

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

Soluble Technologies Group, LLC,

Plaintiff,

v.

Dyla, LLC

Defendants.

Case. No.

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

1. Plaintiff Soluble Technologies Group, LLC (“STG”) alleges, as set forth in detail below, that Defendant Dyla, LLC (“Dyla”), willfully infringes multiple claims of U.S. Patent Nos. 11,744,267, 10,448,659, and 10,327,462 (true and correct copies are attached hereto as Exhibits A, B, and C).

PARTIES AND JURISDICTION

2. STG is a limited liability company organized and existing under the laws of Delaware, having its registered office in Bal Harbor, Florida.

3. Dyla is a Delaware limited liability company with a principal place of business in New York, New York. It manufactures and sells liquid water enhancer (“LWE”) products under various brand names including Stur.

4. This action arises under the Patent Act of 1952, 35 U.S.C. §§1 et seq., as amended.

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

6. Personal jurisdiction over Dyla is proper in this District because Dyla is a Delaware limited liability company and sells infringing products in this District.

7. Venue is proper in this District under 28 U.S.C. § 1391 because Dyla is a Delaware limited liability company.

FACTUAL ALLEGATIONS

8. STG is a leading innovator in the field ofLWE products. In general, LWE products are compositions added to water to flavor the water in an effort to boost hydration for consumers who do not like the taste of plain water.

9. LWE products are packaged for use at the point-of-consumption, typically in containers that may be squeezed to disperse their contents. LWE products may also include electrolytes, vitamins and minerals to enhance a consumer's health.

10. STG licenses its patented technology to a related entity, One8 Health Brands, LLC, which sells patented all natural LWE products under the "Clear Theory" brand. *See* <https://www.getcleartheory.com>. The Clear Theory product competes for customers with Dyla in the all-natural LWE product category.

11. STG has invested substantial resources into developing its patent portfolio related to LWE products. STG now owns U.S. Patent No. 9,560,872, U.S. Patent No. 9,839,227, U.S. Patent No. 10,154,682, U.S. Patent No. 10,327,462, U.S. Patent No. 10,448,659, U.S. Patent No. 11,606,961, U.S. Patent No. 11,606,962, U.S. Patent No. 11,517,033, U.S. Patent No. 11,517,034, 11,622,570, and 11,744,267. STG also owns pending patent applications on the same subject matter, U.S. Pat. App. Nos. 17/469,779, 18/122,441, and 18/122,453.

12. STG has successfully enforced its patents against multiple competitors in the LWE field and has entered into license agreements with a number of industry leaders.

13. STG has had multiple communications with Dyla regarding STG's patent portfolio beginning at least as early as September 1, 2020. STG has kept Dyla apprised of its expanding patent portfolio since that time and has notified Dyla as new patents issued.

14. On May 7, 2023, STG notified Dyla that STG's testing of the Jelly Belly Berry Blue, Jelly Belly Green Apple, Jelly Belly Tutti Frutti, Jelly Belly Very Cherry, revealed that the Jelly Belly products infringe at least claims 1, 11, and 17 of U.S. Patent No. 11,517,034 and claims 1, 6, and 11 of U.S. Patent No. 11,517,033. STG also notified Dyla that STG's testing of the Stur Electrolytes Strawberry Lemon, and Stur Electrolytes Black Raspberry products revealed that these products infringe claims 1, 7, 9, and 16 of U.S. Patent No. 10,448,659 and claims 1, 7, 9, and 16 of U.S. Patent No. 10,327,462.

15. Dyla denied infringement without substantive explanation.

16. On July 13, 2023, STG notified Dyla of allowed claims from U.S. Pat. App. No. 18/122,457.

17. On August 4, 2023, STG notified Dyla of allowed claims from two additional patent applications: U.S. Patent App. Nos. 18/122,453 and 18/122,441.

18. STG explained to Dyla that the newly-allowed claims covered the products STG previously identified as infringing.

19. Dyla has not responded to STG's communication of August 4, 2023.

20. On September 5, 2023, U.S. Pat. App. 18/122,457 issued as U.S. Patent No. 11,744,267. All of the above-mentioned products infringe at least the independent claims of this patent as explained in detail below.

COUNT I—INFRINGEMENT OF U.S. PATENT 10,448,659

21. STG’s testing of the Stur Electrolytes Strawberry Lemon, and Stur Electrolytes Black Raspberry products revealed that these products infringe at least claims 1, 7, 9, and 16 of U.S. Patent No. 10,448,659 (“the ‘659 Patent”).

22. Dyla, without authority from STG, has made, used, offered for sale, and sold, the LWE products referenced in paragraph 21, which embody the patented invention disclosed and claimed in the ‘659 Patent.

23. Claim 1 of the ‘659 Patent reads: “A liquid beverage concentrate composition comprising: a flavor; from about 12% to about 20% by weight of citric acid based on the weight of the liquid beverage concentrate composition; and from about 20% to about 95% by weight of water solvent based on the weight of the liquid beverage concentrate composition.”

24. Claim 7 of the ‘659 Patent reads: “The liquid beverage concentrate composition according to claim 1, wherein the density of the liquid concentrate composition is in a range of from about 1.05 grams per mL to about 1.15 grams per mL.”

25. Claim 9 of the ‘659 Patent reads: “A liquid beverage concentrate composition comprising: a flavor; from about 12% to about 20% by weight of an acid based on the weight of the liquid beverage concentrate composition; and from about 20% to about 95% by weight of water solvent based on the weight of the liquid beverage concentrate composition; wherein the acid is selected from the group consisting of citric acid, malic acid, tartaric acid, phosphoric acid, and any combination thereof.”

26. Claim 16 of the ‘659 Patent reads: “The liquid beverage concentrate composition according to claim 9, wherein the density of the liquid concentrate composition is in a range of from about 1.05 grams per mL to about 1.15 grams per mL.”

27. The Stur Electrolytes Strawberry Lemon LWE product is a liquid beverage concentrate composition. *See* Ex. D (product labels for infringing products). The LWE composition has a flavor—strawberry lemon. Ex. D. The LWE composition has about 12% citric acid based on STG’s testing of the product. STG’s testing revealed that the product contains approximately 12.5% citric acid. STG’s analysis of the LWE composition further reveals that the product is comprised of between 20% to 90% water. Ex. D. Finally, STG’s testing of the LWE composition further revealed that the density of the composition is approximately 1.12 grams per mL.

28. As set forth above, the Stur Electrolytes Strawberry Lemon LWE product meets every limitation of claims 1, 7, 9, and 16 of the ‘659 Patent or contains ingredients that are insubstantially different from and interchangeable with the claim limitations.

29. Likewise, the Stur Electrolytes Black Raspberry product is a liquid beverage concentrate composition. *See* Ex. D. The LWE composition has a flavor—black raspberry. Ex. D. The LWE composition has about 12% citric acid based on STG’s testing of the product. STG’s testing revealed that the product contains approximately 11.3% citric acid. STG’s analysis of the LWE composition further reveals that the product is comprised of between 20% to 90% water. Ex. D. Finally, STG’s testing of the LWE composition further revealed that the density of the composition is approximately 1.16 grams per mL.

30. As set forth above, the Stur Electrolytes Black Raspberry LWE product meets every limitation of claims 1, 7, 9, and 16 of the ‘659 Patent or contains ingredients that are insubstantially different from and interchangeable with the claim limitations.

31. The Accused Products are marketed and sold as direct substitutes for LWE products that practice the ‘659 Patent under license from STG.

32. Dyla is currently practicing the '659 Patent without authority from STG and threatens to continue to do so absent injunctive relief from this Court.

33. The conduct of Dyla has injured and is continuing to injure STG in its business and property.

34. The conduct of Dyla has caused and threatens STG with irreparable harm for which STG has no adequate remedy at law.

COUNT II-INFRINGEMENT OF U.S. PATENT NO. 10,327,462

35. STG's testing of the Stur Electrolytes Strawberry Lemon, and Stur Electrolytes Black Raspberry products ("Accused Products") revealed that these products infringe at least claims 1, 7, 9, and 16 of U.S. Patent No. 10,327,462 ("the '462 Patent).

36. Dyla, without authority from STG, has made, used, offered for sale, and sold, the LWE products referenced in paragraph 35, which embody the patented invention disclosed and claimed in the '462 Patent.

37. Claim 1 of the '462 Patent reads: "A liquid beverage concentrate composition comprising: a flavor; from about 12% to about 20% by weight of citric acid based on the weight of the liquid beverage concentrate composition; from about 20% to about 95% by weight of water solvent based on the weight of the liquid beverage concentrate composition; and a sweetener."

38. Claim 7 of the '462 Patent reads: "The liquid beverage concentrate composition according to claim 1, wherein the density of the liquid concentrate composition is in a range of from about 1.05 grams per mL to about 1.15 grams per mL."

39. Claim 9 of the '462 patent reads: "A liquid beverage concentrate composition comprising: a flavor; from about 12% to about 20% by weight of an acid based on the weight of the liquid beverage concentrate composition; from about 20% to about 95% by weight of water

solvent based on the weight of the liquid beverage concentrate composition; and a sweetener, wherein the acid is selected from the group consisting of citric acid, malic acid, tartaric acid, phosphoric acid, and any combination thereof.”

40. Claim 16 of the ‘462 Patent reads: “The liquid beverage concentrate composition according to claim 9, wherein the density of the liquid concentrate composition is in a range of from about 1.05 grams per mL to about 1.15 grams per mL.”

41. The Stur Electrolytes Strawberry Lemon LWE product is a liquid beverage concentrate composition. *See* Ex. D (product labels for infringing products). The LWE composition has a flavor—strawberry lemon. Ex. D. The LWE composition has about 12% citric acid based on STG’s testing of the product. STG’s testing revealed that the product contains approximately 12.5% citric acid. The LWE composition also includes malic acid. Ex. D. STG’s analysis of the LWE composition further revealed that the product is comprised of between 20% to 90% water. The LWE product includes a sweetener—Stevia Leaf Extract. Ex. D. Finally, STG’s testing of the LWE composition further revealed that the density of the composition is approximately 1.12 grams per mL.

42. As set forth above, the Stur Electrolytes Strawberry Lemon LWE product meets every limitation of claims 1, 7, 9, and 16 of the ‘462 Patent or contains ingredients that are insubstantially different from and interchangeable with the claim limitations.

43. Likewise, the Stur Electrolytes Black Raspberry product is a liquid beverage concentrate composition. *See* Ex. D. The LWE composition has a flavor—black raspberry. Ex. D. The LWE composition has about 12% citric acid based on STG’s testing of the product. STG’s testing revealed that the product contains approximately 11.3% citric acid. The LWE composition also includes malic acid. Ex. D. STG’s analysis of the LWE composition further reveals that the

product is comprised of between 20% to 90% water. Ex. D. The LWE product includes a sweetener—Stevia Leaf Extract. Ex. D. Finally, STG’s testing of the LWE composition further revealed that the density of the composition is approximately 1.16 grams per mL.

44. As set forth above, the Stur Electrolytes Black Raspberry LWE product meets every limitation of claims 1, 7, 9, and 16 of the ‘462 Patent or contains ingredients that are insubstantially different from and interchangeable with the claim limitations.

45. The Accused Products are marketed and sold as direct substitutes for LWE products that practice the ‘462 Patent under license from STG.

46. Dyla is currently practicing the ‘462 Patent without authority from STG and threatens to continue to do so absent injunctive relief from this Court.

47. The conduct of Dyla has injured and is continuing to injure STG in its business and property.

48. The conduct of Dyla has caused and threatens STG with irreparable harm for which STG has no adequate remedy at law.

COUNT III—INFRINGEMENT OF U.S. PATENT NO. 11,744,267

49. STG’s testing of the Stur LWE products sold as Peach, Lemonade, Blue & Blackberry, Strawberry Watermelon, Fruit Punch, Pomegranate Cranberry, and Tropical Punch (“Accused Products”) reveals that each one of these products infringes claims at least claim 15 of U.S. Patent No, 11,744,267 (“the ‘267 Patent”).

50. Dyla, without authority from STG, has made, used, offered for sale, and sold, the LWE products referenced in paragraph 49, which embody the patented invention disclosed and claimed in the ‘267 Patent.

51. Claim 15 of the '267 Patent reads: "A point-of-consumption beverage flavoring liquid concentrate composition consisting essentially of: a flavor component; at least 35% by weight water; optionally, ethanol; and one or more acid modifiers selected from the group consisting of citric acid, malic acid, tartaric acid, phosphoric acid, and any combination thereof, wherein the one or more acid modifiers comprises from about 7% to about 20% by weight of the liquid concentrate composition."

52. The Stur Peach LWE product is a point-of-consumption beverage flavoring liquid concentrate composition. *See* Ex. D. The LWE product includes a flavor component—natural fruit flavor. Ex. D. STG's testing revealed that the LWE product is comprised of at least 35% by weight water. The testing measured 38.88% of the LWE composition as water. The LWE product is further comprised of one or more acid modifiers—citric acid. Ex. D. STG's testing revealed that the LWE product includes acid modifiers that measure from about 7% to about 20% by weight of the liquid concentrate composition. STG's testing revealed the LWE product contains 12.2% citric acid.

53. As set forth above, the Stur Peach LWE product meets every limitation of claim 15 of the '267 Patent or contains ingredients that are insubstantially different from and interchangeable with the claim limitations.

54. The Stur Lemonade LWE product is a point-of-consumption beverage flavoring liquid concentrate composition. *See* Ex. D. The LWE product includes a flavor component—natural fruit flavor. Ex. D. STG's testing revealed that the LWE product is comprised of at least 35% by weight water. The testing measured 42.41% of the composition as water. The LWE product is further comprised of one or more acid modifiers—citric acid and malic acid. Ex. D. STG's testing revealed that the LWE product includes acid modifiers that measure from about 7%

to about 20% by weight of the liquid concentrate composition. STG's testing revealed that the LWE product contains 8.4% citric acid.

55. As set forth above, the Stur Lemonade LWE product meets every limitation of claim 15 of the '267 Patent or contains ingredients that are insubstantially different from and interchangeable with the claim limitations.

56. The Stur Blue & Blackberry LWE product is a point-of-consumption beverage flavoring liquid concentrate composition. See Ex. D. The LWE product includes a flavor component—natural fruit flavor. Ex. D. STG's testing revealed that the LWE product is comprised of at least 35% by weight water. The testing measured 37.08% of the LWE composition as water. The LWE product is further comprised of one or more acid modifiers—citric acid and malic acid. Ex. D. STG's testing revealed that the LWE product includes acid modifiers that measure from about 7% to about 20% by weight of the liquid concentrate composition. STG's testing revealed that the LWE product contains 9.3% citric acid.

57. As set forth above, the Stur Blue & Blackberry LWE product meets every limitation of claim 15 of the '267 Patent or contains ingredients that are insubstantially different from and interchangeable with the claim limitations.

58. The Stur Strawberry Watermelon LWE product is a point-of-consumption beverage flavoring liquid concentrate composition. See Ex. D. The LWE product includes a flavor component—natural fruit flavor. Ex. D. STG's testing revealed that the LWE product is comprised of at least 35% by weight water. The testing measured 36.68% of the LWE composition as water. The LWE product is further comprised of one or more acid modifiers—citric acid and malic acid. Ex. D. STG's testing revealed that the LWE product includes acid modifiers that

measure from about 7% to about 20% by weight of the liquid concentrate composition. STG's testing revealed that the LWE product contains 10.3% citric acid.

59. As set forth above, the Stur Strawberry Watermelon LWE product meets every limitation of claim 15 of the '267 Patent or contains ingredients that are insubstantially different from and interchangeable with the claim limitations.

60. The Stur Fruit Punch LWE product is a point-of-consumption beverage flavoring liquid concentrate composition. See Ex. D. The LWE product includes a flavor component—natural fruit flavor. Ex. D. STG's testing revealed that the LWE product is comprised of at least 35% by weight water. The testing measured 35.22% of the LWE composition as water. The LWE product is further comprised of one or more acid modifiers—citric acid and malic acid. Ex. D. STG's testing revealed that the LWE product includes acid modifiers that measure from about 7% to about 20% by weight of the liquid concentrate composition. STG's testing revealed that the LWE product contains 9.5% citric acid.

61. As set forth above, the Stur Fruit Punch LWE product meets every limitation of claim 15 of the '267 Patent or contains ingredients that are insubstantially different from and interchangeable with the claim limitations.

62. The Stur Pomegranate Cranberry LWE product is a point-of-consumption beverage flavoring liquid concentrate composition. See Ex. D. The LWE product includes a flavor component—natural fruit flavor. Ex. D. STG's testing revealed that the LWE product is comprised of at least 35% by weight water. The testing measured 37.86% of the LWE composition as water. The LWE product is further comprised of one or more acid modifiers—citric acid. Ex. D. STG's testing revealed that the LWE product includes acid modifiers that measure from about

7% to about 20% by weight of the liquid concentrate composition. STG's testing revealed that the LWE product contains 7.2% citric acid.

63. As set forth above, the Stur Pomegranate Cranberry LWE product meets every limitation of claim 15 of the '267 Patent or contains ingredients that are insubstantially different from and interchangeable with the claim limitations.

64. The Stur Tropical Punch LWE product is a point-of-consumption beverage flavoring liquid concentrate composition. See Ex. D. The LWE product includes a flavor component—natural fruit flavor. Ex. D. STG's testing revealed that the LWE product is comprised of at least 35% by weight water. The testing measured 40.08% of the LWE composition as water. The LWE product is further comprised of one or more acid modifiers—citric acid and malic acid. Ex. D. STG's testing revealed that the LWE product includes acid modifiers that measure from about 7% to about 20% by weight of the liquid concentrate composition. STG's testing revealed that the LWE product contains 8.3% citric acid.

65. As set forth above, the Stur Tropical Punch LWE product meets every limitation of claim 15 of the '267 Patent or contains ingredients that are insubstantially different from and interchangeable with the claim limitations.

66. Likewise, as set forth above in paragraphs 41-44, the Stur Electrolytes Strawberry Lemon and Electrolytes Black Raspberry LWE products meet every limitation of claim 15 of the '267 Patent or contain ingredients that are insubstantially different from and interchangeable with the claim limitations.

67. The Accused Products are marketed and sold as direct substitutes for LWE products that practice the '267 Patent under license from STG.

68. Dyla is currently practicing the ‘267 Patent without authority from STG and threatens to continue to do so absent injunctive relief from this Court.

69. The conduct of Dyla has injured and is continuing to injure STG in its business and property.

70. The conduct of Dyla has caused and threatens STG with irreparable harm for which STG has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court:

A. Declare, adjudge, and decree that Dyla is liable for infringement of the ‘659, ‘462, and ‘267 Patents;

B. Issue preliminary and permanent injunctions restraining Dyla from engaging in any further activities that infringe the ‘659, ‘462, and ‘267 Patents, including through appropriate recall relief;

C. Award STG damages in accordance with 35 U.S.C. § 284;

D. Declare this case “exceptional” and award STG increased damages and reasonable attorneys’ fees in accordance with 35 U.S.C. § 285; and

E. Award STG such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

In accordance with Rule 38 of the Federal Rules of Civil Procedure and Local Civil Rule 38, Plaintiffs respectfully demand a jury trial of all issues triable to a jury in this action.

Dated: September 6, 2023

Respectfully submitted,

GELLERT SCALI BUSENKELL & BROWN LLC

/s/ Margaret F. England

Margaret F. England (DE 4248)
1201 N. Orange Street, Suite 300
Wilmington, DE 19801
Telephone: (302) 416-3341
Facsimile: (302) 425-5814
Email: mengland@gsbblaw.com

TUCKER ELLIS LLP

By: /s/ Keith J. Grady

KEITH J. GRADY (MO #46757)
100 S. Fourth Street, Suite 600
St. Louis, MO 63102
Tel. (314) 256-2550
keith.grady@tuckerellis.com

By: /s/ Evan R. Sotiriou

EVAN R. SOTIRIOU (MO #46093)
100 S. Fourth Street, Suite 600
St. Louis, MO 63102
Tel. (314) 256-2550
evan.sotiriou@tuckerellis.com

Attorneys for Soluble Technologies Group, LLC