

IN THE
CIRCUIT COURT OF ST. LOUIS CITY
STATE OF MISSOURI

AFA DISPENSING GROUP B.V.,)
)
 And,)
)
 DISPENSING TECHNOLOGIES B.V.,)
)
 Petitioners,)
)
 v.)
)
 ANHEUSER-BUSCH INBEV S.A.,)
)
 And,)
)
 ANHEUSER-BUSCH INBEV)
 WORLDWIDE, INC.,)
)
 And,)
)
 ANHEUSER-BUSCH, LLC,)
)
 Defendants.)

Case No. 1222-CV-09165

JURY TRIAL DEMANDED

PETITION

COME NOW Petitioners Afa Dispensing Group B.V. and Dispensing Technologies B.V. (collectively hereafter, "Plaintiffs" or "Afa"), through counsel, and for their claims against Defendants Anheuser-Busch InBev S.A., Anheuser-Busch InBev Worldwide, Inc. and Anheuser-Busch, LLC (collectively hereafter, "Defendants"), state as follows.

Nature of Action

1. Plaintiffs bring this action seeking redress for their injuries suffered as a result of Defendants' misappropriation of their trade secret and breach of contract.

FILED
CIRCUIT COURT OF ST. LOUIS CITY
STATE OF MISSOURI
2012 APR 15 10:47 AM
CLERK

Parties

2. Plaintiff Afa Dispensing Group B.V. is a corporation organized under the laws of The Netherlands, with its principal place of business at Grasbeemd 1, 5705 DE Helmond, The Netherlands.

3. Plaintiff Dispensing Technologies B.V. is a corporation organized under the laws of The Netherlands, with its principal place of business at Waterbeemd 4A, 5706 NN Helmond, The Netherlands.

4. Afa Dispensing Group B.V. and Dispensing Technologies B.V. are referred to collectively as "Afa" or "Plaintiffs."

5. Defendant Anheuser-Busch InBev S.A. is a corporation organized under the laws of Belgium, with its principal place of business in North America at One Busch Place, St. Louis, Missouri.

6. Defendant Anheuser-Busch InBev Worldwide, Inc. is a corporation organized under the laws of the State of Delaware, with its principal place of business at One Busch Place, St. Louis, Missouri.

7. Defendant Anheuser-Busch, LLC ("A-B") is a limited liability company organized under the laws of the State of Missouri, with its principal place of business at One Busch Place, St. Louis, Missouri. Anheuser-Busch, LLC is the successor in interest to Anheuser-Busch, Inc., having converted from a Missouri corporation into a Missouri limited liability company, effective October 1, 2011. A-B was acquired by Belgian company InBev S.A. ("InBev") in a hostile takeover consummated in November 2008.

Factual Allegations

8. Afa has been in the plastics business for nearly fifty years, and for at least 35 years has been engaged in the research, development and commercialization of technologically-advanced liquid dispensing systems. Due to its reputation as a leading technology company in its field, in the last 15 years, a number of the largest and best-known multinational consumer product companies have engaged Afa to develop unique dispensing systems for their branded liquids.

9. In the late 1990's, Heineken commissioned Afa to assist in the development of the first home draft system for beer. The Heineken "Beer Tender" system based on Afa's intellectual property and know how was launched successfully in 2002.

10. Approximately two years later, InBev introduced a similar system and was sued by Heineken for patent infringement. InBev had to enter into a "confidential settlement" of the suit.

11. The significant quality problems with InBev's copycat system, "PerfectDraft," necessitated its being pulled from the market for some time.

12. In or about 2005, Afa developed the new "Flair" liquid dispensing technology. The heart of the Flair technology is its "bag-in-bottle" design -- a unique plastic bottle with a flexible plastic bag inside. Flair uses air pressure rather than high-pressure gas to compress the inner "bag" and dispense its liquids, fluids, or soft food products contents.

13. The bag-in-bottle is created from two hollow plastic polyethylene terephthalate ("PET") tubes, known as an inner and outer preform. The inner preform is inserted into the outer preform. They are then blown or expanded into the shape of a bottle through a rapid burst of heat and air pressure on a blow-molding machine. The outer preform becomes the hard outside

of the bottle. The inner preform, which is thinner, becomes the flexible bag inside the bottle that holds the liquid or other content.

14. Because both preforms are made of the same PET plastic, there is a very high risk that they will melt and stick to each other while being blow molded. If that happens, the bag will not compress and dispense its contents.

15. Research & Development Director Wim Maas leads Afa's technical team. Through many years of working with plastic products, Mr. Maas and his team acquired detailed knowledge of the effect of heat on various types of plastic material and the behavior of the material when two or more plastic parts are assembled together. Afa's technical team understood that due to friction and the fact that parts made of the same material behave in the same way when exposed to heat, it is difficult to assemble multiple plastic pieces into a single functioning device. Based on its proprietary knowledge and know-how acquired through decades of experience in producing and assembling billions of injection-molded plastic parts into complex dispensing systems, Afa after incurring substantial expense discovered and developed the use of lubrication as a release agent to prevent unwanted adhesion between the inner and outer preforms.

16. Afa has used a coating as a release agent around the inner preform to prevent the sticking of the two preforms from the first Flair prototypes in early 2007. No one else to Afa's knowledge employed this manufacturing process to successfully produce a "bag-in-bottle" dispensing system.

17. By the Fall of 2007, Afa developed the Flair system to a high level of completion. It had created working prototypes utilizing PET preforms with the inner preform coated with a release agent, which, when blown together, created a bag inside a bottle that did not stick

together. Afa connected the Flair bag-in-bottle through a valve at the bottom of the bottle to an air compressing unit, filled the bottle with beer, mounted a dispenser on top of the bottle, and was able to successfully draft beer out of the bottle.

18. In December 2007, Afa decided to approach InBev to determine whether it had any interest in exploring a partnership to further develop and exploit Afa's Flair technology, because InBev personnel had previously contacted Mr. Maas seeking to establish relations between InBev and Afa and had commented favorably on Afa's reputation as an innovation pioneer.

19. On December 11, 2007, InBev representatives Hans Donker and Albert Wauters met at Afa's offices with Mr. Maas and Afa's Managing Director, Ariel Gratch. Mr. Maas and Mr. Gratch provided a general overview of the Flair technology. The written materials shown to InBev at this meeting were marked "**Confidential Dispensing Technologies** patents and technologies inside." The Afa representatives intentionally did not disclose any part of the manufacturing processes for Flair to preserve the confidentiality of Afa's valuable Flair trade secrets.

20. The InBev representatives expressed interest in further exploring the possibility of a partnership with Afa to develop a proprietary Flair home draft system for InBev beers and requested and received a four-week exclusivity period to pursue discussions with Afa ahead of any InBev competitors.

21. The parties met again on January 9, 2008, at InBev's headquarters in Leuven, Belgium. Messrs. Maas and Gratch met with a number of InBev executives, including Director of Draft Development Daniel Peirsman and his protégé, Sarah Van Hove. Afa's written

materials shown at the meeting bore the legend, "Confidential **Dispensing Technologies** patents and technologies inside."

22. Because InBev's most senior product development team attended, Afa offered to expand its disclosure to include Flair's production process trade secrets on condition that InBev honor Afa's preconditions for disclosing its manufacturing trade secrets.

23. Mr. Gratch, who was a practicing lawyer, was very sensitive to the need to protect Afa's trade secrets from misappropriation. At the outset of the meeting, Mr. Gratch told the InBev representatives that Afa was only willing to disclose its trade secrets on condition that InBev strictly limit its use of them to considering a business partnership with Afa, which clearly meant that InBev could not use Afa's trade secrets in its own products or disclose them. No one from InBev refused Mr. Gratch's express condition nor did anyone request that Afa not disclose its Flair trade secrets or state that InBev was unwilling to honor Mr. Gratch's precondition to their disclosure.

24. As a result, Afa showed the InBev executives a working prototype of the early Flair system and disclosed several of its Flair trade secrets to InBev, including its use of a release agent to coat the inner preform to keep the preforms from sticking together during blowing. A video of the early Flair prototype shown to InBev is attached hereto as Exhibit 1.

25. On January 28, 2008, InBev advised Afa in an email that: "After carefull [sic] review with Commercial Innovation, InBev has decided not to lead in this type of development. The proposed project does not correspond with the current development mix that InBev pursues."

26. Afa has since learned that InBev's statement that it was not pursuing a bag-in-bottle beer dispensing system was false. Unbeknownst to Afa, InBev had been actively working for several years on such a system, but had not yet developed a commercially viable product.

27. Afa has learned that in April 2007, InBev filed patent applications in the United States that inaccurately claimed that two PET preforms could be successfully blown and create an interior flexible bag without claiming a need for the use of any release agent.

28. Shortly after the January meeting in which Afa disclosed the utility of a release agent, InBev withdrew its U.S. patent application.

29. In April 2008, three months after meeting with Afa and learning its Flair trade secret involving the use of a release agent to prevent the preforms from sticking to each other, InBev filed international and European patent applications incorporating Afa's release agent trade secret for a bag-in-bottle draught beer product, which were otherwise identical to its prior U.S. patent application.

30. It subsequently refiled its U.S. application, this time, though, with a description of the need to use a release agent to avoid adhesion.

31. Former A-B executives told Afa of InBev Director of Draught Development Daniel Peirsman's crude boasts about how InBev misappropriates other companies' intellectual property rights, using an obscene story about bulls fencing in young cows and then raping them.

32. Afa has learned that InBev and Peirsman have been involved in a number of European litigations over their misappropriation of competitors' intellectual property similar to the Heineken litigation. Afa has also directly experienced InBev and Peirsman's bad faith acts to misappropriate, i.e., "fence in," Afa's trade secrets and interfere with Afa's development of its Flair technology.

33. In November 2008, InBev consummated its hostile takeover of A-B.

34. In December 2011, Defendants announced the introduction of their bag-in-bottle product (under the trade name "Draftmark") in St. Louis, Missouri. Defendants recently introduced the product in California.

35. Defendants are actively manufacturing the Draftmark bottles at their St. Louis, Missouri facilities. Afa has confirmed through laboratory analysis that Defendants are unlawfully using Afa's misappropriated release agent trade secret in their Draftmark product.

36. Defendants' product could not be manufactured or commercially exploited without using Afa's misappropriated trade secret.

COUNT I

Violation of The Missouri Uniform Trade Secrets Act (Mo. Ann. Stat. §§ 417.450 to 417.467)

37. Under The Missouri Uniform Trade Secrets Act, Defendants are jointly and severally liable for their misappropriation of Afa's trade secret.

38. Afa has a protectable "trade secret" in the technique, method and process of using a release agent to prevent the inner preform from sticking to the outer preform during the blowing of the preforms into a bag-in-bottle.

39. Under § 417.453(4), Missouri law defines a "trade secret" as "information, including but not limited to, technical or nontechnical data, a formula, pattern, compilation, program, device, method, technique, or process, that:

- a. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and

b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”

40. The release agent trade secret has significant economic value in that, without using Afa’s trade secret to coat the inner perform with a release agent to ensure the ability to blow functional bottles, Defendants would not be able to bring Draftmark to the market.

41. If Defendants were to produce the bag-in-bottle for the Draftmark system without the use of a release agent, there would be a significant number of defective bottles, rendering the Draftmark manufacturing process prohibitively inefficient and expensive and damaging Defendants’ reputation and brand value.

42. The release agent trade secret derives independent economic value from not being generally known to, nor readily ascertainable by proper means by, other persons. Afa developed this trade secret based on its specialized expertise and extensive work with plastics over the course of decades, and specifically its work with the assembly of multiple-part plastic pieces into a single product. Afa does not believe that anyone (other than those persons who were provided the information by Afa on a confidential basis), prior to Defendants’ unlawful disclosure and use of the release agent trade secret, knew of or readily could have ascertained the efficacy of utilizing Afa’s release agent trade secret to manufacture a commercially viable bag-in-bottle product from two PET preforms.

43. Afa has taken extensive steps to protect the confidentiality of its release agent trade secret. Before Defendants disclosed Afa’s release agent trade secret, Afa had never publicly disclosed the trade secret, and had never disclosed it to anyone without an agreement or understanding that the information was confidential and could not be disseminated. Afa’s employees are under strict confidentiality obligations. Afa guards its manufacturing processes

very carefully. Its plant is restricted and all production processes, including Flair's production process, are in enclosed, secured areas, preventing anyone from entering without authorization or looking in from the outside.

44. Defendants misappropriated Afa's trade secret by unlawfully using it without Afa's consent and by disclosing it in their European and subsequent American patent applications.

45. The Missouri Uniform Trade Secret Act defines "misappropriation" as "(b) Disclosure or use a trade secret of a person without express or implied consent by another person who: . . . (c) At the time of disclosure or use, knew or had reason to know that knowledge of the trade secret was . . . (ii) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use. . . ." Mo. Ann. Stat. § 417.453(2)(b)(c)(ii).

46. Defendants are currently using Afa's trade secret without Afa's express or implied consent.

47. Defendants know that the trade secret was acquired from Afa under circumstances imposing a duty on them to refrain from using the trade secret for any reason other than in connection with pursuing a business partnership with Afa. Specifically, Afa disclosed the trade secret to InBev on the express precondition that InBev would not use the trade secret for any reason other than pursuing a business venture with Afa.

48. In addition, the written materials that Afa shared with InBev in December 2007-January 2008 relating to the Flair technology all bear the following legend at the top of every page: "Confidential **Dispensing Technologies** patents and technologies inside."

49. Afa is suffering ongoing injury from Defendants' misappropriation and use of its trade secret.

50. Unless permanently enjoined, Defendants will persist in using the misappropriated release agent trade secrets, causing Afa continuing harm for which Afa has no adequate remedy at law.

51. Afa is entitled to “both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss.” Mo. Ann. Stat. § 417.457(1). Alternatively, Afa is entitled to a “reasonable royalty” for Defendants’ unauthorized disclosure and use of Afa’s trade secret. *Id.*

52. Afa is entitled to punitive damages based on Defendants’ outrageous behavior, evil motive and reckless indifference to Afa’s rights. Mo. Ann. Stat. § 417.457.

53. Afa is also entitled to an Order and Final Judgment permanently enjoining Defendants from using Afa’s release agent trade secret in connection with any bag-in-bottle product.

WHEREFORE, Petitioners Afa Dispensing Group B.V. and Dispensing Technologies B.V. respectfully request that this Court render judgment in favor of them and against Defendants:

- (a) awarding Petitioners such damages as are fair and reasonable in an amount to be proven at trial but in excess of Twenty-Five Thousand Dollars (\$25,000.00);
- (b) awarding Petitioners punitive damages equal to One Hundred Fifty Million Dollars (\$150,000,000.00);
- (c) permanently enjoining Defendants from using Afa’s release agent trade secret in connection with any bag-in-bottle product;
- (d) awarding Petitioners’ attorneys’ fees and costs incurred in prosecuting this lawsuit; and

(e) granting such other and further relief as this Court deems just and proper.

COUNT II
Breach of Contract

54. Plaintiffs reallege Paragraphs 1 through 53 as if fully set forth herein.

55. Defendants are contractually obligated to keep confidential, and not use for any purpose other than pursuing a business venture with Afa, all information they learned from Afa at the meeting on January 9, 2008, including the information disclosed by Afa relating to the use of a release agent in connection with bag-in-bottle technology.

56. At the January 9, 2008, meeting, Mr. Gratch offered to disclose information relating to Flair's production process on the express condition that InBev strictly limit its use of the information to considering a business partnership with Afa, which clearly meant that InBev could not use Afa's confidential information in its own products or disclose it.

57. The InBev executives present were highly sophisticated personnel who had specialized knowledge and training in the protection of proprietary information. InBev has highly developed systems for protecting proprietary information that Peirsman administers and frequently boasts about. There is no question that Peirsman knew that he was undertaking a contractual obligation to limit InBev's use of Afa's proprietary information to InBev's consideration of a business partnership with Afa by not refusing Mr. Gratch's express condition nor requesting that Afa not disclose its proprietary information. Peirsman, InBev's trade secret expert, received Afa's proprietary information without stating that InBev would not honor Afa's precondition for its disclosure. Instead, Peirsman and Sarah Van Hove accepted Afa's offer by remaining at the meeting, asking questions concerning the Flair production process, and receiving Afa's proprietary information.

58. Peirsman and Van Hove's actions in accepting disclosure of Afa's proprietary information bound InBev contractually to only use that information to consider a business partnership with Afa and precluded InBev from using or disclosing Afa's proprietary information.

59. Defendants breached their agreement with Afa by disclosing the information they learned at the meeting relating to the use of a release agent and by using this information for their own commercial benefit and not in furtherance of any business venture with Afa.

60. Afa has been injured by Defendants' breach of contract by being deprived of its proprietary information and by having this information unlawfully used by Defendants without permission.

WHEREFORE, Petitioners Afa Dispensing Group B.V. and Dispensing Technologies B.V. respectfully request that this Court render judgment in favor of them and against Defendants:

- (a) awarding Petitioners such damages as are fair and reasonable in an amount to be proven at trial but in excess of Twenty-Five Thousand Dollars (\$25,000.00);
- (b) awarding Petitioners punitive damages equal to One Hundred Fifty Million Dollars (\$150,000,000.00);
- (c) permanently enjoining Defendants from using Afa's release agent proprietary information in connection with any bag-in-bottle product;
- (d) awarding Petitioners' attorneys' fees and costs incurred in prosecuting this lawsuit; and
- (e) granting such other and further relief as this Court deems just and proper.

Respectfully submitted,

GUILFOIL PETZALL & SHOEMAKE, L.L.C.

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