UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

Brook + Whittle LTD, Plaintiff, v. Nestlé USA, Inc., Fuji Seal International, Inc. Defendants.	CASE NO. 2:24-cv-735 **JURY TRIAL DEMANDED**

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Brook + Whittle LTD ("B+W") files this Complaint against Nestlé USA, Inc. ("Nestlé") and Fuji Seal International, Inc. ("Fuji Seal") (collectively, "Defendants") for patent infringement of United States Patent No. 11,961,422 ("the '422 Patent") (Ex. A) and alleges as follows:

NATURE OF THE ACTION

1. B+W brings this claim under the patent laws of the United States, 35 U.S.C. § 1, *et seq*., for the willful infringement by Defendants of United States Patent No. 11,961,422 ("the '422 Patent").

THE PARTIES

2. B+W is a Delaware corporation with its principal place of business at 20 Carter Dr., Guilford, CT 06437.

3. On information and belief, Nestlé is a Delaware corporation with its principal place of business at 1812 N. Moore St., Arlington, VA 22209.

4. On information and belief, Fuji Seal is a Japanese corporation with its principal place of business at 4-1-9, Miyahara, Yodogawa-ku, Osaka 532-0003.

JURISDICTION AND VENUE

5. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338.

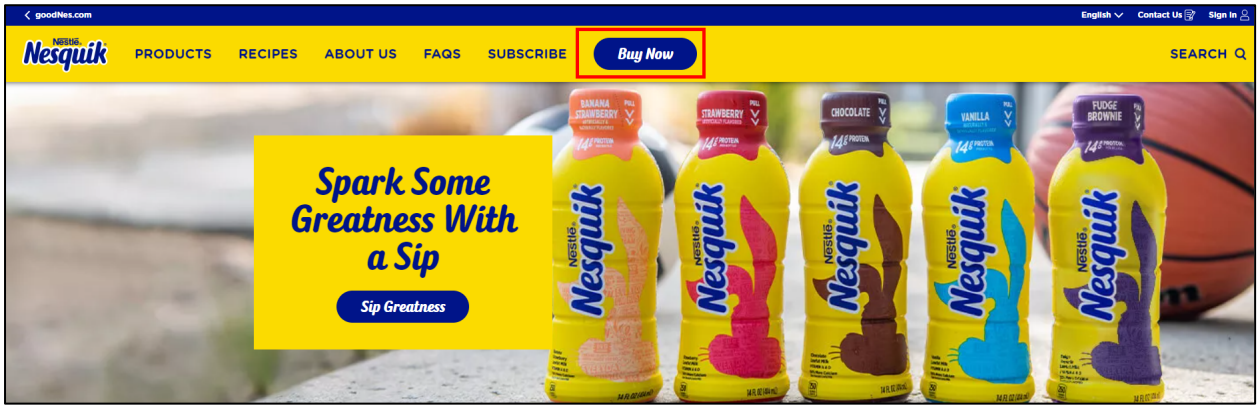
6. This Court has personal jurisdiction over Defendants. On information and belief, Defendants have conducted and are conducting substantial business in the State of Texas and this District, both generally and with respect to the allegations in this Complaint. Further, on information and belief, Defendants have committed and continue to commit acts of patent infringement in the State of Texas and this District giving rise to B+W's infringement claims, including making, having made, using, selling, and/or offering to sell in the State of Texas and this District, and/or importing into the State of Texas and this District the Accused Products, either directly or through at least one of their wholly owned subsidiaries or agents, and/or inducing others to commit acts of patent infringement in the State of Texas and this District.

7. Nestlé sells and/or offers to sell the Accused Products to consumers in the State of Texas and this District directly and through the stream of commerce by working with its wholly owned subsidiaries or agents, distributors, and/or other entities located in the State of Texas.

8. Therefore, Nestlé has purposefully and voluntarily placed one or more infringing products into the stream of commerce with the expectation that they will be purchased and/or used by residents of the State of Texas and this District and/or incorporated into downstream products purchased by consumers in the State of Texas and this District, including by directly or indirectly working with its wholly-owned subsidiaries or agents, distributors, and other entities located in the State of Texas to ensure their products reach the State of Texas and this District.

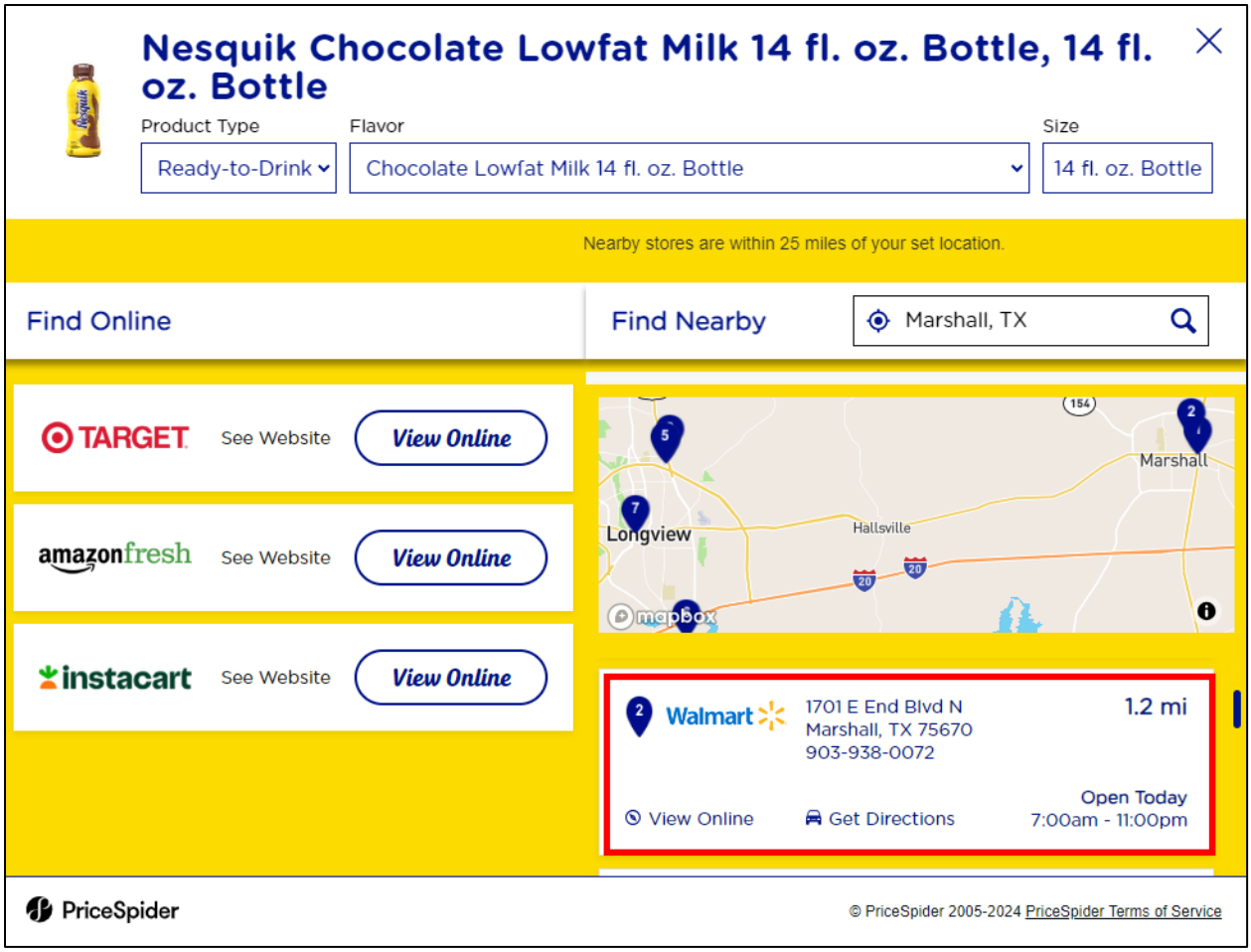
9. On information and belief, Nestlé derives substantial revenue from goods and services it provides to residents of the State of Texas and this District, including revenue associated with the Accused Products.

10. On Nestlé's website, Nestlé invites its consumers to purchase Accused Products directly. For example, a user to Nesquik's webpage may click a link labeled "Buy Now":



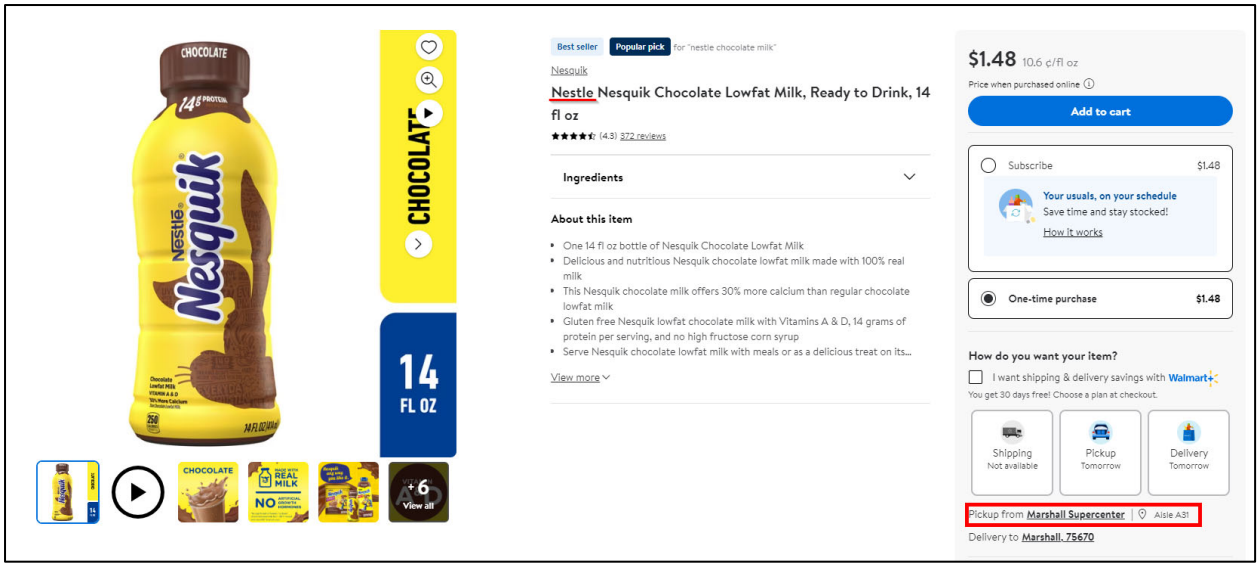
Ex. C (https://www.goodnes.com/nesquik) (annotated).

11. Upon clicking the "Buy Now" button, clicking "Buy Now" on the following page, and entering "Marshall, TX," the user can see that the Accused Products are for sale at least at Walmart in Marshall, TX:



Ex. D (https://www.goodnes.com/nesquik/where-to-buy) (annotated).

12. Further, Walmart's website confirms that the Accused Products are offered for sale and can be purchased at the Walmart located at 1701 E End Blvd N, Marshall, TX 75670.



Ex. E (https://www.walmart.com/ip/Nestlé-Nesquik-Chocolate-Lowfat-Milk-Ready-to-Drink-14-fl-oz-Bottle/24100302?classType=REGULAR&athbdg=L1600&from=/search) (annotated).

13. Additionally, Nestlé makes sales in this District through its "Sales/Regional Office" located at 5800 Granite Parkway, Plano, TX 75024. On information and belief, Nestlé sells the Accused Products from this location.

Ex. F (https://www.nestlejobs.com/locations).

14. Through the foregoing activities, Nestlé has purposefully availed itself of the privilege of conducting activities within the State of Texas, thus invoking the benefits and protections of its laws. Nestlé has sufficient minimum contacts with the State of Texas such that it is subject to specific personal jurisdiction for the matters alleged in this Complaint. Further, the exercise of personal jurisdiction based on these repeated and highly-pertinent contacts does not offend traditional notions of fairness and substantial justice.

15. Venue is proper as to Nestlé pursuant to 28 U.S.C. § 1400(b) for at least the reasons above. Venue is also proper because Nestlé has committed and continue to commit acts of patent infringement in this district, including making, using, offering to sell, and/or selling accused products in this district, and/or importing accused products into this district, including by Internet

sales and/or sales via local sales personnel and/or through the use of dispensing machines within businesses, inducing others to commit acts of patent infringement in this district, and/or committing at least a portion of any other infringements alleged herein in this district

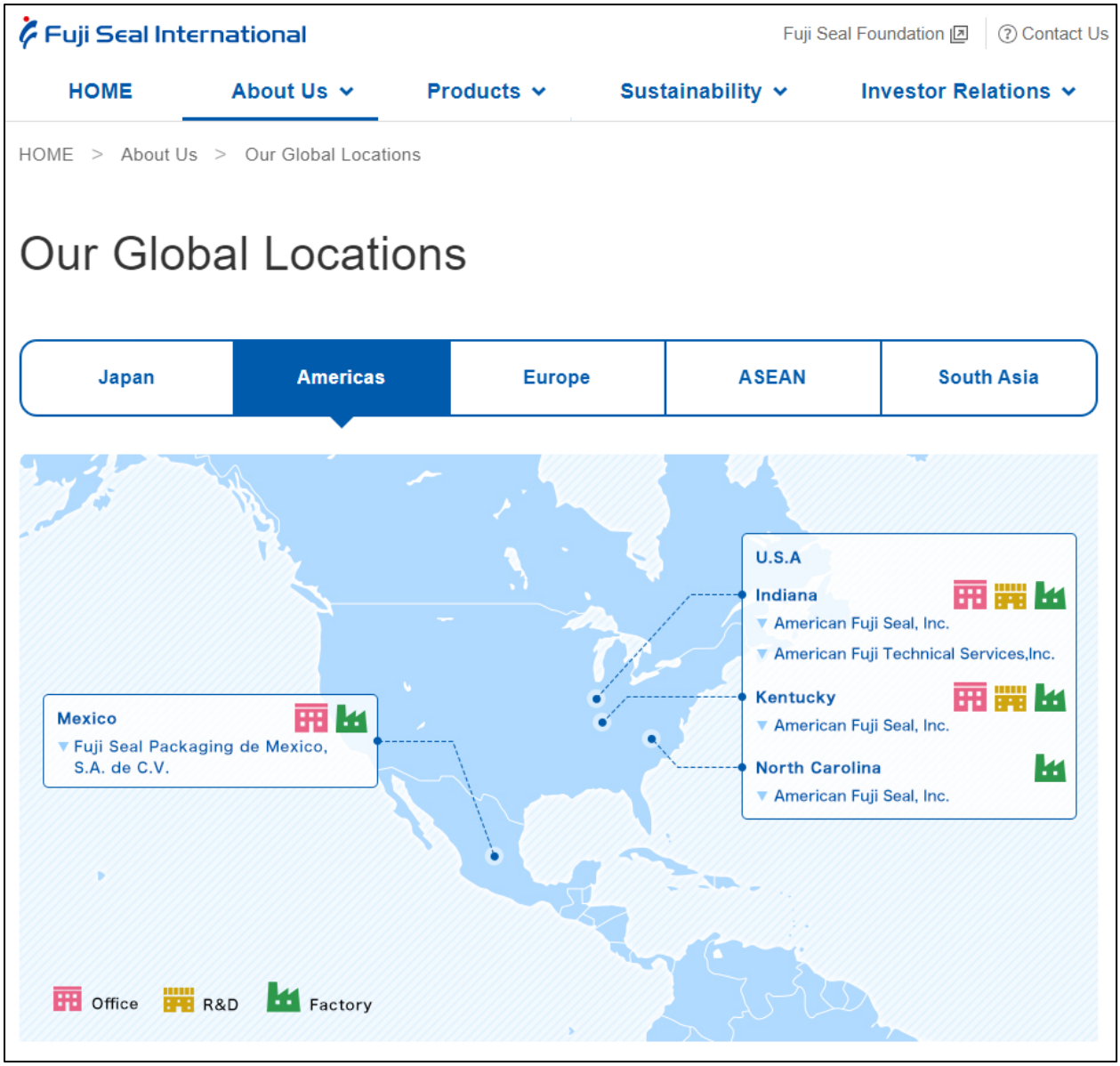
16. Further, Nestlé has a regular and established place of business in this District such as its "Sales/Regional Office" located at 5800 Granite Parkway, Plano, TX 75024.

17. This Court has personal jurisdiction over Fuji Seal.

18. Fuji Seal manufactures the Accused Products, and, therefore, has purposefully and voluntarily placed one or more infringing products into the stream of commerce with the expectation that they will be purchased and/or used by residents of the State of Texas and this District and/or incorporated into downstream products purchased by consumers in the State of Texas and this District, including by directly or indirectly working with its wholly-owned subsidiaries or agents, distributors, and other entities located in the State of Texas to ensure their products reach the State of Texas and this District.

19. On information and belief, Fuji Seal derives substantial revenue from goods and services it provides to residents of the State of Texas and this District, including revenue associated with the Accused Products.

20. Fuji Seal itself manufactures or directs the manufacture of the Accused Products in the United States. As shown below, Fuji Seal itself maintains three of its "Global Locations" in at least the States of Indiana, Kentucky, and North Carolina. Moreover, each of these locations are "factor[ies]" according to Fuji Seal. On information and belief, Fuji Seal manufactures the Accused Products at one or more of these "factor[ies]."



Ex. G (https://www.fujiseal.com/en/about/group-us.html).

21. On information and belief, Fuji Seal knows of Nestlé's use of the Accused Products, including in Texas. On information and belief, Fuji Seal developed the Accused Products in conjunction with Nestlé with the knowledge, purpose, and intention that the Accused Products would be used, sold, and offered for sale in the State of Texas. On information and belief, Fuji Seal is aware that the Accused Products will be sold in this District at least because Fuji Seal makes

the Accused Products specifically for Nestlé, and Fuji Seal is aware that Nestlé is located in this District.

22. On information and belief, the Accused Products manufactured by Fuji Seal are delivered to Nestlé, who distributes them throughout the United States, including Texas. Texas is, after all, the second most populous state in the United States. On information and belief, Fuji Seal knows this, and intentionally places the Accused Products into the stream of commerce via Nestlé so that they may be delivered, offered for sale, sold, and used, in the State of Texas, including in the Eastern District of Texas.

23. As described above, the Accused Products are sold and offered for sale in this District. On information and belief, Fuji Seal is aware of this fact.

24. As described above, Nestlé's website shows that the Accused Products are available for sale in the Eastern District of Texas. On information and belief, Fuji Seal is aware of this fact.

25. On information and belief, Fuji Seal works jointly with Nestlé to develop and manufacture the Accused Products, knowing the Accused Products would be sold to consumers in the State of Texas and this District directly by Nestlé or through the stream of commerce, as outlined above.

26. Through the forgoing activities, Fuji Seal has purposefully availed itself of the privilege of conducting activities within the State of Texas, thus invoking the benefits and protections of its laws. Fuji Seal has sufficient minimum contacts with the State of Texas such that it is subject to specific personal jurisdiction for the matters alleged in this Complaint. Further, the exercise of personal jurisdiction based on these repeated and highly-pertinent contacts does not offend traditional notions of fairness and substantial justice.

27. Venue is proper as to Fuji Seal at least under 28 U.S.C. § 1391(b)(3) and (c)(3) because it is a foreign corporation or the agent of a foreign corporation not residing in any United States Judicial District, which may be sued in any District.

BACKGROUND

28. Founded in 1995, B+W is one of North America's leading manufacturers of shrink sleeves, pressure-sensitive labels, flexible packaging, and heat transfer labels. B+W partners with and provides packaging solutions for customers across the United States, including for leading consumer brands such as Barilla, Minute Maid, and Colgate.

29. B+W is deeply committed to sustainability, with a stated mission of having 100% of their customers using sustainable products. To achieve this mission, B+W has invested more than $80 million in their sustainable innovation pipeline. To date, B+W has 100+ clients using sustainable materials, with 14+ billion sustainable labels sold.

30. Nestlé offers a portfolio of food and beverage products in the United States.

31. Fuji Seal develops and manufactures shrink sleeve labels.

32. In an April 12, 2024 press release, Nestlé announced that it would begin using an allegedly new light-blocking, recyclable shrink sleeve label on its line of seven ready-to-drink Nesquik flavored milk products. Nestlé claimed that the cap, bottle, and sleeve of these milk products could all be recycled together.

33. On information and belief, Fuji Seal supplies parts for and manufactures the light-blocking, recyclable shrink sleeve labels for Nestlé's Nesquik bottles.

THE '422 PATENT

34. On April 16, 2024, the USPTO duly and legally issued the '422 Patent, entitled "Recyclable heat shrink film for recyclable container." B+W owns all rights, title, and interest in

and to the ’422 Patent, and possess all rights of recovery under the ’422 Patent. A true and accurate copy of the ’422 Patent is attached hereto as Ex. A.

35. The ’422 Patent is valid and enforceable.

ACCUSED PRODUCTS

36. The Accused Products in this case include, but are not limited to, Nestlé’s recyclable shrink sleeve label used on its line of ready-to-drink Nesquik flavored milk products, as well as any recyclable shrink sleeve labels used in any of Nestlé’s other product lines (*i.e.*, Coffee mate and Nestlé Sensations) and/or any recyclable shrink sleeve labels sold by Fuji Seal that utilize the same recyclable, light-blocking shrink sleeve label technology (“the Accused Products”).

CLAIM FOR RELIEF

Count I – Infringement of United States Patent No. 11,961,422

37. B+W realleges and incorporates each of the allegations in Paragraphs 1–36 above as though fully set forth herein.

38. Defendants’ products that infringe the ’422 Patent include, but are not limited to, the Accused Products and use thereof.

39. Defendants make, use, sell, offer for sale, and/or import the Accused Products and components thereof in the United States.

40. Defendants directly infringe—literally and/or under the doctrine of equivalents—at least Claims 1 and 19 of the ’422 Patent by making, using, selling, offering for sale, and/or importing into the United States its Accused Products and components thereof.

41. Exhibit B includes charts comparing Claims 1 and 19 of the ’422 Patent to the Accused Products. As set forth in Exhibit B, the Accused Products practice, in whole or in material part, the technology claimed in the ’422 Patent. Accordingly, the Accused Products infringe at

least one claim of the ’422 Patent. The Accused Products are identified based on publicly available information, and B+W reserves the right to identify additional infringing evidence or products on the basis of information obtained, for example, during discovery.

42. For example, Claim 1 of the ’422 Patent recites:

A recyclable shrink label comprising:

a heat shrink film comprising polyethylene terephthalate (PET) and having a first surface and a second surface opposite of the first surface, the heat shrink film having a thickness from 15 μm to 100 μm; and

a light blocking layer disposed adjacent the first surface and comprising a light blocking component, the light blocking layer being constructed for the recyclable shrink label to block at least 80% of incident light having wavelengths in a range of 200 nm to 900 nm, wherein the light blocking component comprises a particulate having a particle size of 0.1 μm to 100 μm, wherein the particulate comprises metal, metal oxide, a reflective pigment, carbon black, mica, or a combination thereof, and

wherein the recyclable shrink label is recyclable with a PET container.

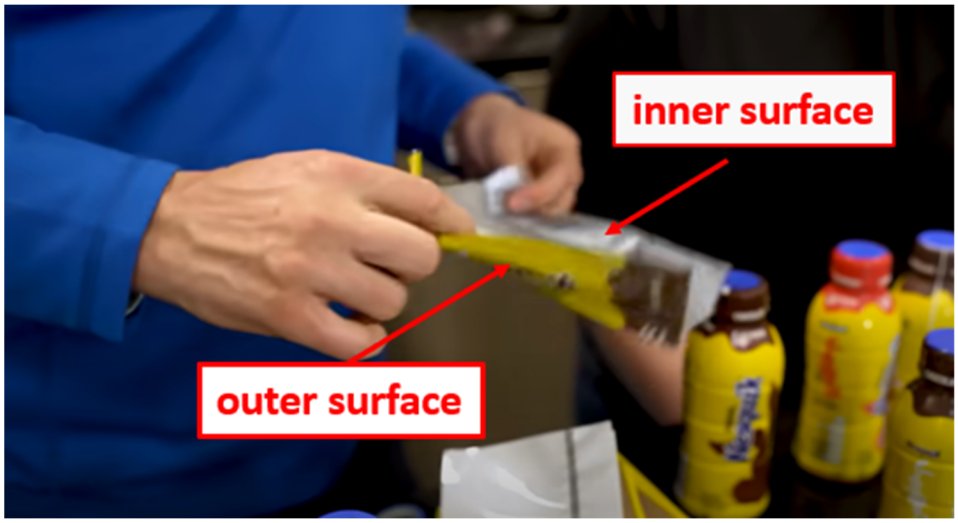
43. The Accused Products practice each limitation of Claim 1 of the ’422 Patent.

44. To the extent the preamble is construed to be limiting, Defendants’ Accused Products comprise “a recyclable shrink label.” In a press release published on April 12, 2024, Nestlé described “Nestlé is converting its Nesquik ready-to-drink portfolio to a new ***recyclable shrink sleeve label*** made with light-blocking print technology that is compatible with the U.S. recycling stream.” Ex. H (Nesquik® Makes Bottles Easier to Recycle for Consumers, April 12, 2024, *available at* https://www.nestleusa.com/media/pressreleases/nesquik-bottles-easier-to-recycle (last visited September 6, 2024)) (“April 12, 2024 Press Release”) (emphasis added).

45. The Accused Products include a heat shrink film comprising polyethylene terephthalate (PET) having a first surface and a second surface opposite of the first surface, the heat shrink film having a thickness from 15 μm to 100 μm. For instance, the April 12, 2024 Press Release describes the Accused Products as comprising a “recyclable ***shrink sleeve*** label,” which

refers to a heat shrink film, which is a "packaging material [that] can be reincorporated with the plastic supply stream and made into ***another PET bottle***." *Id.* (emphasis added). In fact, these Accused Products are themselves made from "crystallized PET." Ex. I (Nestlé to Use Recyclable, Light-Blocking Shrink Sleeves on Some Beverage Products, April 17, 2024, *available at* https://www.packagingdive.com/news/nestle-recyclable-shrink-sleeve-label-light-blocking/713427 (last visited September 6, 2024)) ("April 17, 2024 Article"). On information and belief, the PET heat shrink film of the Accused Products has a thickness between 15 µm and 100 µm.

46. Further, the PET heat shrink film of the Accused Products comprises at least two surfaces, including a surface facing inwards (towards the bottle) and a surface facing outwards, opposite of the inwards-facing surface (away from the bottle), as shown below. Ex. J ("Nesquik Makes Bottles Easier to Recycle for Consumers," April 19, 2024, available at https://www.youtube.com/watch?v=EZz8pgrFI4c (last visited September 6, 2024) (the "Nesquik Video") at 0:36 (annotated).



47. The Accused Products comprise "a light blocking layer disposed adjacent the first surface and comprising a light blocking component." This component is depicted in the image below. *See id.* at 0:42 (annotated).

48. Further, in the April 12, 2024 Press Release, Nestlé stated that "Nestlé is converting its Nesquik ready-to-drink portfolio to a new recyclable shrink sleeve label made with ***light-blocking print technology*** that is compatible with the U.S. recycling stream." Ex. H (April 12, 2024 Press Release) (emphasis added).

49. The Accused Products comprise a "light blocking layer being constructed for the recyclable shrink label to block at least 80% of incident light having wavelengths in a range of 200 nm to 900 nm." For example, in the Nesquik Video, Meaghan Sparkman, Business Director at Nestlé USA, describes that "[s]ome products like ***Nesquik have unique product attributes that are more susceptible to light***, like color, taste, and vitamins, ***which make a light-blocking sleeve really important*** to be able to protect and maintain the product quality." Ex. J (Nesquik Video) at 0:17–0:32 (emphasis added). On information and belief, the light-blocking sleeve of the Accused Products is constructed to block at least 80% of incident light having wavelengths in a range of 200 nm to 900 nm.

50. The Accused Products comprise a "light blocking component . . . compris[ing] a particulate having a particle size of 0.1 μm to 100 μm, wherein the particulate comprises metal,

metal oxide, a reflective pigment, carbon black, mica, or a combination thereof." For example, in the Nesquik Video, Ms. Sparkman states that the Accused Products achieve light blocking using "light blocking inks." *Id.* at 0:34–0:44. On information and belief, the light blocking inks used in the Accused Products comprise (at least) metals and/or reflective pigments with particle size of 0.1 μm to 100 μm.

51. The Accused Products comprise a recyclable shrink label "wherein the recyclable shrink label is recyclable with a PET container." For example, in the Nesquik Video, Ms. Sparkman touts that, "[w]ith this innovation, ***you'll be able to toss the entire packaging into the recycle bin.***" *Id.* at 0:34–0:44 (emphasis added).

52. Further, in the April 12, 2024 Press Release, Nestlé describes:

> The new shrink sleeve is made with materials that ***allow the bottle and sleeve to be recycled together***, with the ambition that ***the packaging material can be reincorporated with the plastic supply stream and made into another PET bottle***, helping create a circular economy for packaging. With this sleeve, ***the entire Nesquik ready-to-drink bottle will be recyclable***—meaning consumers can put the ***entire package, including cap, bottle and shrink sleeve*** into their recycling bin without needing to remove the sleeve.

Ex. H (April 12, 2024 Press Release) (emphasis added).

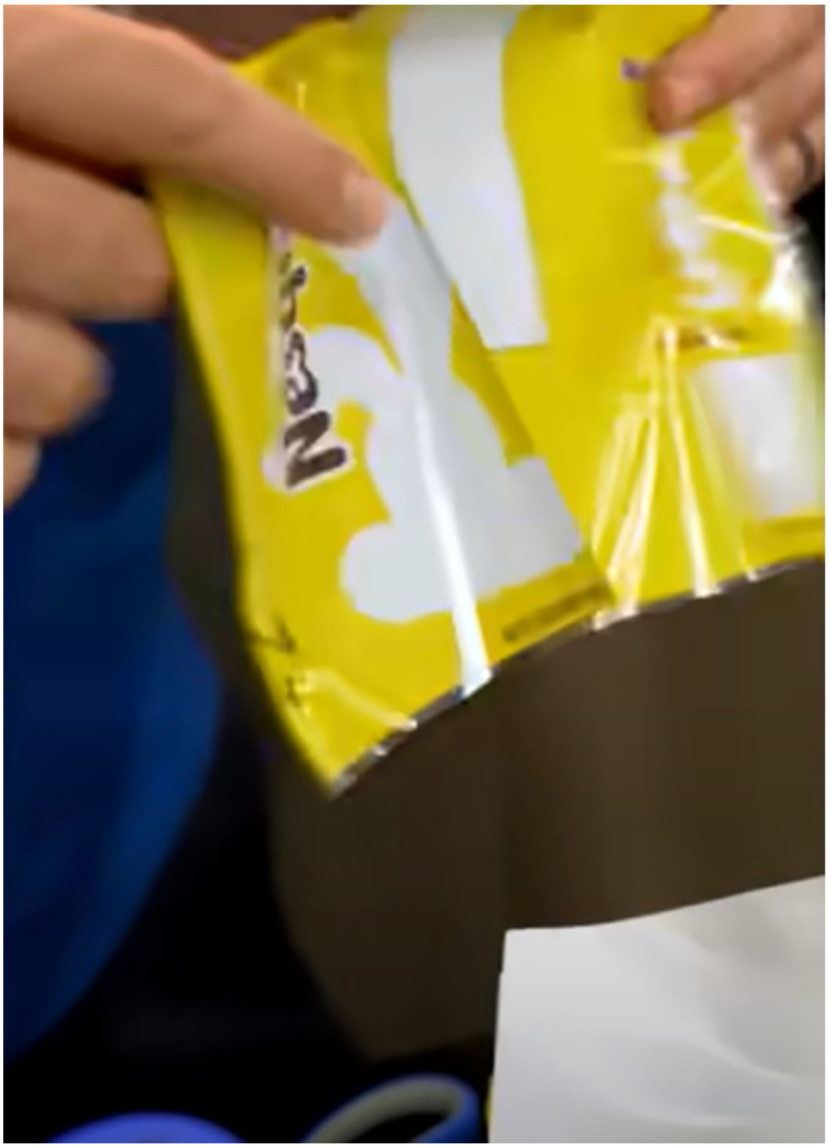
53. As another example, Claim 19 of the '422 Patent recites:

> A recyclable shrink label comprising:
>
> a heat shrink film comprising polyethylene terephthalate (PET) and having a first surface and a second surface opposite of the first surface, the heat shrink film having a thickness from 15 μm to 100 μm; and
>
> a light blocking layer disposed adjacent the first surface and comprising a light blocking component, the light blocking layer being constructed for the recyclable shrink label to block at least 80% of incident light having wavelengths in a range of 200 nm to 900 nm, and
>
> a high opacity layer comprising a white pigment,
>
> wherein the recyclable shrink label is recyclable with a PET container.

54. The Accused Products practice each limitation of Claim 19 of the ’422 Patent.

55. As explained above with respect to Claim 1, the Accused Products comprise a “recyclable shrink label” (to the extent the preamble is limiting), “a heat shrink film comprising polyethylene terephthalate (PET) and having a first surface and a second surface opposite of the first surface, the heat shrink film having a thickness from 15 μm to 100 μm,” “a light blocking layer disposed adjacent the first surface and comprising a light blocking component, the light blocking layer being constructed for the recyclable shrink label to block at least 80% of incident light having wavelengths in a range of 200 nm to 900 nm,” and “wherein the recyclable shrink label is recyclable with a PET container.”

56. The Accused Products comprise “a high opacity layer comprising a white pigment.” For example, this component is depicted in the image below. Ex. J (Nesquik Video) at 0:02.



57. Defendants were aware of the ’422 Patent since before this case was filed. For example, Nestlé was aware of the ’422 Patent from approximately the date of issuance of April 16, 2024. Further, numerous Nestlé employees were aware of B+W’s patented technology, including the invention of the ’422 Patent, when Nestlé was developing the Accused Products. Fuji Seal was also aware of the ’422 Patent before this case was filed, including at least as early as June 13, 2024, as part of communications between B+W and Fuji Seal.

58. Defendants have further been aware of the ’422 Patent since at least the filing date of this Complaint.

59. Defendants actively induce and are actively inducing infringement of at least claims 1 and 19 of the ’422 Patent, in violation of 35 U.S.C. § 271(b).

60. Defendants’ customers and end-users of the Accused Products directly infringe claims 1 and 19 of the ’422 Patent, at least by using the Accused Products, including as described above in Paragraphs 37–56.

61. Defendants knowingly induce infringement of at least Claims 1 and 19 of the ’422 Patent by manufacturers, customers, and end-users of the Accused Products with specific intent to induce infringement, and/or with willful blindness to the possibility that its acts induce infringement, through activities relating to making, selling, marketing, advertising, promotion, support, and distribution of the Accused Products in the United States.

62. Defendants instruct manufacturers, customers, and end users, at least through its technical, marketing, promotional, and instructional materials, to use the infringing Accused Products, including as described in detail above in Paragraphs 37–56.

63. For example, Nestlé advertises that “consumers can put the entire package, including cap, bottle and shrink sleeve into their recycling bin without needing to remove the sleeve.”

64. Further, Nestlé instructs Fuji Seal and/or other suppliers to manufacture the Accused Products.

65. Defendants contributed and are contributing to infringement of at least Claims 1 and 19 of the ’422 Patent, in violation of 35 U.S.C. § 271(c).

66. Defendants' customers and end-users of the Accused Products directly infringe Claims 1 and 19 of the '422 Patent, at least by using the Accused Products, including as described in detail above in Paragraphs 37–56.

67. Defendants contribute to infringement of Claims 1 and 19 of the '422 Patent by offering to sell, selling, and importing into the United States the Accused Products and components thereof, including, for example, Nestlé's recyclable shrink sleeve label used on its line of ready-to-drink Nesquik flavored milk products. Such components are substantial, material parts of the claimed inventions of the '422 Patent and have no substantial non-infringing use.

68. Nestlé's recyclable shrink sleeve label used on its line of ready-to-drink Nesquik flavored milk products is especially made and especially adapted for use in infringing the '422 Patent and is not a staple article or commodity of commerce suitable for substantial non-infringing use.

69. Fuji Seal sells or offers to sell components of the Accused Products to Nestlé.

70. Defendants' infringement of the '422 Patent is without license or other authorization.

71. Because Defendants had knowledge of the '422 Patent and proceeded to knowingly infringe, Defendants' infringement has been and continues to be willful.

72. Defendants' continued infringement of the '422 Patent has damaged and will continue to damage B+W.

73. Unless and until enjoined by this Court, Defendants will continue to directly infringe as well as induce and contribute to infringement of the '422 Patent. Defendants' infringing acts are causing and will continue to cause at least B+W irreparable harm, for which there is no

adequate remedy at law. Under 35 U.S.C. § 283, B+W is entitled to a permanent injunction against further infringement.

74. This case is exceptional, entitling B+W to an award of attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

JURY TRIAL DEMANDED

75. B+W respectfully requests a jury trial on any issues so triable by right.

PRAYER FOR RELIEF

76. WHEREFORE, B+W respectfully requests that this Court enter judgment in its favor and grant the following relief:

a. A judgment that Defendants infringe, directly and indirectly, the '422 Patent.

b. An order permanently enjoining Defendants, their affiliates and subsidiaries, and each of their officers, agents, servants and employees and those acting in privity or concert with them, from making, offering to sell, selling, using, or importing into the United States products claimed in any of the claims of the '422 Patent, inducing others to use and perform methods that infringe any claim of the '422 Patent; inducing others to make offer, sell, use or import into the United States articles that infringe, or are made by a process that infringes, any claim of the '422 Patent; and contributing to others infringing any claim of the '422 Patent, until after expiration of the '422 Patent, including any extensions and/or additional periods of exclusivity to which B+W is or become entitled;

c. An order awarding damages under 35 U.S.C. §§ 154 & 284 in an amount sufficient to compensate B+W for their damages arising from infringement by Defendants including, but not limited to, lost profits and/or a reasonable royalty;

d. A judgment that Defendants' infringement of the '422 Patent was and continues to be willful and an order awarding B+W treble damages under 35 U.S.C. § 284;

e. A judgment and order requiring Defendants to pay B+W the prejudgment and post-judgment interest to the fullest extent allowed under the law, as well as their costs;

f. An order finding that this is an exceptional case and awarding Plaintiffs their reasonable attorneys' fees pursuant to 35 U.S.C. § 285; and

g. Such other relief as the Court may deem appropriate and just under the circumstances.

Dated: September 8, 2024

Respectfully submitted,

/s/ Brandon H. Brown

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