

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

PERIMETER BRAND PACKAGING,
LLC,

Plaintiff,

v.

RECKITT BENCKISER, LLC,
RECKITT BENCKISER PLC,
RECKITT BENCKISER GROUP PLC,

Defendants.

Civil Action No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Perimeter Brand Packaging, LLC (“Perimeter” or “Plaintiff”), for its Complaint against Defendants Reckitt Benckiser, LLC, Reckitt Benckiser plc, and Reckitt Benckiser Group plc (referred to collectively herein as “Reckitt Benckiser” or “Defendants”), alleges the following:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*

THE PARTIES

2. Plaintiff Perimeter is a limited liability company organized under the laws of the State of Delaware with a place of business at 263 Ocean Avenue, Marblehead, MA 01945.

3. Upon information and belief, Reckitt Benckiser Group plc is a corporation organized under the laws of the United Kingdom, having a principal place of business at 103-105 Bath Road, Slough, Berkshire, SL1 3 UH, United Kingdom.

4. Upon information and belief, Reckitt Benckiser plc is a corporation organized under the laws of the United Kingdom, having a principal place of business at 103-105 Bath Road, Slough, Berkshire, SL1 3 UH, United Kingdom. Upon further information and belief, Reckitt Benckiser plc is wholly-owned subsidiary of Reckitt Benckiser Group plc.

5. Upon information and belief, Reckitt Benckiser, LLC is a limited liability company organized under the laws of the State of Delaware with a place of business at 399 Interpace Parkway, Parsippany, NJ 07054. Upon further information and belief, Reckitt Benckiser, LLC is wholly-owned subsidiary of Reckitt Benckiser plc.

6. Upon information and belief, Reckitt Benckiser sells, offers to sell, and/or uses products and services throughout the United States, including in this judicial district, and introduces infringing products and services into the stream of commerce knowing that they would be sold and/or used in this judicial district and elsewhere in the United States.

JURISDICTION AND VENUE

7. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

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

9. This Court has personal jurisdiction over Defendants under the laws of the State of Delaware, due at least to their substantial business in Delaware and in this judicial district, directly or through intermediaries, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct and/or deriving substantial revenue from goods and services provided to individuals in the State of Delaware. Further, this Court has personal jurisdiction over Reckitt Benckiser, LLC because it is incorporated in Delaware and by doing so has purposely availed itself of the privileges and benefits of the laws of the State of Delaware.

10. Venue is proper in this judicial district as to Reckitt Benckiser, LLC under 28 U.S.C. § 1400(b) because it is incorporated in this District.

11. Venue is proper in this judicial district as to Reckitt Benckiser Group plc and Reckitt Benckiser plc because they are foreign corporations that may be sued in any judicial district under 28 U.S.C. § 1391(c).

BACKGROUND

History of the Invention

12. Christopher Evans, Christopher Gieda, Kristin Speck, and Jose Arevalo are the inventors of U.S. Patent Nos. 7,703,621 (“the ’621 patent”) and 8,297,461 (“the ’461 patent”). A true and correct copy of the ’621 patent is attached as Exhibit 1. A true and correct copy of the ’461 patent is attached as Exhibit 2.

13. The ’621 patent and ’461 patent resulted from the pioneering efforts of Mr. Evans, Mr. Gieda, Ms. Speck, and Mr. Arevalo (hereinafter “the Inventor(s)”) in the area of product packaging for moisture retention. These efforts resulted in the development, in the early 2000s, of a method and apparatus for packaging including a moisture retention seal. The ’621 patent and the ’461 patent were assigned by the Inventors to Union Street Brand Packaging, LLC (predecessor to Perimeter).

14. At the time of these pioneering efforts, the most widely implemented technology used to address packaging for moisture retention was the use of canisters and closures that relied on precise dimensional tolerances that were difficult to achieve. In that type of system, it was difficult to ensure an adequate seal to retain moisture in the packaging. The Inventors conceived of the inventions claimed in the ’621 patent and the ’461 patent as a way to improve moisture retention without resorting to expensive and/or unreliable seals, such as consumer-frustrating secondary cellophane seals welded to the canister.

Sales of Products

15. Union Street Brand Packaging, LLC (“Union Street”) was founded in 2001, to invent, design, develop, and supply innovative consumer packaging products for leading consumer brands. Union Street was founded as a joint venture with injection molder Nypro, Inc., which has since been acquired by Jabil Circuit, Inc. Union Street changed its name to Perimeter Brand Packaging, LLC in 2013.

16. Union Street and Perimeter sold more than a billion units of closures to moistened wipes manufacturers over a nine-year period from 2006 to 2015.

17. Products supplied by Union Street and Perimeter were marked with the ’621 patent between the years 2010 and 2015, as shown for example in a photograph of a relevant Clorox product, provided in Exhibit 3. Clorox was a customer of Union Street and Perimeter from 2006 to 2015.

18. An image of the licensed Clorox moistened wipes package using Perimeter’s patented technology is shown with a cross-section of the relevant details of the closure and container in Exhibit 4.

19. Since 2015, Clorox has been using moistened wipes packages that do not use Perimeter’s patented technology. A comparison of Clorox wipes on the retail market before and after 2015, demonstrates Clorox’s efforts to design around the patents-in-suit, which on information and belief, took years of research and development, in contrast with Reckitt Benckiser’s apparent copying of the patented inventions, as set forth below.

Reckitt Benckiser’s Infringing Products

20. Reckitt Benckiser develops, markets, and/or sells in the United States, and/or imports into the United States, moistened wipes products under the brand name Lysol. On

information and belief, Lysol and Clorox are the top two brands, measured by sales revenue, in the U.S. market for moistened wipes.

21. In 2018 Perimeter retained an independent research organization to perform high definition computed tomography (CT) scanning tests on Reckitt Benckiser's Lysol moistened wipes packaging. That testing revealed that Reckitt Benckiser was selling packaging designs claimed in the '621 patent and the '461 patent without a license. Specifically, the package for Reckitt Benckiser's Lysol brand moistened wipes (the "Accused Instrumentalities") includes a closure and container with sealing features as claimed in the '621 patent and the '461 patent.

22. A comparison between the licensed Clorox packaging and the unlicensed Lysol packaging demonstrates that Reckitt Benckiser copied the design of the relevant Clorox packaging that employed Perimeter's patented technology, despite the fact that the relevant Clorox packaging was marked with the '621 patent number (and an additional patent number). A comparative chart is provided in Exhibit 5.

23. On April 9, 2018 Perimeter sent correspondence to one of the Defendants, Reckitt Benckiser plc, detailing the results of the testing and offering a license to the '621 and '461 patents. (Exhibit 6.) As one example of infringement, the correspondence included annotated CT scan images of the Accused Instrumentalities demonstrating that the canisters and closures met the limitations of claim 1 of the '621 patent.

24. After Perimeter sent follow-up correspondence on May 3, 2018, Reckitt Benckiser plc finally responded by email on May 25, 2018, stating that it was "still reviewing internally" and ensuring that a reply would be received by June 8, 2018. That self-imposed deadline passed without additional correspondence from any Reckitt Benckiser entity. After receiving no further reply, Perimeter sent an additional letter on June 19, 2018.

25. On June 25, 2018 Reckitt Benckiser plc responded by email stating that “RB is not interested in a license” and that the “claims either are directed to subject matter that is not of interest to RB, and/or are anticipated by the prior art, including the attached exemplary references.” (Exhibit 7.)

26. The June 25, 2018 email from Reckitt Benckiser plc attached two purported prior art references, WO8400531A1 (“Holt”) and FR2719558A1 (“Bardet”) (Exhibits 8 and 9), but did not provide any other information or analysis regarding validity or infringement. In particular, Reckitt Benckiser failed to offer any substantive response to the detailed evidence of infringement that Perimeter had provided.

27. On August 7, 2019 Perimeter filed a request for the supplemental examination of the ‘621 patent with the U.S. Patent and Trademark Office (“PTO”). Specifically, Perimeter requested that the PTO review claims 1-3, 7-12, 14-16, 20, 21, 24 and 26 of the ‘621 patent to determine whether a substantial new question of patentability of those claims is raised by either of the Holt or Bardet references. (Exhibit 10.) On October 2, 2019, the PTO issued a decision in response to Perimeter’s request, finding that neither of the Holt and Bardet references raised a substantial new question of patentability of any of claims 1-3, 7-12, 14-16, 20, 21, 24 and 26 of the ‘621 patent. (Exhibit 11.) A Supplemental Examination Certificate was issued on October 2, 2019 with respect to the ‘621 patent. (Exhibit 12.)

28. Because of the significant advantages that can be achieved through the use of the patented invention, Perimeter believes that the ‘621 patent and the ‘461 patent present significant commercial value for companies like Reckitt Benckiser. Indeed, the market for packaged moistened wipes is substantial and growing. Despite Perimeter’s extensive efforts and

demonstrations of infringement, Reckitt Benckiser refused to take a license to the '621 patent and the '461 patent.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 7,703,621

29. The allegations set forth in the foregoing paragraphs 1 through 28 are incorporated into this first claim for relief.

30. On April 27, 2010, the '621 patent was duly and legally issued by the United States Patent and Trademark Office under the title “Moisture Retention Seal” from a patent application filed on August 25, 2005.

31. Perimeter is the assignee and owner of the right, title and interest in and to the '621 patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

32. Upon information and belief, Reckitt Benckiser has and continues to directly infringe one or more claims of the '621 patent by selling, offering to sell, making, using, importing and/or providing and causing to be used products, specifically the Accused Instrumentalities, which by way of example include the packaging for Lysol Disinfecting Wipes (*see* <http://www.rb.com/us/brands/lysol/>) (Exhibit 13).

33. The Accused Instrumentalities infringed and continue to infringe at least claims 1-3, 7-8, 10-12, 14-16, 20-21, 23-24, and 26 of the '621 patent during the pendency of the '621 patent, as established in the preliminary infringement claim chart attached as Exhibit 14. This preliminary chart is based on information derived exclusively from public information and/or product testing, because Perimeter has had no discovery of Reckitt Benckiser's confidential information and zero feedback from Reckitt Benckiser regarding its contentions regarding the scope and applicability of the '621 patent claims. Accordingly, Perimeter reserves all rights to

modify, supplement or amend the infringement analysis and any express or implied claim construction.

34. Reckitt Benckiser's infringement has been and continues to be willful. As set forth above, a comparison of the licensed Clorox moistened wipes package and the Accused Instrumentalities is shown in Exhibit 5. The similarities between the two packages suggest direct copying by Reckitt Benckiser, even though the '621 patent was marked prominently on the package of Clorox moistened wipes. Clorox's efforts to design around the patents-in-suit, which on information and belief, took years of research and development, provide further contrast with Reckitt Benckiser's apparent copying of the patented inventions.

35. In addition, Reckitt Benckiser was expressly informed of its infringement at least as early as April 9, 2018, in communications from Perimeter. Rather than accept a license or attempt to design around the patents, Reckitt Benckiser sent an email that completely ignored the evidence of infringement that had been provided by Perimeter. In its supposed defense, Reckitt Benckiser instead identified two purported prior art references, which were later each deemed by the PTO not to raise any substantial questions of patentability for any of claims 1-3, 7-12, 14-16, 20, 21, 24 and 26 of the '621 patent.

36. Upon information and belief, these Accused Instrumentalities are sold, marketed, provided to, manufactured by and/or used by or for the Defendants' suppliers, partners, and customers across the country and in this District.

37. Upon information and belief, since at least April 9, 2018, when Reckitt Benckiser was notified of the '621 patent by Perimeter, Reckitt Benckiser has induced and continues to induce others to infringe at least claims 1-3, 7-8, 10-12, 14-16, 20-21, 23-24, and 26, of the '621 patent under 35 U.S.C. § 271(b) by, among other things, and with specific intent or willful

blindness, actively aiding and abetting others to infringe, including but not limited to Reckitt Benckiser's suppliers, partners and customers, whose manufacture and/or use of the Accused Instrumentalities constitutes direct infringement of at least claims 1-3, 7-8, 10-12, 14-16, 20-21, 23-24, and 26 of the '621 patent. For example, to the extent any other entity manufactures the Accused Instrumentalities on behalf of Reckitt Benckiser, Reckitt Benckiser induces those entities' direct infringement of at least the method of manufacturing claims 16, 20, 21, and 23 of the '621 patent.

38. In particular, Reckitt Benckiser's actions that aid and abet others such as their suppliers, partners and customers to infringe include distributing the Accused Instrumentalities and providing designs, instructions, materials and/or services related to the Accused Instrumentalities. On information and belief, Reckitt Benckiser has engaged in such actions with specific intent to cause infringement or with willful blindness to the resulting infringement because Reckitt Benckiser has had actual knowledge of the '621 patent and that its acts were inducing infringement since at least April 9, 2018.

39. Perimeter has been harmed by Reckitt Benckiser's infringing activities.

COUNT II – INFRINGEMENT OF U.S. PATENT NO. 8,297,461

40. The allegations set forth in the foregoing paragraphs 1 through 39 are incorporated into this second claim for relief.

41. On October 30, 2012, the '461 patent was duly and legally issued by the United States Patent and Trademark Office under the title "Moisture Retention Seal" from a patent application filed on February 22, 2011, which claims priority to the patent application filed on August 25, 2005 that issued as the '621 patent.

42. Perimeter is the assignee and owner of the right, title and interest in and to the '461 patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

43. Upon information and belief, Reckitt Benckiser has and continues to directly infringe one or more claims of the '461 patent by selling, offering to sell, making, using, importing and/or providing and causing to be used products, specifically the Accused Instrumentalities, which by way of example include the packaging for Lysol Disinfecting Wipes (*see* <http://www.rb.com/us/brands/lysol/>) (Exhibit 13).

44. The Accused Instrumentalities infringed and continue to infringe at least claims 1-7, 10, 12, 15 and 16 of the '461 patent during the pendency of the '461 patent as established in the preliminary infringement claim chart attached as Exhibit 15. This preliminary chart is based on information derived exclusively from public information and/or product testing, because Perimeter has had no discovery of Reckitt Benckiser's confidential information and zero feedback from Reckitt Benckiser regarding its contentions regarding the scope and applicability of the '461 patent claims. Accordingly, Perimeter reserves all rights to modify, supplement or amend the infringement analysis and any express or implied claim construction.

45. Reckitt Benckiser's infringement has been and continues to be willful. As set forth above, a comparison of the licensed Clorox moistened wipes package and the Accused Instrumentalities is shown in Exhibit 5. The similarities between the two packages suggest direct copying by Reckitt Benckiser, even though the '621 patent, which is the parent patent of the '461 patent, was marked prominently on the package of Clorox moistened wipes. Clorox's efforts to design around the patents-in-suit, which on information and belief, took years of research and

development, provide further contrast with Reckitt Benckiser's apparent copying of the patented inventions.

46. In addition, Reckitt Benckiser was expressly informed of its infringement at least as early as April 9, 2018, in communications from Perimeter. Rather than accept a license or attempt to design around the patents, Reckitt Benckiser sent an email that completely ignored the evidence of infringement that had been provided by Perimeter. In its supposed defense, Reckitt Benckiser instead identified two purported prior art references, which were later each deemed by the PTO not to raise any substantial questions of patentability for any of claims 1-3, 7-12, 14-16, 20, 21, 24 and 26 of the '621 patent.

47. Upon information and belief, these Accused Instrumentalities are sold, marketed, provided to, manufactured by and/or used by or for the Defendants' suppliers, partners, and customers across the country and in this District.

48. Upon information and belief, since at least April 9, 2018, when Reckitt Benckiser was notified of the '461 patent by Perimeter, Reckitt Benckiser has induced and continues to induce others to infringe at least claims 1-7, 10, 12, 15 and 16 of the '461 patent under 35 U.S.C. § 271(b) by, among other things, and with specific intent or willful blindness, actively aiding and abetting others to infringe, including but not limited to Reckitt Benckiser's suppliers, partners and customers, whose manufacture and/or use of the Accused Instrumentalities constitutes direct infringement of at least claims 1-7, 10, 12, 15 and 16 of the '461 patent.

49. In particular, Reckitt Benckiser's actions that aid and abet others such as their suppliers, partners and customers to infringe include distributing the Accused Instrumentalities and providing designs, instructions, materials and/or services related to the Accused Instrumentalities. On information and belief, Reckitt Benckiser has engaged in such actions with

specific intent to cause infringement or with willful blindness to the resulting infringement because Reckitt Benckiser has had actual knowledge of the '461 patent and that its acts were inducing infringement since at least April 9, 2018.

50. Perimeter has been harmed by Reckitt Benckiser's infringing activities.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Perimeter demands a trial by jury on all issues triable as such.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Perimeter demands judgment for itself and against Reckitt Benckiser as follows:

- A. An adjudication that Reckitt Benckiser has infringed the '621 patent and '461 patent;
- B. An award of damages to be paid by Reckitt Benckiser adequate to compensate Perimeter for Reckitt Benckiser's past infringement of the '621 patent and '461 patent, and any continuing or future infringement through the date such judgment is entered, including interest, costs, expenses and an accounting of all infringing acts including, but not limited to, those acts not presented at trial;
- C. An award of enhanced damages and in particular treble damages based on Reckitt Benckiser's willful infringement pursuant to 35 U.S.C. § 284;
- D. An injunction barring Reckitt Benckiser from further infringement of the '621 patent and '461 patent;
- E. A declaration that Reckitt Benckiser willfully infringed the '621 patent and '461 patent and that this case is exceptional under 35 U.S.C. § 285, and an award of Perimeter's reasonable attorneys' fees; and

F. An award to Perimeter of such further relief at law or in equity as the Court deems just and proper.

Dated: May 8, 2020

DEVLIN LAW FIRM LLC

/s/ Timothy Devlin

Timothy Devlin (No. 4241)

tdevlin@devlinlawfirm.com

1526 Gilpin Avenue

Wilmington, Delaware 19806

Telephone: (302) 449-9010

Facsimile: (302) 353-4251

*Attorneys for Plaintiff Perimeter Brand Packaging,
LLC*