

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS

_____	)	
NEW YORK PACKAGING, II, LLC	)	
135 Fulton Avenue	)	
New Hyde Park, New York 11040	)	
	)	Civil Action No. 23-3810
Plaintiff,	)	
v.	)	
	)	
UNISTAR PLASTICS, LLC	)	
400 Portwall Street	)	
Houston, Texas 77029	)	
	)	
Defendant	)	
_____	)	

**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff New York Packaging (“NYP”), by its undersigned counsel, alleges as follows for its Complaint against defendant UniStar Plastics, LLC (“USP”).

**THE NATURE OF THIS ACTION**

1. NYP brings this action against USP pursuant to 35 U.S.C. §101 et. seq. and §§ 271, 281, 283, 284, & 285 inclusive, for infringement of one or more claims of U.S. Patent No. 11,440,267 (“the ’267 Patent) and 10,513,078 (the ’078 Patent) titled METHOD OF MANUFACTURING HEADERLESS PRODUCE BAGS WITH INCREASED ADHESION. The patents list Jeffrey D. Rabiea as sole inventor and are assigned to New York Packaging II, LLC. The Rabiea ’267 Patent is directed to plastic bags used in grocery stores available on a rack for the consumer. The Rabiea ’078 Patent is directed to the method of manufacturing bags as claimed in the ’267 patent. A consumer removes a bag from the stack of bags and places produce

or other items in the bag for weighing and purchase. Plaintiff NYP and Defendant USP are competitors in the manufacture and sale of plastic produce bags to distributors and grocery stores. Plaintiff NYP developed the patented produce bags and introduced them into the market place in 2016. Defendant USP copied the patented bags and introduced their infringing bags in 2022. When NYP observed the bags, NYP obtained samples and evaluated the bags and made determinations about the patented aspects of the bags. USP has and continued to infringe the '267 and '078 patents and has refused to cease its infringing actions, thereby necessitating this lawsuit.

## **THE PARTIES**

2. Plaintiff NYP is a limited liability company organized and existing under the laws of the State of New York, having its headquarters and a principal place of business at 135 Fulton Avenue, New Hyde Park, New York 11040. NYP manufactures and sells plastic bags to the wholesale and retail markets, directly and through distributors, providing its customers with cost effective packaging solutions and providing the end consumer with reliable and environmentally friendly bagging options.

3. Defendant USP is a Texas and Louisiana company, having a regular and established principal place of business at 400 Portwall St Houston TX 77029; at 6415 Allegheny Street, Houston, Texas 77020; at 6718 Larimer St, Houston, TX 77020; and at 7188 Mykawa Road, Houston, Texas 77033-1124. USP sells and distributes plastic bags, including its infringing bags, from these facilities and throughout a significant portion of the United States.

## **JURISDICTION AND VENUE**

4. This is an action for patent infringement arising under the laws of the United States, 35 U.S.C. §271 *et seq.*

5. This Court has subject matter jurisdiction over this action pursuant to 35 U.S.C. §§271, 281 and 28 U.S.C. §§ 1331 and 1338(a), federal question, and 28 U.S.C. § 1332 diversity jurisdiction.

6. This Court has personal jurisdiction over USP because USP is located in this judicial district, has a regular and established place of business in this judicial district and has sold accused goods in and from this District and thus established minimum contacts.

7. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b), defendant has committed acts of infringement and has a regular and established place of business in this judicial District.

## **BACKGROUND AND GENERAL ALLEGATIONS**

8. NYP has been in business since 2005 and provides a range of plastic packaging products. NYP's products are distributed throughout the US and in various other countries. NYP is recognized as an innovator in the packaging industry, was the first company to introduce Headerless T-shirt bags into the retail market and holds a number of patents on various aspects of plastic bags, protecting NYP's investments in innovation.

9. Mr. Rabiea has over 42 years of experience in the plastic bag industry, including intimate knowledge and participation in the manufacture and bag design process. The Rabiea '267 and '078 Patents protect innovations in headerless plastic produce bags which enhance

consumer convenience while decreasing product loss and waste.

10. Typical produce bags are dispensed from a stack suspended from a bag hanger or in rolls of bags attached end to end. Stacked bags are removed one at a time from the stack by pulling from the rack. Roll bags can be removed one at a time from the roll by separating the first bag from the next bag along the perforation line therebetween. Like the bags hanging in face-to-face relation from a rack, each bag must be individually manually opened after it is removed from the roll. Care must also be made to prevent extra unwanted bags being removed from the stack or the roll and discarded. The requirement that each plastic bag be manually opened also causes many of the bags to be wasted because the bags cannot be opened easily. For that reason, many are discarded and end up on the floor. Aside from wasting bags, which increases the costs to the retail establishment, having unused bags accumulating on the floor around the location where the bags are dispensed can be dangerous because it creates a potential slip and fall hazard.

11. NYP therefore sought to develop headerless produce bags that would open the next bag as it was removed from a rack to avoid the need for manual opening by the customer. NYP developed headerless produce bags with increased adhesion between the surfaces of the bags and patented the unique method of manufacturing the new headerless produce bags.

12. In order to achieve the desired improved features, Mr. Rabiea developed a manufacturing process where the exterior surface of one or both of the sheets of plastic film which form the bags is treated with low temperature corona discharge plasma to raise the level of surface charge magnitude to at least 34 Dyne to increase the adhesion force between the bags. A recess is formed in each of the bags to further increase the adhesion. The increased adhesion

causes the mouth of one bag to automatically open as the adjacent bag is removed from the rack. In addition to the recess, openings are created in the bags to accept the support rods of a dispensing rack. The bags can have simple edge sides or side gussets and may be provided in a package which includes a pouch which receives and supports the lower portions of the bags.

13. The Rabiea '267 and '078 Patents-in-suit, attached hereto as Exhibits A and B to the Complaint, protect the new and innovative headerless plastic produce bags developed by NYP. The '078 patent was issued on December 24, 2019 and the '267 Patent was issued on September 13, 2022. Both are assigned to, and currently owned by, Plaintiff NYP.

14. The '267 patent's claims are directed to superior headerless produce bags developed by NYP. The '078 patent's claims are directed to the method of manufacturing superior headerless produce bags developed by NYP.

### **USP's Infringement**

15. USP is a direct competitor of NYP. Both companies sell stacks of plastic bags that are placed onto racks by a retailer in retail stores for dispensing of the bags by customers, one at a time. USP sells boxes containing numerous stacks of plastic bags, including the accused stacks of headerless produce bags (the “Accused Products”). The sales of USP compete directly with the sales of NYP, the two companies compete in the same markets for the same customers. Sales of USP products have directly replaced sales of NYP products and have interfered and displaced distribution contracts of NYP. NYP has lost sales and profits due to the infringing activities of USP.

16. Among other products, USP sells the Accused Products, including some product

which is identified by USP as "fruits and veggies more matters." The Accused Products are identifiable by their characteristics which are protected by the claimed invention.

Upon investigation, testing, information and belief, NYP has located infringing product in numerous retail, wholesale and distribution locations and supply chains in the United States.

Photographs of one example of an identified Accused Product is attached hereto as Exhibit C to the Complaint.

17. NYP has notified USP about its rights to the accused bags. USP continues to infringe.

18. NYP obtained quantities of the USP Accused Product and conducted a detailed analysis, which confirmed that the USP bag stacks infringe claims of the '267 and '078 patents.

19. The '267 patent includes five claims:

1. A headerless plastic bag, comprising :

a first sheet;  
a second sheet aligned in facing relation to the first sheet and heat sealed to the first sheet to form the plastic bag, wherein the first sheet comprising an exterior surface with a surface charge magnitude of at least 43[Dyne];

a first pair of mated recesses disposed in the first sheet and the second sheet, the first pair of mated recesses configured to cause the first sheet to releasably mechanically adhere to the second sheet , whereby an adherence between the first sheet and the second sheet caused by the pair of recesses, and the adherence caused by the plasma treatment together cause the plastic bag to automatically open upon separation of the plastic bag from a second plastic bag , the first sheet defining a first pair of holes disposed at a top edge of the bag , and the second sheet defining a second pair of holes disposed at the top edge of the bag in facing relation to the first pair of holes , the first pair of mated recesses disposed only at positions interposing the first or second pair of holes and a first side edge of the bag or a second side edge of the bag, the separation localized at points interposing each hole of the first pair of holes of the first sheet, and at points interposing each hole of the second pair of holes of the second sheet.

2. The bag of claim 1 wherein the sides of the bag comprise gussets.

3. A dispenser for use with the bag of claim 1, comprising a pouch adapted to receive and

support the lower portion of the bag.

4. A system, comprising:

a first headerless plastic bag, comprising:

a first sheet;

a second sheet aligned in facing relation to the first sheet and heat sealed to the first sheet to form the plastic bag having three heat sealed sides and a mouth, wherein the first sheet comprising an exterior surface with a surface charge magnitude of at least 43 Dyne;

a first pair of mated recesses disposed in the first sheet and the second sheet, the first pair of mated recesses configured to cause the first sheet to releasably mechanically adhere to the second sheet, the first sheet defining a first pair of holes disposed at a top edge of the bag, and the second sheet defining a second pair of holes disposed at the top edge of the bag, the first pair of mated recesses disposed only at a position interposing the first pair of holes and a first side edge of the bag or a second side edge of the bag; and

a second headerless plastic bag, comprising:

a second pair of recesses configured to mate with at least one of the first pair of recesses, whereby an adherence between the first sheet and the second sheet caused by the pair of recesses, and the adherence caused by the plasma treatment together cause the plastic bag to automatically open upon separation of the plastic bag from the second plastic bag.

5. A dispenser for use with the bags of claim 2 comprising a pouch adapted to receive and support the lower portion of the bags.

20. USP sells headerless bags that have a first sheet and a second sheet aligned in facing relation and heat sealed to form a plastic bag, with an exterior surface with a surface charge magnitude of at least 43Dyne and with a pairs of mated recesses which cause the first sheet to releasably mechanically adhere to the second sheet to cause the plastic bag to automatically open upon separation, that infringe the asserted claims of the '267 patent.

**COUNT I**  
**Infringement of U.S. Patent No. 11,440,267**

21. The allegations the paragraphs above are hereby re-alleged and incorporated

herein by reference.

22. NYP is the current assignee and owner of the '267 Patent-in-Suit.

23. USP has infringed, and continues to infringe, at least claims 1, 2 and 4 of the '267

Patent under:

- 35 U.S.C. §271(a), by making, using, offering to sell and/or selling the Accused

Products in the United States;

24. USP has infringed, and continues to infringe, at least claims 1, 2 and 4 of the '267

Patent under:

- 35 U.S.C. §271(a) by importing into the United States a patented invention during the term of the '267 patent;

25. USP continues to make its headerless produce bags which infringe claims of the '078 Patent.

26. USP does not have a license or permission to use the '267 Patent.

27. USP has been willfully infringing the '267 Patent since at least June 28, 2022, when it received notice from NYP. Upon information and belief, USP has no good faith defense to NYP's infringement allegations and has refused to cease selling products or to engage in further attempts to reach a business resolution. Instead, USP has intentionally continued its infringement.

28. As a result of USP's willful infringement of the '267 Patent, NYP has suffered and will continue to suffer damages in an amount not yet determined, of lost profits on a majority of the sales and at least a reasonable royalty on the remainder.



**PRAYER FOR RELIEF**

- A. For a Judgment declaring that Defendant has infringed the '267 Patent under 35 U.S.C. §271(a).
- B. For a judgment declaring that USP's infringement of the '267 Patent has been willful;
- D. For a grant of a permanent injunction pursuant to 35 U.S.C. §283, enjoining USP from further acts of infringement;
- E. For a judgment awarding NYP compensatory damages as a result of USP's infringement sufficient to reasonably and entirely compensate NYP for said infringement in an amount to be determined at trial;
- F. For a judgment declaring that this case is exceptional and awarding NYP its expenses, costs and attorneys' fees in accordance with 35 U.S.C. § 285 and Rule 54(d) of the Federal Rules of Civil Procedure;
- G. For a judgment awarding NYP prejudgment interest pursuant to 35 U.S.C. § 284, and a further award of post judgment interest, pursuant to 28 U.S.C. § 1961, continuing until such judgment is paid.
- H. For a judgment awarding NYP enhanced damages under 35 U.S.C. § 284; and
- I. For such other relief to which NYP is entitled under the applicable United States laws and regulations or as this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Federal Rule of Civil Procedure Rule 38(b), Plaintiff hereby demands trial by jury as to all claims in this litigation.

DATED: October 9, 2023

Respectfully submitted,

/s/ Joseph J. Zito

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