

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

MILKMEN DESIGN, LLC,

Plaintiff,

v.

WALGREEN CO.,

Defendant.

Civil Action No.: 5:24-cv-01007

TRIAL BY JURY DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

For its complaint against Defendant Walgreen Co. (“Defendant”), Plaintiff Milkmen Design, LLC (“Plaintiff”) alleges as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement under the patent laws of the United States, Title 35 United States Code, to prevent and enjoin Defendant from infringing and profiting, in an illegal and unauthorized manner, from U.S. Utility Patent No. 10,967,776 (“the ‘776 Patent”), attached as **Exhibit A** and incorporated herein by reference, and U.S. Utility Patent No. 11,518,287 (“the ‘287 Patent”), attached as **Exhibit B** and incorporated herein by reference (collectively the “Patents” or the “Patents-in-Suit”) and to recover damages, attorney’s fees, and costs pursuant to 35 U.S.C. §271.

THE PARTIES

2. Plaintiff is a limited liability company organized and existing under the laws of the state of Ohio with its principal place business at 13694 York Road, North Royalton, Ohio.

3. Defendant is an Illinois corporation with its principal place of business at 108

Wilmot Road, MS #2002, Deerfield, Illinois 60015. Upon information and belief, and the Ohio Secretary of State website, Defendant may be served with process c/o The Prentice-Hall Corporation System, Inc., 1160 Dublin Road – Suite 400, Columbus, Ohio 43215.

JURISDICTION AND VENUE

4. This is an action for patent infringement in violation of the patent laws of the United States, 35 U.S.C. §§ 1 et seq.

5. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§1331, 1332 and 1338(a).

6. The Court has personal jurisdiction over Defendant by virtue of its systematic and continuous contacts with this jurisdiction and the injury to Milkmen in this District, the cause of action having arisen in this District.

7. Upon information and belief, Defendant is subject to this Court's specific and general personal jurisdiction consistent with due process because of its substantial business in this forum, including (i) at least a portion of the infringement alleged occurred in this District; (ii) regularly doing or soliciting business and deriving substantial revenue from goods sold in this state and in this District; and (iii) has used, sold, offered for sale, and/or imported its infringing product and placed such infringing product in the stream of interstate commerce with the expectation that such infringing product would be used, distributed, sold and/or offered for sale within this state and in this District.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. §1400(b) because Defendant is importing, selling, and offering their infringing product in this judicial district.

9. Venue is proper in this judicial district pursuant to 28 U.S.C. §1400(b) because Defendant has regular and established places of business in this District. Specifically, Defendant

owns and/or operates the store located at 1950 Wales Road NE, Massillon, Ohio 44646, which is in this District, and is the location at which Defendant's infringing product was purchased.

FACTUAL ALLEGATIONS

10. On April 6, 2021, the USPTO duly issued the '776 Patent, entitled "CONDIMENT HOLDER," after a full and fair examination.

11. On December, 6 2022, the USPTO duly issued the '287 Patent, entitled "ROTATABLE CONDIMENT HOLDER," after a full and fair examination.

12. Milkmen is presently the owner of the Patents-in-Suit, having received all rights, title, and interest in the Patents-in-Suit.

13. The '776 Patent discloses a condiment holder for supporting a condiment container and a method for using the same.

14. The '287 Patent discloses a rotatable condiment holder for supporting a condiment container and a method for using the same.

15. To the extent required, Milkmen has complied with all marking requirements under 35 U.S.C. §287.

16. Defendant offers for sale, sells, and distributes a condiment holder which incorporates the design, structure, and function of the Patents-in-Suit. The infringing condiment holder will be referred to as the "Accused Product."

17. The following is a depiction of the Accused Product. This Accused Product was purchased at the store located at 1950 Wales Road NE, Massillon, Ohio 44646 operated by Defendant.



18. Prior to initiating this lawsuit, on December 21, 2023, Milkmen advised Defendant of the Patents-in-Suit and advised the Defendant that the Accused Product infringes the Patents-in-Suit.

19. Upon information and belief, since being advised of the Patents-in-Suit, Defendant has refused to discontinue sale of the Accused Product.

20. Upon information and belief, Defendant is still selling the Accused Product.

COUNT I

21. Milkmen incorporates by reference every allegation set forth in the preceding paragraphs.

22. Defendant has offered and, upon information and belief, continues to offer for sale the Accused Product that enables the performance of at least one independent claim of the '776 Patent in violation of 35 U.S.C. §271.

23. Upon information and belief, Defendant has imported for sale the Accused Product that enables the performance of at least one independent claim of the '776 Patent in violation of 35 U.S.C. §271.

24. Defendant has infringed and, upon information and belief, continues to infringe at least one independent claim of the '776 Patent and will continue to do so unless enjoined by this Court.

25. Defendant has committed these acts of infringement without license or authorization from Milkmen.

26. As a direct and proximate result of Defendant's infringement of at least one independent claim of the '776 Patent, Milkmen has been and continues to be damaged.

27. As a direct and proximate result of Defendant's direct infringement of the '776 Patent, Milkmen has suffered monetary damages and is entitled to a monetary award of damages in an amount adequate to compensate Milkmen for Defendant's past and continuing infringement of the '776 Patent.

COUNT II

28. Milkmen incorporates by reference every allegation set forth in the preceding paragraphs.

29. Defendant has offered for sale and sold and, upon information and belief, continues to offer for sale and sells the Accused Product that enables the performance of at least one independent claim of the '287 Patent in violation of 35 U.S.C. §271.

30. Upon information and belief, Defendant has imported for sale the Accused Product that enables the performance of at least one independent claim of the '287 Patent in violation of 35 U.S.C. §271.

31. Defendant has infringed and, upon information and belief, continues to infringe at least one independent claim of the '287 Patent and will continue to do so unless enjoined by this Court.

32. Defendant has committed these acts of infringement without license or authorization from Milkmen.

33. As a direct and proximate result of Defendant's infringement of at least one

independent claim of the '287 Patent, Milkmen has been and continues to be damaged.

34. As a direct and proximate result of Defendant's direct infringement of the '287 Patent, Milkmen has suffered monetary damages and is entitled to a monetary award of damages in an amount adequate to compensate Milkmen for Defendant's past and continuing infringement of the '287 Patent.

DEMAND FOR JURY TRIAL

35. Plaintiff demands a trial by jury of all causes of action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief.

a. That Defendant be adjudged to have directly infringed the '776 Patent either literally or under the doctrine of equivalents;

b. That Defendant be adjudged to have directly infringed the '287 Patent either literally or under the doctrine of equivalents;

c. That Defendant, its officers, directors, agents, servants, employees, attorneys, affiliates, divisions, branches, partners, and those persons in active concert or participation with any of them, be permanently restrained and enjoined from directly infringing the Patents-in-Suit;

d. An accounting of all infringing sales and damages including, but not limited to, those sales and damages not presented at trial;

e. An award of damages pursuant to 35 U.C.C. §284 sufficient to compensate Milkmen for the Defendant's past infringement, including compensatory damages;

f. An assessment of pre-judgment and post-judgment interest and costs against Defendant, together with an award of such interest and costs, in accordance with 35 U.S.C. §284;

g. That Defendant be directed to pay enhanced damages, including Milkmen's

attorneys' fees incurred in connection with this lawsuit pursuant to 35 U.S.C. §285; and

h. That Milkmen be granted such other and further relief as this Court may deem just and proper.

Dated: June 13, 2024

Respectfully submitted,

SAND, SEBOLT & WERNOW CO., LPA

/s/ Howard L. Wernow

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