

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

F'REAL FOODS, LLC and
RICH PRODUCTS CORPORATION,

Plaintiffs,

V.

HAMILTON BEACH BRANDS, INC.,
HERSHEY CREAMERY COMPANY and
PAUL MILLS D/B/A MILLS BROTHERS
MARKETS,

Defendants.

C.A. No. _____

DEMAND FOR JURY TRIAL

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs fʀeal Foods LLC (“fʀeal”) and Rich Products Corporation (“Rich”) complain of Defendants Hamilton Beach Brands, Inc. (“Hamilton Beach”), Hershey Creamery Company (“Hershey Creamery”) and Paul Mills doing business as Mills Brothers Markets (“Mills Brothers”) as follows:

JURISDICTION AND VENUE

1. This is a civil action for patent infringement. This Court has subject matter over this action under 28 U.S.C. §§ 1331 and 1338(a).

2. Personal jurisdiction over all defendants is vested in this Court because each of the defendants has committed acts of infringement in this judicial district, is incorporated in this judicial district, has asserted counterclaims in this Court related to the patents at issue and/or has otherwise engaged in a persistent course of conduct in this judicial district.

3. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c) and 1400(b) because each of the defendants has conducted acts of infringement in this district, does business in this district, and resides in this district.

PARTIES

4. f'real is a California limited liability company with its principal place of business at 6121 Hollis Street, Suite 500, Emeryville, California 94608. f'real regularly does business in this judicial district through its retail customers and has lost business opportunities in this judicial district due to the infringing actions set forth in this Complaint.

5. Rich is a Delaware corporation with its principal place of business at One Robert Rich Way, Buffalo, New York 14213. f'real is a wholly owned subsidiary of Rich and, for a period of time, the patents in suit were assigned to Rich.

6. Hamilton Beach is a Delaware corporation with its principal place of business at 4421 Waterfront Drive, Glen Allen, Virginia 23060.

7. Hershey Creamery is a Delaware corporation with its principal place of business at 301 South Cameron Street, Harrisburg, Pennsylvania 17101.

8. Paul Mills d/b/a Mills Brothers Markets has a principal place of business at 508 S.E. 2nd Street, Milford, Delaware 19963.

F'REAL'S PATENT RIGHTS

9. f'real produces milkshakes, smoothies and frozen cappuccino beverage products that are sold at over 13,000 locations across the United States and Canada, including convenience stores, colleges, universities, theaters and military bases. To enjoy a f'real product, the customer chooses a desired frozen milkshake, smoothie or cappuccino from a merchandizing freezer at the retail location and inserts it into a blender sold to the retailer by f'real. The blender

then mixes the frozen product to a desired consistency and makes it available for the enjoyment of the customer.

10. f'real's founder, Mr. Jim Farrell, began f'real's business in the garage of his California home. Mr. Farrell's objective was to build a business that would allow customers to prepare their own high quality milkshakes at convenience stores and fast food restaurants.

11. In building the f'real business, Mr. Farrell faced numerous challenges. A first challenge was providing the customer with a choice of quality milkshakes that could be quickly prepared without extensive training or involvement by the busy retailer. A second challenge was to keep the blender sanitary after milkshakes were prepared, again without extensive training or involvement by the busy retailer.

12. Mr. Farrell addressed the first challenge by pre-preparing milkshakes in various flavors using quality ingredients, freezing them and then sealing them for delivery to the retailer. To achieve a preferred old-fashioned texture for f'real's frozen milkshakes, Mr. Farrell developed a self-serve blender that could be operated by the customer. In testing prototype blenders, Mr. Farrell found that simply cutting through the frozen milkshake with a blender blade did not produce the old-fashioned milkshake texture he wanted. After hard work and experimentation, Mr. Farrell discovered that adding liquid, such as milk or water, to the frozen milkshake during the blending process made it easier to blend to a milkshake with old-fashioned texture. Mr. Farrell also discovered that the milkshake could be aerated to help produce the desired texture.

13. On May 17, 1996, Jim Farrell filed U.S. Patent Application No. 649,534 for his new blender and blender process. Based upon this patent application, the U.S. Patent and Trademark Office duly and legally issued U.S. Patent No. 5,803,377 ("377 patent") on

September 8, 1998, entitled “Apparatus And Method For Making Frozen Drinks,” to Mr. Farrell as the inventor. f̄real owns the ‘377 patent and has the right to sue for infringement. A copy of the ‘377 patent is attached to this Complaint as Exhibit 1.

14. Unless the milkshake blender is sanitized in a timely manner, bacteria can grow on food particles left in the blending chamber and lead to disease. To address this need for sanitation, Mr. Farrell conceived of a system for the f̄real blenders that would both automatically minimize the amount of food particles released in the food preparation chamber during preparation of the milkshake and then automatically clean the food preparation chamber after the milkshake was prepared and removed from the chamber. Mr. Farrell’s concept minimized the release of food particles by having f̄real’s blender automatically place a splash shield over the top of the milkshake while the milkshake was being blended. When the blending was complete and the milkshake was removed from the blending chamber, cleaning fluid would automatically be sprayed through nozzles into the blending chamber to rinse off the splash shield as well as the walls of the blending chamber.

15. On November 15, 2002, Mr. Farrell filed U.S. Provisional Patent Application No. 60/426,622 for his automatic sanitizing blender and sanitizing process. This U.S. Provisional Patent Application led to three issued U.S. Patents.

16. On December 5, 2006, the U.S. Patent and Trademark Office duly and legally issued U.S. Patent No. 7,144,150 (“‘150 patent”), entitled “Rinseable Splash Shield And Method Of Use,” to Mr. Farrell as the inventor. f̄real owns the ‘150 patent and has the right to sue for infringement. A copy of the ‘150 patent is attached to this Complaint as Exhibit 2.

17. On April 21, 2009, the U.S. Patent and Trademark Office duly and legally issued U.S. Patent No. 7,520,658 (“‘658 patent”), entitled “Rinseable Splash Shield And Method

Of Use,” to Mr. Farrell as the inventor. f’real owns the ‘658 patent and has the right to sue for infringement. A copy of the ‘658 patent is attached to this Complaint as Exhibit 3.

18. On April 21, 2009, the U.S. Patent and Trademark Office duly and legally issued U.S. Patent No. 7,520,662 (“‘662 patent”), entitled “Rinseable Splash Shield And Method Of Use,” to Mr. Farrell as the inventor. f’real owns the ‘662 patent and has the right to sue for infringement. A copy of the ‘662 patent is attached to this Complaint as Exhibit 4.

DEFENDANTS’ ACTIVITIES

19. In or about 2010, defendant Hamilton Beach indicated to f’real that it was interested in supplying milkshake blending equipment to fast food restaurants, full service restaurants and ice cream stores. To avoid violating f’real’s patent rights, Hamilton Beach sought and obtained a license from f’real under f’real’s ‘150, ‘658 and ‘662 patents. A little more than a year later, Hamilton Beach changed its mind about paying f’real for use of f’real’s patented technology and, on August 2, 2011, Hamilton Beach sent f’real a notice of termination under the license agreement.

20. In or about 2013, Hamilton Beach teamed up with co-defendant Hershey Creamery to go into direct competition with f’real in f’real’s core convenience store market. Hamilton Beach makes the MIC2000 mix-in-cup milkshake blenders and provides them to Hershey Creamery with MIC2000 operating manuals. Hershey Creamery then leases the MIC2000 milkshake blenders and sells its frozen milkshakes to convenience store retailers along with providing operating instructions, including Hamilton Beach’s MIC2000 operating manuals. Hershey Creamery has also placed videos on YouTube to explain how its frozen milkshakes should be prepared in the Hamilton Beach MIC2000 mix-in-cup blenders. One retailer who is operating a Hamilton Beach MIC2000 blender and selling Hershey Creamery milkshakes for use

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