

UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NEW YORK

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Attorneys for Plaintiff Auto-Kaps, LLC

AUTO-KAPS, LLC,

Plaintiff,

v.

CLOROX COMPANY,

Defendant.

Case No.

COMPLAINT FOR PATENT
INFRINGEMENT

DEMAND FOR JURY TRIAL

Plaintiff Auto-Kaps, LLC (“Auto-Kaps”) demands a jury trial and complains against the defendant Clorox Company (“Clorox”).

THE PARTIES

1. Auto-Kaps is a corporation organized and existing under the laws of the State of New York, conducting business in this judicial district.

2. Upon information and belief, Defendant Clorox is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Oakland, California, that transacts significant business in this judicial district.

JURISDICTION AND VENUE

3. This action arises under the patent laws of the United States of America, Title 35

of the United States Code. This Court has jurisdiction of this action under 28 U.S.C. §§1331 and 1338(a).

4. Auto-Kaps is informed and believes, and based thereon alleges, that Clorox is doing business and committing acts of infringement of the patent identified below in this judicial district, and is subject to personal jurisdiction in this judicial district.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§1391 and 1400(b).

THE PATENTS

6. On February 17, 2009, U.S. Patent No. 7,490,743 (“the ‘743 patent”) was duly and legally issued to Auto-Caps for an invention entitled “Dispenser Assembly”. A copy of the ‘743 patent is attached to this Complaint as Exhibit 1.

7. The ‘743 patent is directed to a novel liquid dispenser assembly that facilitates the ability to dispense all of the liquid in the dispenser, and facilitates the assembly of such liquid dispensers.

DIRECT INFRINGEMENT BY CLOROX

8. Auto-Kaps is informed and believes, and based thereon alleges, that Clorox makes, uses, tests, distributes, markets, offers for sale and sells or otherwise provides to its customers a dispenser assembly under the SMART TUBE[®] brand (“SMART TUBE[®] dispensers”). A representative example of a SMART TUBE[®] dispenser sold by Clorox is attached to this Complaint as Exhibit 2.

9. Auto-Kaps is informed and believes, and based thereon alleges, that SMART TUBE[®] dispensers facilitate the ability to dispense all of the liquid in a liquid dispenser.

10. Auto-Kaps is informed and believes, and based thereon alleges, that SMART TUBE[®] dispensers infringe claims of the '743 patent, including without limitation at least claim 1 in violation of 35 U.S.C. §271(a).

WILLFUL INFRINGEMENT BY CLOROX

11. On May 23, 2013, Auto-Kaps' counsel sent a letter to Clorox's counsel: i) advising Clorox of the existence of the '743 patent; ii) advising Clorox that its SMART TUBE[®] dispensers infringe claims of the '743 patent; and iii) offering to license the '743 patent to Clorox.

12. Clorox has therefore been aware of the '743 patent since on or about May 23, 2013, and all of its infringing conduct after such date has been willful.

INDIRECT INFRINGEMENT BY CLOROX

13. Auto-Kaps is informed and believes, and based thereon alleges, that SMART TUBE[®] dispensers infringe the claims of the '743 patent, including without limitation at least claim 1 thereof.

14. Clorox advertises that its SMART TUBE[®] dispenser "reaches all the way to the bottom of the bottle and enables complete dispensing of product without having to tilt or tip the container", thereby ensuring that its customers "are getting to that last drop in every Clorox cleaning product bottle".

15. Clorox's advertising touts the advantages and benefits of its SMART TUBE[®] dispensers so that its customers will use such dispensers, that infringe at least claim 1 of the '743 patent.

16. Auto-Kaps is informed and believes, and based thereon alleges, that Clorox has investigated the '743 patent and became aware, or should have become aware, that its SMART TUBE[®] dispensers infringe the '743 patent.

17. Auto-Kaps is informed and believes, and based thereon alleges, that Clorox has been advertising and offering for use by its customers the infringing SMART TUBE[®] dispensers after Clorox became aware that such device infringed the '743 patent, and will continue with such infringing activities.

18. Auto-Kaps is informed and believes, and based thereon alleges, that Clorox has been selling or otherwise providing SMART TUBE[®] dispensers to its customers with the specific knowledge of the '743 patent and the specific knowledge that SMART TUBE[®] dispensers are and will be used to infringe the '743 patent, and that Clorox will continue such infringing activities.

19. Clorox has been and is actively inducing the infringement of the '743 patent in violation of 35 U.S.C. §271(b) based on its marketing, sale, distribution and touting of the benefits of SMART TUBE[®] dispensers and by encouraging its customers to use SMART TUBE[®] dispensers which directly infringe claims of the '743 patent. Clorox has been and continues doing so with knowledge of the '743 patent and with the specific intent that its customers use SMART TUBE[®] dispensers which directly infringe claims of the '743 patent.

20. Auto-Kaps has been and is being damaged by the foregoing activities of Clorox and its customers which infringe the '743 patent, and will be irreparably harmed unless such infringing activities are enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Auto-Kaps prays for judgment against Defendant Clorox on all the counts and for the following relief:

- A. Declaration that the Auto-Kaps is the owner of the right to sue and to recover for infringement of the '743 patent being asserted in this action;
- B. Declaration that Clorox has directly infringed and actively induced the infringement of the '743 patent;
- C. Declaration that Clorox has willfully infringed the '743 patent.
- D. Declaration that Clorox and its customers are jointly or severally responsible for the damages from infringement of the '743 patent through the use of SMART TUBE[®] dispensers;
- E. A preliminary and permanent injunction against Clorox, each of its officers, agents, servants, employees, and attorneys, all parent and subsidiary corporations, their assigns and successors in interest, and those persons acting in active concert or participation with them, including distributors, enjoining them from continuing acts of direct infringement, active inducement of infringement, and contributory infringement of the '743 patent;
- F. An accounting for damages under 35 U.S.C. §284 for infringement of the '743 patent by Clorox, and the award of damages so ascertained to Auto-Kaps together with interest as provided by law;
- G. Award of Auto-Kaps's costs and expenses;
- H. Award of Auto-Kaps's attorney fees;
- I. Award of treble damages; and

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