

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN

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S.C. JOHNSON & SON, INC.,

Plaintiff,

v.

Case No. 16-CV-244

MINIGRIP, LLC,

Defendant.

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**SEVENTH CIRCUIT RULE 3(c) DOCKETING STATEMENT**

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**District Court Jurisdiction**

The district court in this matter has subject matter jurisdiction pursuant to 28 U.S.C. § 1332. Plaintiff S.C. Johnson & Son, Inc. ("SCJ") and defendant Minigrip, LLC ("Minigrip") are citizens of different states. SCJ is a citizen of Wisconsin because it is incorporated under the laws of the State of Wisconsin and its principal place of business is in Wisconsin. Minigrip is a limited liability company organized under the laws of the State of Delaware and maintains its principal place of business in Texas. Thus, it is a citizen of Delaware and Texas. Pitt Plastics, Inc. is Minigrip's sole member. It is incorporated under the laws of the State of Kansas and its principal place of business is in Kansas.

In the district court, SCJ alleged that Minigrip breached two contracts between the parties: the "Project Lincoln Confidential Disclosure and License Agreement," which became effective July 24, 2013 (hereinafter the "License Agreement"), and a Contract Manufacturing Agreement entered into in the Spring of 2015 but made effective as of October 1, 2012 (hereinafter the "Manufacturing Agreement"). The License Agreement and Manufacturing Agreement were entered into in connection with the re-launch of SCJ's Ziploc® brand pinch-

and-seal reclosable plastic bags. SCJ has invested over \$30 million in research, development, and modifications to its own manufacturing processes to make the new style Ziploc® brand bags. Prior to entering into the Manufacturing Agreement, SCJ had spent approximately \$600,000 to \$900,000 in consumer research studies alone.

After making these significant investments, along with untold time and energy to restage its gold-standard Ziploc® brand through a top-secret program it called "Project Lincoln," SCJ sought partners to assist in manufacturing the new bags (SCJ did not have the manufacturing capacity to make all of the bags the market demanded). One of those manufacturing partners was Minigrip.

Through the License Agreement and Manufacturing Agreement, Minigrip made three contractual promises SCJ has alleged in this case were breached: (1) Minigrip agreed not to make or sell the Project Lincoln bags or a "similar product" for or to anyone else; (2) Minigrip agreed not to use any of the equipment SCJ owned that was installed at Minigrip's facility in Thailand to make any products other than the Project Lincoln bags; and (3) Minigrip agreed not to use any of SCJ's "Confidential Information" related to Project Lincoln for any purpose other than to make the Project Lincoln bags. The parties also agreed that, if Minigrip breached any of these promises, that SCJ could pursue equitable relief, including specific performance and injunctive relief, in federal court (damages claims were to be directed to arbitration).

In December 2015, less than a year after SCJ re-launched the Ziploc® brand in stores through the Project Lincoln bags, SCJ noticed similar bags made by Minigrip on the store shelves of mass retailer Meijer, Inc. (the "Meijer Bags"). There were three primary new features to a Project Lincoln bag, and the Meijer Bags copied two of them. The Project Lincoln bags had full-colored lips, with different colors depending on whether the bags were sandwich/snack bags

(green), storage bags (red/magenta), or freezer bags (blue). The bags also had a "color differential" feature; one lip of the bag was a different color intensity from the other lip of the bag. And the bags had a file-folder-style tab cut into one of the lips of the bag (the "Project Lincoln tab"). The bags that Minigrip made for and sold to Meijer had the same colored lip feature, with the same color-coding by bag type, and also had a color differential between the lips of the bag (one lip colored and one clear). It did not have the Project Lincoln tab, but Minigrip specifically designed a similar "tab" feature for Meijer (and now others) through a combination of an increased lip offset and color differential between lips.<sup>1</sup>

During 2016, Minigrip made millions of dollars in sales to Meijer of the bags that were made and sold in violation of the "similar product" exclusivity clause.<sup>2</sup> Moreover, after SCJ initiated this litigation requesting specific performance and a permanent injunction to preclude Minigrip from manufacturing the Meijer Bags, SCJ learned in early March 2017 that Minigrip was imminently planning to launch the same product with its other largest customers, including mass retailers, Walmart and Target, and the grocer Aldi (among others). This mass expansion would result in millions of dollars of additional sales, some of which would otherwise go to SCJ.

Due to the scope of the investment by SCJ that it seeks here to protect and the amount of Minigrip sales at issue as a result of the equitable relief that SCJ sought in this matter, the amount in controversy exceeds \$75,000, and the district court had subject matter jurisdiction pursuant to 28 U.S.C. § 1332. *See, e.g., Uhl v. Thoroughbred Tech. & Tel., Inc.*, 308 F.3d 978, 983–84 (7th Cir. 2002).

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<sup>1</sup> Minigrip personnel specifically referred to this feature as a "tab" or "color tab" to Meijer and internally.

<sup>2</sup> And, at the time that the complaint was filed, Minigrip had sold more than \$75,000 of the Meijer Bags and intended in the future to sell in excess of \$75,000 of the Meijer Bags. Dkt. 9, ¶ 10.

### Appellate Court Jurisdiction

SCJ filed the complaint in this action on April 15, 2016. On February 13, 2017, Minigrip filed a motion for summary judgment as to all claims in the case (*see, e.g.*, Dkt. 44, 50, 51) and also filed a motion to exclude SCJ's experts under *Daubert* (*see* Dkt. 43). SCJ filed an extensive opposition to Minigrip's summary judgment motion on March 13, 2017 (*see, e.g.* Dkt. 65, 69, 70) and the *Daubert* motion (Dkt. 71), and discovery continued in the case throughout April, May, and June of 2017.

As noted above, in the middle of summary judgment briefing, SCJ learned of Minigrip's imminent plans to make and sell the same bag that violated the exclusivity provisions of the License Agreement and Manufacturing Agreement to other significant players in the industry. Consequently, on April 19, 2017, SCJ filed a motion for entry of a preliminary injunction to preserve the *status quo* and preclude Minigrip from selling the "similar product" to customers other than Meijer pending a trial on the merits. Dkt. 96, 97.

These and other motions remained pending as the parties prepared for the final pre-trial conference on July 12, 2017, and the trial scheduled to begin on July 24, 2017. On July 7, 2017, the district court entered the following text-only order (hereafter, the "Order"): "Defendant Minigrip, LLC's motion for summary judgment, Dkt. [44], is GRANTED, with a full opinion to follow. All other motions are DENIED. All pending deadlines and the trial are taken off the calendar. Signed by District Judge James D. Peterson on 7/7/2017. (jls)." Dkt. 152.

The Order constitutes a final order in the case and a denial of SCJ's motion for a preliminary injunction. Consequently, the Seventh Circuit Court of Appeals has jurisdiction pursuant to 28 U.S.C. § 1291 because the Order is a "final decision" reflecting the district court's decision to dispose of all claims against all parties in the case, with the issuance of the district

court's reasoning for the decision to follow. *See Dzikunoo v. McGaw YMCA*, 39 F.3d 166, 167 (7th Cir. 1994). SCJ need not wait for the full opinion and the entry of judgment before appealing the final decision, and has chosen not to do so in light of the ongoing harm being caused by Minigrip's full-scale entry into the market with the directly competing, similar product.<sup>3</sup> *See id.* In addition, although the denial of SCJ's motion for preliminary injunction is also appealable as part of the "final decision," *see Retired Chicago Police Ass'n v. City of Chicago*, 7 F.3d 584, 608 (7th Cir. 1993), the Seventh Circuit Court of Appeals has jurisdiction independently over that aspect of the Order denying SCJ's motion for preliminary injunction pursuant to 28 U.S.C. § 1292(a)(1).

SCJ is cognizant of Seventh Circuit Rule 50, which requires district court judges to give reasons either orally on the record or by written statement when the court grants summary judgment or denies a motion for preliminary injunction. Circuit Rule 50 also provides that "[t]he court urges the parties to bring to this court's attention as soon as possible any failure to comply with this rule." Accordingly, SCJ brings this lack of reasoning to the Seventh Circuit Court of Appeals' attention so that any appropriate action may be taken and the appeal can proceed in an orderly and timely manner with the benefit of the district court's reasoning. *See United States v. Mobley*, 193 F.3d 492, 494–95 (7th Cir. 1999).

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<sup>3</sup> The Seventh Circuit in *Dzikunoo* stated the appellant "can appeal from a final decision whenever entered, or he can wait until the entry of the Rule 58 judgment. In this case the appellant decided not to wait, but instead to appeal from the final decision of June 29. That was his privilege." *Dzikunoo*, 39 F.3d at 167.

**Counsel of Record**

SCJ's counsel of record for this appeal is Attorney Mark A. Cameli. Attorney Cameli's post office address, email address, and telephone number are set forth below.

Dated this 4th day of August, 2017.

*s/ Ryan S. Stippich*

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