

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA

| | | |
|----------------------------------|---|-----------------------------------|
| POLYFORM A.G.P. INC., |) | |
| a Quebec, Canada corporation; |) | |
| PLASTIQUES CELLULAIRES |) | |
| POLYFORM, INC., a Quebec, Canada |) | |
| corporation; and |) | Case No. 4 : 1 0 - CV - 4 3 - CDL |
| NUDURA CORPORATION, |) | |
| an Ontario, Canada corporation, |) | |
| |) | |
| PLAINTIFFS, |) | |
| |) | |
| v. |) | |
| |) | |
| AIRLITE PLASTICS CO., a Nebraska |) | |
| corporation, |) | |
| |) | |
| DEFENDANT. |) | |

COMPLAINT

Plaintiffs Polyform A.G.P. Inc., a Quebec, Canada corporation; Plastiques Cellulaires Polyform, Inc., a Quebec, Canada corporation (collectively, unless otherwise so stated, referred to as “Polyform”), and Nudura Corporation (“Nudura”), an Ontario, Canada corporation, by its attorneys, Merchant & Gould, for their Complaint against Defendant Airlite Plastics Co. ("Defendant"), allege as follows:

The Parties

1. Plaintiff Polyform A.G.P. Inc. is a corporation organized and existing under the laws of Quebec, Canada, and has a principal place of business in Quebec, Canada. Polyform A.G.P. Inc. currently owns United States Patent No. 6,401,419 (“the ‘419 patent”). A reexamination certificate was issued by the United States Patent and Trademark Office ("Patent

Office") for the '419 patent on March 23, 2010. A copy of the '419 patent and the Reexamination Certificate are respectively attached as Exhibits 1 and 2.

2. Plaintiff Plastiques Cellulaires Polyform, Inc. is a corporation organized and existing under the laws of Quebec, Canada, and has a principal place of business in Quebec, Canada. Plastiques Cellulaires Polyform, Inc. is the exclusive licensee of all rights to the '419 patent.

3. Plaintiff Nudura Corporation is a corporation organized and existing under the laws of Ontario, Canada, and has a principal place of business in Ontario, Canada. Nudura is the sole entity with authority to distribute products made according to the '419 patent in the United States.

4. Defendant, Airlite Plastics Co., is a corporation organized and existing under the laws of Nebraska and has a principal place of business at 6110 Abbott Drive, Omaha, Nebraska, 68110-2805.

Jurisdiction

5. Defendant has done business in this District by manufacturing, offering for sale, distributing, and selling the products that are the subject of this action in this District on a continuous and systematic basis.

6. This is an action for patent infringement under the patent laws of the United States.

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

8. This Court has personal jurisdiction over Defendant because, *inter alia*, Defendant has purposefully availed itself of the rights and benefits of conducting activities in

Georgia. Defendant transacts business within Georgia, and engages in the manufacture, distribution, and sale of a range of the products that are the subject of this action within the United States generally and the State of Georgia and this District specifically.

9. Venue is proper in this Judicial District under 28 U.S.C. §§ 1391(b) and (c) and § 1400(b).

Background

10. Defendant manufactures and sells stackable foam construction panels in a multitude of configurations under the commercial name “Fox Blocks.”

11. Defendant’s “Fox Blocks” products infringe one or more claims of the ‘419 patent added in the reexamination proceeding.

12. The sale by Defendants of “Fox Blocks” in the United States has caused and continues to cause irreparable harm to Polyform and Nudura.

Count I

Patent Infringement of United States Patent No. 6,401,419

13. On June 11, 2002, the ‘419 patent, entitled STACKABLE CONSTRUCTION PANEL was duly and legally issued by the United States Patent and Trademark Office. On March 23, 2010, the Patent Office issued a Reexamination Certificate for the ‘419 Patent, and added new claims 14-25 ("the new claims").

14. Defendant manufactures, distributes, uses and/or offers for sale and sells stackable construction panels which infringe one or more of the new claims of the ‘419 patent, or otherwise induces or contributes to the infringement of the new claims of the ‘419 patent in the United States.

15. Plaintiffs have been damaged by Defendant's infringement of the '419 patent and will continue to be damaged in the future unless Defendant is enjoined from continuing to infringe said patent.

Prayer for Relief

WHEREFORE, Plaintiffs pray for the following relief:

- a. A judgment that Defendant has infringed United States Patent No. 6,401,419;
- b. A permanent injunction under 35 U.S.C. § 283 to prohibit, until such time as the '419 patent expires, the violation by Defendant, its officers, directors, agents, servants, employees, and all others acting under or through it, directly or indirectly, of any right secured by the '419 patent by Defendant; and
- c. Such other and further relief as this Court may deem just and equitable.

Plaintiffs, Polyform A.G.P. Inc.; Plastiques Cellulaires Polyform, Inc.; and Nudura Corporation,

By Their Attorneys,

Date: April 27, 2010

s/ Michael I. Krause

Michael I. Krause
Bar Number: 429286
Attorney for Plaintiffs
MERCHANT & GOULD P.C.
191 Peachtree Street N.E.
Suite 4300
Atlanta, GA 30303
Telephone: (404) 954-5100
Fax: (404) 954-5099
E-mail: mkrause@merchantgould.com