

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

**MILKMEN DESIGN, LLC,**

Plaintiff,

v.

**BYTECH NY, INC.,**

and

**HOBBY LOBBY STORES, INC.,**

Defendants.

Civil Action No.: 5:24-cv-01900

**TRIAL BY JURY DEMANDED**

**COMPLAINT FOR PATENT INFRINGEMENT**

For its complaint against Defendants Bytech NY, Inc. (“Bytech”) and Hobby Lobby Stores, Inc. (“Hobby Lobby”) (jointly, “Defendants”), Plaintiff Milkmen Design, LLC (“Milkmen”) alleges as follows:

**NATURE OF THE ACTION**

1. This is a civil action for patent infringement under the patent laws of the United States, Title 35 United States Code.
2. Defendants have infringed and continue to infringe, in an illegal and unauthorized manner, 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. The patents are collectively referred to as the “Patents” or the “Patents-in-Suit”.
3. Milkmen seeks to recover injunctive relief, damages, attorney’s fees, and costs pursuant to 35 U.S.C. §271.

**THE PARTIES**

4. Milkmen 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.

5. Bytech is a corporation organized and existing under the laws of the state of New York, with its principal place of business at 2585 West 13<sup>th</sup> Street, Brooklyn, New York 11223. Based on the New York Secretary of State website, Bytech may be served with process c/o the New York Secretary of State as its Agent, at The Corporation, 2585 West 13<sup>th</sup> Street, Brooklyn, New York 11223.

6. Hobby Lobby is a corporation organized and existing under the laws of Oklahoma with its principal place of business at 7707 SW 44<sup>th</sup> Street, Oklahoma City, Oklahoma 73179 and authorized to do business in the state of Ohio. Hobby Lobby's agent for service of process in the state of Ohio is Corporation Service Company, 1160 Dublin Road – Suite 400, Columbus, Ohio 43215.

7. Upon information and belief, each of the Defendants directly and/or indirectly imports, designs, manufactures, distributes, markets, offers to sell and/or sells infringing products in the United States, including in the Northern District of Ohio, and otherwise purposefully directs infringing activities to this judicial district.

**JURISDICTION AND VENUE**

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

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

10. The Court has personal jurisdiction over the Defendants because the Defendants

have infringed the Patents-in-Suit in this District by, among other things, engaging in infringing conduct within and directed at this District, because of their systematic and continuous contacts with this District, because of the injury to Milkmen in this District, and because the causes of action have arisen in this District.

11. Upon information and belief, Defendants are subject to the Court's specific and/or general personal jurisdiction consistent with due process because of their 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) making, using, selling, offering for sale, and/or importing their infringing products and placing such infringing products in the stream of interstate commerce with the expectation that such infringing products would be used, distributed, sold and/or offered for sale within this state and in this District.

12. Venue is proper in this District pursuant to 28 U.S.C. §1400(b) because Bytech is importing, selling and offering its infringing product for sale in this District.

13. Venue is proper in this District pursuant to 28 U.S.C. §1400(b) because Hobby Lobby has a regular and established place of business in this District. Upon information and belief, Hobby Lobby is registered to conduct business in this state, operates approximately 20 stores in this state, and operates at least 10 stores in this District.

### **FACTUAL ALLEGATIONS**

14. On April 6, 2021, the United States Patent & Trademark Office (the "USPTO") duly issued the '776 Patent, entitled "CONDIMENT HOLDER," after a full and fair examination.

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

16. The Patents-in-Suit have been in full force and effect since they issued.

17. Milkmen owns by assignment the entire right, title, and interest in and to the Patents-in-Suit, including the right to seek damages for past, current and future infringement.

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

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

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

21. Defendants have commercialized a condiment holder which incorporates the design, structure and function of at least one claim of each of the Patents-in-Suit.

22. Upon information and belief, Bytech designs, manufactures, and distributes a condiment holder within the United States which incorporates the design, structure and function of at least one claim of each of the Patents-in-Suit.

23. Hobby Lobby offers for sale, sells and distributes the same condiment holder which incorporates the design, structure and function of at least one claim of each of the Patents-in-Suit.

24. The infringing condiment holder will be referred to as the "Accused Product."

25. The following is a depiction of the Accused Product. This product was purchased at a retail store operated by Hobby Lobby at 4790 Everhard Rd NW, Canton, OH.

26. A side-by-side comparison of the '776 Patent and the Accused Product confirms that the Accused Product incorporates the design, structure and function of the '776 Patent. A side-by-side comparison of the '287 Patent and the Accused Product confirms that the Accused Product incorporates the design, structure and function of the '287 Patent.



27. Prior to initiating this lawsuit, Milkmen advised Defendants of the Patents-in-Suit and advised the Defendants that the Accused Product infringes at least one claim of each of the Patents-in-Suit.

28. Upon being advised of the Patents-in-Suit, Hobby Lobby has acknowledged the Patents-in-Suit and stated that it will forgo future purchases of the Accused Product and has removed it from its website. Hobby Lobby also advised that all third-party vendors are contractually obligated to indemnify and defend it in the event of an intellectual property claim. As such, Hobby Lobby tendered this matter to Bytech. But that indemnification does not insulate Hobby Lobby from liability to Milkmen.

29. Upon information and belief, Bytech is still manufacturing, distributing and/or selling the Accused Product.

### COUNT I

30. Milkmen incorporates by reference each and every allegation set forth in the

preceding paragraphs.

31. Upon information and belief, Bytech has designed, manufactured, distributed and sold 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 and continues to do so.

32. Upon information and belief, the Accused Product that Bytech designs, manufactures, distributes and sells can be used as a condiment holder that is engageable with an air vent fin of a vehicle and which includes a retaining aperture configured to be capable of selectively receiving and retaining any one of a plurality of differently shaped condiment containers therein and to a method of using the condiment holder.

33. Bytech has offered 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.

34. Upon information and belief, Bytech 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.

35. Upon information and belief, Bytech has had knowledge of the '776 Patent by way of direct correspondence from representatives of Milkmen.

36. Bytech has directly infringed and continues to directly infringe, literally or by way of the doctrine of equivalents, at least one of the independent claims of the '776 Patent and will continue to do so unless enjoined by this Court.

37. Bytech has committed these acts of infringement without license or authorization from Milkmen.

38. As a direct and proximate result of Bytech's direct infringement of the '776 Patent, Milkmen has been and continues to be damaged.

39. As a direct and proximate result of Bytech'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 Bytech's past and continuing infringement of the '776 Patent.

## COUNT II

40. Milkmen incorporates by reference each and every allegation set forth in the preceding paragraphs.

41. Upon information and belief, Bytech has designed, manufactured, distributed and sold 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 and continues to do so.

42. Upon information and belief, the Accused Product that Bytech designs, manufactures, sells and distributes can be used as a rotatable condiment holder that is engageable with an air vent fin of a vehicle and which includes a retaining aperture configured to be capable of selectively receiving and retaining any one of a plurality of differently shaped condiment containers therein and to a method of using the condiment holder.

43. Bytech has offered 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.

44. Upon information and belief, Bytech 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.

45. Upon information and belief, Bytech has had knowledge of the '287 Patent by way of direct correspondence from representatives of Milkmen.

46. Bytech has directly infringed and continues to directly infringe, literally or by way

of the doctrine of equivalents, at least one of the independent claims of the '287 Patent and will continue to do so unless enjoined by this Court.

47. Bytech has committed these acts of infringement without license or authorization from Milkmen.

48. As a direct and proximate result of Bytech's direct infringement of the '287 Patent, Milkmen has been and continues to be damaged.

49. As a direct and proximate result of Bytech'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 Bytech's past and continuing infringement of the '287 Patent.

### **COUNT III**

50. Milkmen incorporates by reference each and every allegation set forth in the preceding paragraphs.

51. Upon information and belief, Hobby Lobby has offered for sale, sold and distributed 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 and continues to do so.

52. Upon information and belief, the Accused Product that Hobby Lobby has offered for sale, sold and distributed can be used as a rotatable condiment holder that is engageable with an air vent fin of a vehicle and which includes a retaining aperture configured to be capable of selectively receiving and retaining any one of a plurality of differently shaped condiment containers therein and to a method of using the condiment holder.

53. Hobby Lobby has offered 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.



54. Upon information and belief, Hobby Lobby 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.

55. Upon information and belief, Hobby Lobby has had knowledge of the '776 Patent by way of direct correspondence from representatives of Milkmen.

56. Hobby Lobby has directly infringed and continues to directly infringe, literally or by way of the doctrine of equivalents, at least one of the independent claims of the '776 Patent and will continue to do so unless enjoined by this Court.

57. Hobby Lobby has committed these acts of infringement without license or authorization from Milkmen.

58. As a direct and proximate result of Hobby Lobby's direct infringement of the '776 Patent, Milkmen has been and continues to be damaged.

59. As a direct and proximate result of Hobby Lobby'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 Hobby Lobby's past and continuing infringement of the '776 Patent.

#### **COUNT IV**

60. Milkmen incorporates by reference each and every allegation set forth in the preceding paragraphs.

61. Upon information and belief, Hobby Lobby has offered for sale, sold and distributed 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 and continues to do so.

62. Upon information and belief, the Accused Product that Hobby Lobby has offered

for sale, sold and distributed can be used as a rotatable condiment holder that is engageable with an air vent fin of a vehicle and which includes a retaining aperture configured to be capable of selectively receiving and retaining any one of a plurality of differently shaped condiment containers therein and to a method of using the condiment holder.

63. Hobby Lobby has offered 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.

64. Upon information and belief, Hobby Lobby 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.

65. Upon information and belief, Hobby Lobby has had knowledge of the '287 Patent by way of direct correspondence from representatives of Milkmen.

66. Hobby Lobby has directly infringed and continues to directly infringe, literally or by way of the doctrine of equivalents, at least one of the independent claims of the '287 Patent and will continue to do so unless enjoined by this Court.

67. Hobby Lobby has committed these acts of infringement without license or authorization from Milkmen.

68. As a direct and proximate result of Hobby Lobby's direct infringement of the '287 Patent, Milkmen has been and continues to be damaged.

69. As a direct and proximate result of Hobby Lobby'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 Hobby Lobby's past and continuing infringement of the '287 Patent.

**JURY DEMAND**

70. Milkmen demands a trial by jury of any and all causes of action.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for the following relief.

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

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

c. That Defendants, their officers, directors, agents, servants, employees, attorneys, affiliates, divisions, braches, 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 Defendants' past infringement, including compensatory damages;

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

g. An award of damages pursuant to 35 U.S.C. §289 sufficient to compensate Milkmen for the Defendants' past infringement, equal to Defendant's total profit, but not less than \$250;

h. Defendants be ordered to pay enhanced damages, including Milkmen's attorney's fees pursuant to 35 U.S.C. §285; and

i. Milkmen be awarded such other and further relief to which it is entitled.

Dated: October 30, 2024

Respectfully submitted,

SAND, SEBOLT & WERNOW CO., LPA

*/s/ Howard L. Wernow*

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