

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

WAYING TECHNOLOGY
DEVELOPMENT CO., LIMITED.,

Plaintiff,

v.

CAN GLASS INC.,

Defendant.

Case No. 3:24-cv-682

JURY TRIAL DEMANDED

ORIGINAL COMPLAINT

Plaintiff Waying Development Co., Limited, (“Plaintiff”) files this Declaratory Judgment action against Defendant Can Glass Inc., (“Defendant”) and alleges as follows:

NATURE OF THE ACTION

1. This is an action for declaratory judgment of design patent invalidity and non-infringement arising under the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.* Plaintiff is seeking a declaratory judgment of invalidity and non-infringement of U.S. Design Patent No. D977,994 (“D’994 Patent”) which issued February 14, 2023 entitled “GLASS CAN” and D979,426 (“D’426 Patent”) which issued February 28, 2023 entitled “GLASS CAN.”

2. In addition, Plaintiff alleges that Defendant has violated the common law of the State of Illinois by committing tortious interference with a contractual relationship and tortious interference with a prospective business expectancy.

THE PARTIES

3. Plaintiff is a company organized and existing under the laws of the People's Republic of China located at Zhong Yang Yuan Zhu Bei Qu 5 Dong, Ren Min Lu, Longhua, Shenzhen, CN 518131.

4. Upon information and belief, Defendant is a company organized and existing under the laws of Delaware. Defendant may be served with process or notice of these proceedings by service upon its designated registered agent Registered Agent Solutions, Inc., 838 Walker Road, Suite 21-2, Dover, DE.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331, 1338(a), 1367, and 2201(a).

6. On information and belief, this Court has personal jurisdiction over Defendant as Defendant has constitutionally sufficient contacts with this District so as to make personal jurisdiction over Defendant proper as Defendant has committed the acts complained of herein within this Judicial District. Furthermore, upon information and belief, Defendant owns and/or operates an Amazon storefront through which Defendant sells glass cans that allegedly embody the D'994 and D'426 Patents within the forum state and within this judicial District.

7. Defendant has filed various complaints sent to Plaintiff which sells to customer in this District. Defendant also conducted electronic and voice communications with representatives with Plaintiff in Texas .

THE D'426 PATENT

8. The D'426 Patent discloses an ornamental design for a Glass Can. *See* D'426 Patent, Figs. 1-8, attached hereto as *Exhibit A*.

9. The D'426 Patent was filed on Mar 2, 2022 and issued on February 28, 2023.

10. Defendant is the owner by assignment, with all rights and title, of the D'426 Patent.

THE D'994 PATENT

11. The D'994 Patent discloses an ornamental design for a Glass Can. *See* D'994 Patent, Figs. 1-8, attached hereto as *Exhibit B*.

12. The D'994 Patent was filed on May 31, 2022 and is a continuation of the D'426 Patent and claims a priority date of March 2, 2022 and issued on February 14, 2023.

13. Defendant is the owner by assignment, with all rights and title, of the D'994 Patent.

FACTUAL BACKGROUND

14. Plaintiff is a seller of, among other things, drinking glasses via its Amazon storefront, Coolife USA Direct.

15. Plaintiff has been selling its tumblers since at least as early as March of 2023.

16. Plaintiff's Amazon sales are conducted under the Amazon Services Solutions Agreement.

17. On or around November 26, 2023, Defendant filed complaints with Amazon.com regarding Plaintiff's products, including products with the ASINs: B0C8JF71SB; B0CGDNZ4V4; B0C33JF3NJ; B0C33M9RNB; B0BYNNCQL9; B0BYNLKL5Q; and B0C8JBVLSL.

18. On or around December 11, 2023, Plaintiff's counsel sent a letter to counsel for Defendant detailing the lack of infringement and invalidity of the D'994 Patent. *See Exhibit C*. A read confirmation was received which indicated that Defendant's counsel received the letter.

19. On or around December 15, 2023, Plaintiff's followed up with counsel for Defendant asking for the courtesy of a response. *See Exhibit D*.

20. On or around December 23, 2023, Plaintiff's counsel again followed up with counsel for Defendant asking for the courtesy of a response. *See Exhibit E*.

21. On or around January 11, 2024, after multiple attempts, Plaintiff's counsel managed to finally speak with Defendant's counsel over the phone and Defendant's counsel confirmed that he would provide a response to Plaintiff's December 11, 2023 letter. *See Exhibit F.*

22. However, no response was received and on January 23, 2024, Plaintiff's counsel again followed up with Defendant's counsel for a response to Plaintiff's letter. *See Exhibit G.*

23. Defendant knew or at least should have known that numerous prior sales on Amazon are invalidating prior art to both the D'994 Patent and the D'426 Patent. The identical nature of the prior sales, as discussed herein, can only point to Defendant copying the existing designs in an attempt to gain design patent protection in the United States and to extort money from various Amazon sellers including Plaintiff.

24. By alleging infringement of the D'994 Patent and the D'426 Patent against Plaintiff, Defendant has made bad faith allegations that are knowingly and objectively false.

25. Defendant's willful disregard of Plaintiff's invalidity and non-infringement letter further supports Defendant's bad faith allegations.

26. Therefore, an actual and justiciable controversy exists between the Parties concerning the validity of the D'994 Patent and the D'426 Patent. and whether Plaintiff's products infringe the D'994 Patent and the D'426 Patent..

27. Plaintiff now seeks a declaratory judgment of invalidity and non-infringement of the D'994 Patent and the D'426 Patent..

CLAIM I: DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE D'994 PATENT

28. Plaintiff incorporates by reference the preceding paragraphs as if fully set forth herein.

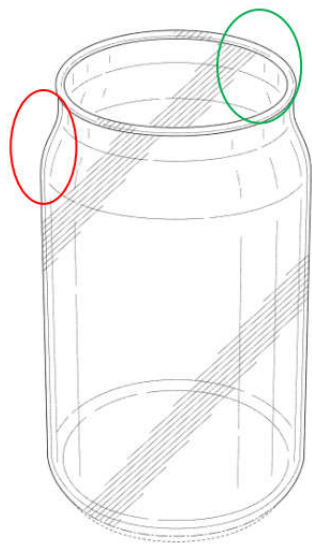


FIG. 1

D'994 Fig. 1



Accused Coolife Products

29.

30. Based on a cursory comparison of the D'994 Patent, the top of the Coolife product does not have the same curved shape leading to the mouth as the D'994 patent (shown in red oval). Additionally, the lip of the mouth does not then curve outward, but rather goes straight up (shown in green oval). Given that the D'994 Patent is limited in scope because of Applicant's prosecution history argument specific to the lip of the mouth, it is not possible for the Plaintiff's products to infringe.

31. Since the D'994 Patent is invalid for failing to comply with at least the condition of patentability set forth in 35 U.S.C § 102, it is axiomatic that Plaintiff's silicon sleeve bamboo lid products do not infringe the D'896 Patent. *Commil USA, LLC v. Cisco Sys., Inc.*, 575 U.S. 632 (2015) (stating that it is axiomatic that one cannot infringe an invalid patent because there is nothing to infringe upon).

32. Pursuant to the Federal Declaratory Judgment Act, Plaintiff seeks a judicial declaration that Plaintiff's accused drinking glasses products do not infringe the D'994 Patent because the D'994 Patent is invalid.

CLAIM II: DECLARATORY JUDGMENT OF INVALIDITY OF THE D'994 PATENT

33. Plaintiff incorporates by reference the preceding paragraphs as if fully set forth herein.


34. The D'994 Patent is invalid for failing to comply with at least the condition of patentability set forth in 35 U.S.C § 102. Specifically, the D'994 Patent is anticipated by the cited prior art herein.

35. For example, prior art products have been on sale at least as early as 2016. For example, see:

- www.amazon.com/Monogram-Beer-Glasses-Men-Personalized/dp/B075M86C7M/
- www.amazon.com/Wonderful-Beer-White-Glass-Perfect/dp/B08LH7S1NC/
- www.amazon.com/Glass-Its-Wonderful-Beer-Funny-Christmas-Present/dp/B076VJ65RC/
- www.amazon.com/Glass-Personalized-Birthday-Glass-Engraved-Vintage-Cheers-Aged-Perfection-Birthday-Gift-Etched-Glass-Barware/dp/B073QGFM8V/
- www.amazon.com/Daddys-Juice-Beer-Can-Glass/dp/B07D6DKFPQ/

36. Numerous sellers on Amazon have been selling the same or similar products which is invalidating prior art to the D'994 Patent since at least as early as 2016, well in advance of the D'994 March 2, 2022 priority date.

37. As plainly shown below in a side-by-side comparison of the prior art sales on Amazon.com and the D'994 Patent, the prior art sales invalidate the D'994 Patent because the prior art publicly disclosed the identical or similar glass can before the filing date of the D'994 Patent.

D'896 Patent – Filed March 8, 2022	Prior Art
 <p data-bbox="453 1331 537 1367">FIG. 1</p>	 <p data-bbox="821 1335 1078 1371">September 15, 2016</p> <p data-bbox="821 1398 1349 1472">https://www.amazon.com/Libbey-Glass-Signature-Party-Picks/dp/B01LY6FE0R/</p>

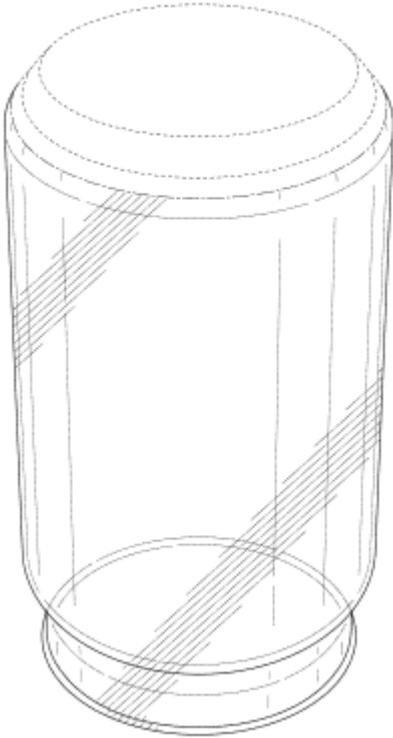


FIG. 2

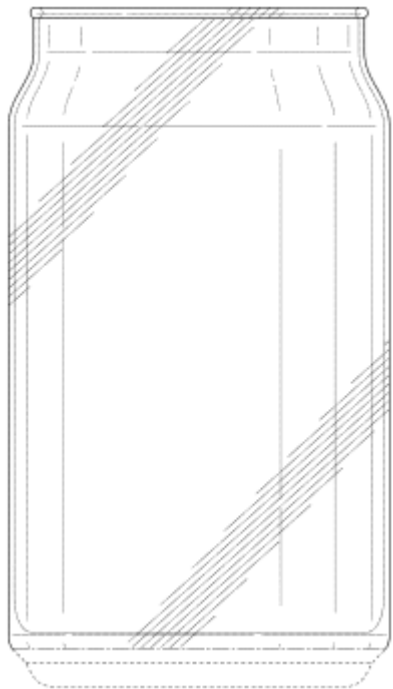


FIG. 3



July 29, 2016

<https://www.amazon.com/Can-Glass-Set-Yosemite-Topographic/dp/B079ZP8X76/>



January 24, 2020

<https://www.amazon.com/49ish-Funny-Glass-Birthday-Turning/dp/B08466CTGN/>



February 27, 2017

<https://www.amazon.com/Daddys-Juice-Beer-Can-Glass/dp/B07D6DKFPQ/>



January 16, 2018

<https://www.amazon.com/Personalized-Glasses-Christmas-Husband-Toasting/dp/B0792RVLCH/>



September 29, 2016

<https://www.amazon.com/Personalized-Aluminum-Custom-Engraved-Glasses/dp/B01LZBLPHC/>

38. As shown above, the claimed design of the D'994 Patent is identical or substantially similar to the prior art sales. Furthermore, the prior art sales are identical to the Plaintiff's drinking

glasses products Defendant has accused of infringement. As such, each and every claimed design element of the D'994 Patent is anticipated by the prior art sales.

39. Pursuant to the Federal Declaratory Judgment Act, Plaintiff seeks a judicial declaration of invalidity of the D'994 Patent for failing to meet the condition of patentability set forth in 35 U.S.C. § 102, as the D'994 Patent is anticipated by the prior art sales, and is, therefore, invalid.

CLAIM III: DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE D'426 PATENT

40. Plaintiff incorporates by reference the preceding paragraphs as if fully set forth herein.



41.

D'624 Fig. 1

Accused Coolife Products

42. Based on a cursory comparison of the D'426 Patent, the top of the Coolife product does not have the same curved shape leading to the mouth as the D'426 patent (shown in red oval). Additionally, the lip of the mouth does not then curve outward, but rather goes straight up (shown

in green oval). Given that the D'426 Patent is limited in scope because of Applicant's prosecution history argument specific to the lip of the mouth, it is not possible for the Plaintiff's products to infringe.

43. Since the D'426 Patent is invalid for failing to comply with at least the condition of patentability set forth in 35 U.S.C § 102, it is axiomatic that Plaintiff's silicon sleeve bamboo lid products do not infringe the D'426 Patent. *Commil USA, LLC v. Cisco Sys., Inc.*, 575 U.S. 632 (2015) (stating that it is axiomatic that one cannot infringe an invalid patent because there is nothing to infringe upon).

44. Pursuant to the Federal Declaratory Judgment Act, Plaintiff seeks a judicial declaration that Plaintiff's accused drinking glasses products do not infringe the D'426 Patent because the D'426 Patent is invalid

CLAIM IV: DECLARATORY JUDGMENT OF INVALIDITY OF THE D'426 PATENT

45. Plaintiff incorporates by reference the preceding paragraphs as though fully set forth herein.

46. The D'426 Patent is invalid for failing to comply with at least the condition of patentability set forth in 35 U.S.C § 102. Specifically, the D'426 Patent is anticipated by the cited prior art herein.

47. For example, prior art products have been on sale at least as early as 2016. For example, see:

- www.amazon.com/Monogram-Beer-Glasses-Men-Personalized/dp/B075M86C7M/
- www.amazon.com/Wonderful-Beer-White-Glass-Perfect/dp/B08LH7S1NC/

- www.amazon.com/Glass-Its-Wonderful-Beer-Funny-Christmas-Present/dp/B076VJ65RC/
- www.amazon.com/Glass-Personalized-Birthday-Glass-Engraved-Vintage-Cheers-Aged-Perfection-Birthday-Gift-Etched-Glass-Barware/dp/B073QGFM8V/
- www.amazon.com/Daddys-Juice-Beer-Can-Glass/dp/B07D6DKFPQ/

48. Numerous sellers on Amazon have been selling the same or similar products which is invalidating prior art to the D'426 Patent since at least as early as 2016, well in advance of the March 2, 2022 priority date.

49. As plainly shown above in a side-by-side comparison of the prior art sales on Amazon.com and the D'426 Patent (which have the identical figures as the D'994 Patent), the prior art sales invalidate the D'426 Patent because the prior art publicly disclosed the identical or similar glass can before the filing date of the D'426 Patent.

DEMAND FOR JURY TRIAL

Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment as follows:

- a. a declaration that the D'994 and D'426 Patents are invalid;
- b. a declaration that Plaintiff's drinking glasses products do not infringe the D'994 and D'426 Patents;
- c. a judgment that Defendant has tortiously interfered with Plaintiff's contractual relations;

- d. a judgment that Defendant has tortiously interfered with Plaintiff's prospective business relationships;
- e. a declaration that this case is exceptional and an award to Plaintiff of its costs, expenses, and reasonable attorneys' fees incurred in this action pursuant to 35 U.S.C § 285; and
- f. Further relief as the Court may deem just and proper.

DATED: March 14, 2024

Respectfully submitted,

/s/ Hao Ni

Hao Ni

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