

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No.:

HAPPY HEAD MARKETING LLC

Plaintiff,

v.

THE PACKAGING COMPANY,  
MICHAEL E. SALEMI and  
INTERNATIONAL SOURCING &  
MANUFACTURING

Defendants.

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**COMPLAINT**

Plaintiff Happy Head Marketing, LLC (“Plaintiff” or “Happy Head”) files this complaint for declaratory judgment against Defendant Michael E. Salemi (“Salemi”), The Packaging Company (“TPC”), and International Sourcing & Manufacturing (“ISM”) (collectively, “Defendants”) with regard to United States Patent No. 11,370,583 (“the ‘583 Patent”, or “the Patent-In-Suit”) and alleges as follows:

**NATURE OF THE ACTION**

1. This action is based on the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*, 17 U.S.C. §§1, *et seq.* and the United States Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.
2. This action arises out of an actual and justiciable case or controversy that exists between Plaintiff and Defendants, arising out of the Defendants’ patent assertion efforts against

Plaintiff's lawful activities based on a patent of which no valid claims are infringed and for which no relief is legally warranted.

### **THE PARTIES**

3. Plaintiff is a Florida limited liability company with its principal place of business at 360 N.E. 75<sup>th</sup> Street, Unit 119, Miami, FL 33138.

4. On information and belief, Defendant Salemi is an individual residing in Long Beach, California.

5. On information and belief, Defendant TPC is a company of unknown incorporation or organization with its principal place of business at 2310 East 4<sup>th</sup> Street, Long Beach, CA 90814.

6. On information and belief, Defendant ISM is California corporation with a principal place of business at 2310 East 4<sup>th</sup> Street, Long Beach, CA 90814.

7. On information and belief, Defendant Salemi is an officer of and/or owner of defendants TPC and ISM.

### **JURISDICTION AND VENUE**

8. This action arises under the United States Patent Act, 35 U.S.C. § 1, *et seq.*

9. Plaintiff brings this civil action against Defendant under 28 U.S.C. §§ 2201 and 2202 to obtain declaratory judgment of non-infringement and invalidity with respect to United States Patent No. 11,370,583 (“the ‘583 Patent” or “the Patent-In-Suit”). Attached hereto as Exhibit 1 is a true and correct copy of the ‘583 Patent.

10. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338, 2201, and 2202.

11. The Court has personal jurisdiction over the parties, and venue in this judicial district is proper under 28 U.S.C. §§ 1391 and/or 1400. Defendants have directed their patent

assertion efforts and claims at Plaintiff, a Florida-based company, in this judicial district by, *inter alia*, repeatedly accusing Plaintiff of infringing the '583 Patent. Moreover, on information and belief, Defendants directly target business activities relating to its products toward customers in the United States, including Florida residents.

12. Venue over the Plaintiff's claims is proper pursuant to 28 U.S.C. §1391 because, upon information and belief, a substantial part of the events giving rise to the claims were directed to and occurred in this venue, Plaintiff resides in Florida, and accused property that is at least partly the subject of the action is located in and sold from this venue.

### **FACTUAL BACKGROUND**

13. In or around late June, 2022, a person who identified himself as a Mr. Salemi from The Packaging Group made a telephone call to Plaintiff at its headquarters in Miami, Florida. Ryan Rosenberg, an individual who works for Plaintiff, answered the phone call. During the call, Mr. Salemi informed Mr. Rosenberg that Mr. Salemi and/or his company owns a U.S. patent that issued or would soon issue as the '583 Patent and that Happy Head's Child Resistant ("CR") tins infringed or would infringe the '583 Patent. On this call, Defendant Salemi demanded that Plaintiff cease selling these tins and call him back to discuss the consequences of this alleged infringement.

14. During this same telephone call, Defendant Salemi also referred to a prior conversation he claimed to have had with "one of the owners" of Happy Head in late 2021 at the 2021 MJBizCon® trade show in Las Vegas, Nevada, during which he alleged to have warned Plaintiff that Plaintiff's use and sale of its CR tins would infringe Defendant Salemi's soon to issue U.S. patent and carry significant legal and business consequences. Thus, Defendant Salemi's allegation on this call that Plaintiff was infringing the '583 Patent by making, using, selling, offering to sell, and/or importing allegedly infringing goods in, from, and into the state of Florida

was, by Defendant Salemi's own account, the second time he made this accusation against Plaintiff.

15. On November 17, 2022, two individuals approached Plaintiff's show booth at the 2022 MJBizCon<sup>®</sup> trade show in Las Vegas and handed Mr. Rosenberg a "cease and desist" letter addressed to Happy Head Marketing LLC (Plaintiff) in Miami, FL ("the C&D Letter"). The C&D Letter was typed on TPG letterhead and signed by Michael E. Salemi as C.O.O. (ostensibly standing for "Chief Operating Officer") of TPG and accuses Plaintiff's boxes "such as but not limited to Hi-Lock Hinged Child Resistant Tins" ("Accused Infringing Products") of infringing the '583 Patent. Attached hereto as Exhibit 2 is a true and correct copy of the C&D Letter.

16. The Patent-in-Suit was issued in the name inventor Michael E. Salemi. As of the filing of this Complaint, there was no record at the United States Patent and Trademark Office of the named inventor Defendant Salemi having assigned or licensed his rights to the Patent-In-Suit to any other person or entity.

17. However, based on the C&D Letter being signed by an alleged officer of TPG, on information and belief, TPG has an interest in the '583 Patent, whether by assignment or license or otherwise.

### **COUNT 1:**

#### **DECLARATORY JUDGMENT OF NON-INFRINGEMENT**

18. Plaintiff incorporates and realleges all previous paragraphs.

19. Plaintiff has sold the Accused Infringing Products since the issuance of the '583 patent.

20. Defendants have at multiple times accused the Accused Infringing Products of infringing the '583 Patent.

21. An actual controversy between the parties exists regarding whether or not Plaintiff Happy Head has infringed or continues to infringe any claim of the '583 Patent.

22. Plaintiff makes, offers for sale, imports and sells CR Tins which do not infringe and have never infringed any claim of the Patent-In-Suit.

23. Accordingly, Plaintiff is entitled to a declaratory judgment from this Court that Plaintiff does not and has not infringed the '583 Patent.

**COUNT 2:**

**DECLARATORY JUDGMENT OF PATENT INVALIDITY**

24. Plaintiff incorporates and realleges paragraphs 1 through 23.

25. An actual controversy exists between Plaintiff and Defendants regarding whether or not each claim of the '583 Patent is valid.

26. Each claim of the '583 Patent is invalid for failure to comply with one or more conditions of patentability, including but not limited to 35 U.S.C. §§ 101, 102, 103, and/or 112..

27. Plaintiff is entitled to a declaratory judgment that each claims of the '583 Patent is invalid.

**Jury Demand**

Plaintiff Happy Head requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

**PRAYER FOR RELIEF**

Plaintiff respectfully requests that this Court find in favor of Plaintiff and against the Defendants and enter judgment as follows, ordering that:

- a. Each and every claim of United States Patent No. 11,370,583 is invalid;
- b. Plaintiff has not infringed any valid claim of United States Patent No. 11,370,583 directly, indirectly, contributorily, or by inducement, and, therefore, Plaintiff is not liable for infringement of any claim of the patent-in-suit;
- c. Each and every claim of United States Patent No. 11,370,583 is unenforceable;
- d. Defendants and their agents and all persons in concert or participation with them be enjoined from threatening, asserting, or charging infringement, or instituting any action for infringement, of each and every claim of United States Patent No. 11,370,583 by or against Plaintiff or its suppliers, vendors, distributors, importers, customers, or users of its products;
- e. Plaintiff be awarded its costs and attorneys' fees incurred in prosecuting this action, as provided for by 35 U.S.C. § 285, plus interest; and
- f. Plaintiff be awarded such other relief as the Court deems just and proper.

Dated: December 16, 2022

By: /s/Michael B. Chesal  
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