a contributory infringer of the '755 patent under 35 U.S.C. § 271(c) by offering to sell, selling and importing into the United States the Accused Instrumentalities that infringe the patented container, to be especially made or adapted for use in an infringement of the '755 Patent. Each of the Accused Instrumentalities is a material component for use in practicing the '755 Patent and is specifically made and are not a staple article of commerce or capable of substantial non-infringing use.

43. Plaintiff Zip Top has been harmed by SCJ's infringing activities. Thus, SCJ is liable to Zip Top in an amount that adequately compensates Zip Top for such infringements, 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.

44. Plaintiff Zip Top has suffered, and is continuing to suffer, damages as the Defendant SCJ's infringement of the Asserted Patents, and Plaintiff Zip Top is entitled to compensation, including Defendant SCJ's profits, and other monetary relief to the fullest extent allowed by law, including attorneys' fees, pursuant to 35 U.S.C. §§ 284, and 285.

COUNT II — PATENT INFRINGEMENT U.S. PAT. NO. 11,383,890

45. Zip Top incorporates the above paragraphs herein by reference.

46. Upon information and belief, SCJ has directly infringed under 35 U.S.C. § 271(a) at least claim 1 of the '890 Patent by making, using, selling, importing, offering for sale, providing, practicing, and causing to be used the Accused Instrumentalities that infringe the patented containers, as detailed in the preliminary claim chart attached hereto as Exhibit D and incorporated herein by reference.

47. Upon information and belief, SCJ has directly infringed under 35 U.S.C. § 271(g) at least claim 1 of the '890 Patent by importing, offering to sell, selling, and/or using the Accused Instrumentalities made by the process claimed in the '890 Patent, as detailed in the preliminary claim chart attached hereto as Exhibit D and incorporated herein by reference.

48. SCJ was made aware of the '890 Patent and its infringement thereof at least as early as the original Complaint, which was filed on September 15, 2022 and served on September 22, 2022.

49. Upon information and belief, SCJ has induced and continues to induce others to infringe at least claim 1 of the '890 Patent under 35 U.S.C. § 271(b) by, among other things, and with specific intent or willful blindness, actively aiding and abetting others to infringe, including,

but not limited to SCJ's partners, clients and customers, whose use of the Accused Instrumentalities constitutes direct infringement of at least claim 1 of the '890 Patent.

50. In particular, SCJ's actions that aid and abet others such as its partners, clients and customers to infringe include advertising and distributing the Accused Instrumentalities and providing instruction materials and services regarding the Accused Instrumentalities.

51. Any party, including SCJ's partners, clients and customers using the Accused Instrumentalities necessarily infringes the '890 Patent. SCJ thus induces others to infringe the '890 Patent. SCJ has knowingly induced infringement since at least the filing of this Complaint when SCJ was first made aware of the '890 Patent.

52. Upon information and belief, SCJ is liable as a contributory infringer of the '890 Patent under 35 U.S.C. § 271(c) by offering to sell, selling and importing into the United States the Accused Instrumentalities that infringe the patented container, to be especially made or adapted for use in an infringement of the '890 Patent. Each of the Accused Instrumentalities is a material component for use in practicing the '890 Patent and is specifically made and are not a staple article of commerce capable of substantial non-infringing use.

53. Plaintiff Zip Top has been harmed by SCJ's infringing activities. Thus, SCJ is liable to Zip Top in an amount that adequately compensates Zip Top for such infringements, 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.

54. Plaintiff Zip Top has suffered, and is continuing to suffer, damages as the result of Defendant SCJ's infringement of the Asserted Patents, and Plaintiff Zip Top is entitled to compensation, including Defendant SCJ's profits, and other monetary relief to the fullest extent allowed by law, including attorneys' fees, pursuant to 35 U.S.C. §§ 284, and 285.

JURY DEMAND

Plaintiff Zip Top demands a trial by jury of all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Zip Top requests this Court to enter judgment against Defendant SCJ, including SCJ subsidiaries, affiliates, agents, servants, employees, and all persons in active concert or participation with Defendant SCJ, and grant the following relief:

- A. Entry of judgment that Defendant SCJ has directly infringed, contributorily infringed, and/or induced infringement of one or more claims of the '755 Patent;
- B. Entry of judgment that Defendant SCJ has directly infringed, contributorily infringed, and/or induced infringement of one or more claims of the '890 Patent;
- C. Damages in an amount adequate to compensate Plaintiff Zip Top for Defendant SCJ's infringements to be determined at trial, which amount cannot be less than a reasonable royalty;
- D. Pre-judgment and post-judgment interest on the damages assessed at the maximum rate permitted by law;
- E. Entry of a judgment awarding treble damages pursuant to 35 U.S.C. § 284 for SCJ's willful infringement of the '755 and '890 Patents;
- F. A Court declaration that this is an exceptional case and award Plaintiff Zip Top its reasonable attorneys' fees and expenses in accordance with 35 U.S.C. § 285;
- G. Issue a preliminary injunction and thereafter a permanent injunction enjoining and restraining Defendant SCJ, its directors, officers, agents, servants, employees, and those acting in privity or in concert with them, and their subsidiaries, divisions, successors, and

assigns, from further acts of infringement, contributory infringement, or inducement of infringement of the '755 and '890 Patents; and

H. Such other and further relief, both at law and in equity, to which Plaintiff Zip Top may be entitled and which the Court deems just and proper.

Dated: October 31, 2022

Respectfully submitted,

/s/ R. William Beard, Jr.

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Attorneys for Plaintiff Zip Top, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2022, I electronically filed the foregoing Amended Complaint and Exhibits A-D with the Clerk of the U.S. District Court, Northern District of Illinois, Eastern Division by using the CM/ECF system which will send notification of such filing(s) to the following individual(s):

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