

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ROBERT E. GREEN
909 North Front street
Marquette, Michigan 49855

Plaintiff

v.

CONAGRA FOODS, INC.
P.O. Box 3768, Dept H
Omaha, Nebraska 68103-0768

Defendant

Civil Action No.

08-296

COMPLAINT FOR PATENT INFRINGEMENT
AND INJUNCTIVE RELIEF

Plaintiff, Robert E. Green, complains of Defendant, ConAgra Foods, Inc. as follows:

JURISDICTION AND VENUE

1. This is an action for patent infringement under Title 35 United States Code.
2. This Court has jurisdiction of this action under 28 U.S.C. §§ 1331, 1338(a).
3. Plaintiff, Green is an individual residing in Marquette Michigan and is the owner of United States Letters Patent 5,315,083 for a Microwave Cooking utensil.
4. Defendant ConAgra is, upon information and belief, a corporation existing under the law of the state of Nebraska and is engaged in making, using and selling microwave cooking utensils as taught and claimed in the '083 patent in suit and is offering for sale and selling products covered under the claims of the '083 patent in suit. ConAgra does substantial business in Maryland and has sold infringing product in the State of Maryland, in this Judicial District. Jurisdiction and Venue are proper in this District as to Defendant under 28 U.S.C. §1391(b) and §1400(a).

GENERAL ALLEGATIONS

5. Robert Green, invented a microwave cooking utensil with a dual nested container configuration for the simultaneous heating of two separate food components. Mr. Green filed a patent application on May 12, 1992, for the protection of his invention. The patent application was subsequently examined by the United States Patent and Trademark Office, and issued on May 12, 1994 as the 5,315,083 patent entitled Microwave Cooking Utensil.

6. The '083 patent issued after careful examination by the United States Patent and Trademark Office, which determined the Harvey invention to be new, useful and unobvious.

7. The '083 patent includes claims 1, 5 and 6, which read as follows:

Claim 1. An utensil for heating and cooking foods in a microwave oven comprising:

a first microwave transparent vessel for holding a first food material having a first microwave absorbing property, said first vessel having a bottom wall, a substantially frusto-conical side wall converging toward said bottom wall, and an upper annular edge;

a second microwave transparent vessel for holding a second food material having a second microwave absorbing property, said second vessel having a bottom wall, a frusto-conical side wall having an upper end, and a depending flange extending outwardly from said upper end, said second vessel being disposed within said first vessel whereby said side walls of the first and second microwave transparent vessels are in a spaced relationship and said side wall of said second vessel compliments the side wall of said first vessel whereby a substantially uniform annular space is defined between said side walls of said first and second vessels; and

a microwave permeable cover on said second vessel.

Claim 5. The utensil in accordance with claim 1, wherein said second vessel includes vent means to vent vapor from said first vessel.

Claim 6. The utensil in accordance with claim 1, wherein said cover includes vent means for venting the second vessel.

8. ConAgra manufactures and sells a product referred to as the "Healthy Choice

Cafe Steamers." The product has all of the elements of claims 1, 5 and 6 of the '083 patent.

**COUNT I
PATENT INFRINGEMENT**

9. Plaintiff realleges each and every allegation set forth above and incorporates them herein by reference.

10. Plaintiff owns and has at all times owned and has had standing to sue for infringement of United States Letters Patent 5,315,083 which was duly and legally issued on May 12, 1994.

11. The '083 patent properly names Robert E. Green as inventor, is entitled "MICROWAVE COOKING UTENSIL" and includes independent Claims 1, 5 and 6.

12. Defendant has infringed and continues to infringe the claims of the '083 patent.

13. Defendant has infringed and continues to infringe at least claims 1, 5 and 6.

14. Defendant ConAgra has infringed and continues to infringe the claims of the '083 patent by manufacturing or causing to be manufactured, distributing, using, and/or selling products which infringe the claims of the '083 patent, including products know as Healthy Choice Cafe Steamers. ConAgra's infringement is a literal infringement of the claims and an equivalent infringement of the claims.

15. Plaintiff is entitled to recover from the Defendant the damages sustained as a result of Defendant's infringing acts.

16. Defendant has, with full knowledge of those rights, wilfully proceeded to infringe in disregard of Plaintiff's rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgement against Defendant as follows:

- 17. That Defendant be held to have infringed the '083 patent and be held to have willfully infringed.**
- 18. That Defendant, its directors, officers, agents, servants, employees and all other persons in active concert or privity or in participation with it, be enjoined from directly or indirectly infringing Plaintiff's patent.**
- 19. That Defendant be enjoined to deliver upon oath, to be impounded during the pendency of this action, and delivered to Plaintiff pursuant to judgement herein, any and all devices shown by the evidence to infringe Plaintiff's patent.**
- 20. That Defendant be required to file with the Court and to serve on Plaintiff, within 30 days after service of the Court's order as herein prayed, a report in writing under oath setting forth in detail the manner and form in which Defendant has complied with the Court's order.**
- 21. That judgement be entered for Plaintiff against Defendant, for Plaintiff's actual damages according to proof, and for any additional profits attributable to infringements of Plaintiff's patent.**
- 22. That judgement be entered for Plaintiff against Defendant, for statutory damages based upon Defendant's acts of patent infringement and for its other violations of law.**
- 23. That Defendant be required to account for all gains, profits, and advantages derived from its acts of infringement and for its other violations of law.**
- 24. That judgement be entered for Plaintiff and against Defendant, for trebling of the damages awarded for patent infringement.**
- 25. That Plaintiff have judgement against the Defendant for Plaintiff's costs and**

attorney's fees.

26. That the Court grant such other, further, and different relief as the Court deems proper under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiff hereby requests and demands a trial by jury on all issues so triable.

Verified by:


Robert E. Green

Respectfully submitted,

/s/ Joseph J Zito

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