

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA, CENTRAL DIVISION**

CASE NUMBER: 4:14-cv-00203-SMR-CFB

Larry Ray Johnson

plaintiff

Yarn Tree Designs, Inc.

involuntary plaintiff

vs.

S C Johnson & Son, Inc

defendant

**BRIEF IN SUPPORT OF PLAINTIFF'S AMENDED COMPLAINT FOR DECLARATORY
JUDGMENT**

CHANGES MADE IN AMENDED COMPLAINT FOR DECLARATORY JUDGMENT

As required by this court's in its September 24, 2014 ruling, Plaintiff has filed an amended complaint for declaratory judgment adding Yarn Tree Designs, Inc. (YTD) as a plaintiff. YTD, having declined to willingly join as a plaintiff, has been added as an involuntary plaintiff.

The following changes have been made to the original request for declaratory judgment:

1. Added Yarn Tree Designs, Inc. as an involuntary plaintiff.
2. Clarified the alternate spellings of ziplock. It now reads: Ziplock. A type of resealable plastic bag with interlocking plastic grooves and ridges. Includes, but not limited to, these phonetically identical variations in spelling: ziplock, zip lock, zip-lock, and ziploc.
3. Added copies of letters between the US Department of Commerce Patent Office and Dow Chemical. The letters were discovered after the original filing. These letters are Exhibit 7.
4. Added a request for relief that Plaintiff's use of the term ziplock and its alternate spellings does not constitute "counterfeiting, unfair competition, and false designation of origin." This was an oversight on the original filing.

BRIEF IN SUPPORT OF PLAINTIFF'S AMENDED COMPLAINT FOR DECLARATORY JUDGMENT

It is ironic that one of most articulate defenses of fair use comes from a case involving SCJ almost 20 years ago. The US Court Of Appeals, 2nd Circuit in Car Freshener Inc vs. S C Johnson, Inc (1995), in a ruling that sided with SCJ, stated:

This action for trademark infringement involves the principle that the public's right to use language and imagery for descriptive purposes is not defeated by the claims of a trademark owner to exclusivity.

It is a fundamental principle marking an outer boundary of the trademark monopoly that, although trademark rights may be acquired in a word or image with descriptive qualities, the acquisition of such rights will not prevent others from using the word or image in good

faith in its descriptive sense, and not as a trademark. See *Abercrombie & Fitch Co. v. Hunting World, Inc.*, 537 F.2d 4, 12-13 (2d Cir.1976); *Sunmark, Inc. v. Ocean Spray Cranberries, Inc.*, 64 F.3d 1055, 1058 (7th Cir.1995); *United States Shoe Corp. v. Brown Group, Inc.*, 740 F.Supp. 196, 198-99 (S.D.N.Y.1990); *Holzwarth v. Hulse*, 14 N.Y.S.2d 181, 181 (Sup.Ct.1939); *Johnson & Johnson v. Seabury & Johnson*, 67 A. 36, 38 (N.J.1907); Restatement (Third) of Unfair Competition § 28 (1995); 3A Louis Altman, Callmann on Unfair Competition, Trademarks and Monopolies § 21.24 (4th ed. 1983); Margreth Barrett, Intellectual Property 760-61 (1995). The principle is of great importance because it protects the right of society at large to use words or images in their primary descriptive sense, as against the claims of a trademark owner to exclusivity. See *U.S. Shoe*, 740 F.Supp. at 198-199. This common-law principle is codified in the Lanham Act, which provides that fair use is established where “the use of the name, term, or device charged to be an infringement is a use, otherwise than as a mark, . which is descriptive of and used fairly and in good faith only to describe the goods or services of . [a] party, or their geographic origin.” 15 U.S.C. § 1115(b)(4).

Is ziploc generic?

Both this court and SCJ have expressed a desire to eliminate the likelihood of multiple suits on essentially the same question. A ruling in plaintiff's favor will almost certainly give rise to other suits from other companies that that been threatened by SCJ. I would invite this court to consider whether the term ziplock has evolved past simply being descriptive and is now a generic term. That is, is ziplock simply a description of a characteristic of a plastic bag, or is "ziplock bag" a category or class of plastic bags.

Anti-Monopoly, Inc. v. General Mills Fun Group, 684 F.2d 1316 (2nd appeal) (United States Court of Appeals, 9th Circuit. 1982)

A word used as a trademark is not generic if "the primary significance of the term in the minds of the consuming public is not the product but the producer." Id. at 302. "[W]hen a trademark primarily denotes a product, not the product's producer, the trademark is lost." Id. at 301. A registered mark is to be cancelled if it has become "the common descriptive name of an article," 15 U.S.C. § 1064(c), and no incontestable right can be acquired in such a mark. 15 U.S.C. § 1065(4). We said "Even if only one producer — Parker Brothers — has ever made the MONOPOLY game, so that the public necessarily associates the product with that particular producer, the trademark is invalid unless source indication is its primary significance."

signed October 1, 2014

Larry Ray Johnson, Plaintiff

3221 Magnolia Circle, Ames, IA 50014

phone 515-232-3121

fax 515-232-0789

email: LNBJOHNSON@hotmail.com

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA, CENTRAL DIVISION**

CASE NUMBER: 4:14-cv-00203-SMR-CFB

Larry Ray Johnson
3221 Magnolia Circle
Ames, IA 50014

plaintiff

Yarn Tree Designs, Inc.
117 Alexander Avenue
Ames, IA 50010

involuntary plaintiff

vs.

S C Johnson & Son, Inc
1525 Howe Street
Racine, WI 53403

defendant

PLAINTIFF'S AMENDED COMPLAINT FOR DECLARATORY JUDGEMENT

TO THE HONORABLE JUDGE OF THIS COURT:

1. Plaintiff Larry Ray Johnson ("Johnson" or "Plaintiff") respectfully files this AMENDED complaint for declaratory judgement against Defendant S C Johnson & Son, Inc ("SCJ" or "Defendant")

PARTIES

2. Plaintiff: Larry Ray Johnson, 3221 Magnolia Circle, Ames, Iowa 50014 Phone 515-232-3121. Plaintiff is a resident of this district. Plaintiff is owner of the URL ziplockplasticbags.com.

3. Involuntary Plaintiff: Yarn Tree Designs, Inc. Yarn Tree Designs, Inc. (YTD). YTD is owned by Plaintiff and his wife, Sarah Beth Johnson.

4. Defendant: S C Johnson & Son, Inc., 1525 Howe Street, Racine, WI 53403 Phone 262-260-2000. S C Johnson & Son, Inc. (SCJ) is a privately owned company. SCJ is one of the world's largest sellers of chemical products for the consumer market.

NATURE OF THE ACTION

5. SCJ has asserted that Plaintiff's use of the terms ziplock, zip-lock, and zip lock (referred to collectively as "ziplock") infringes on SCJ's "Ziploc" trademark. SCJ has demanded that Plaintiff cease using the descriptive term ziplock to describe a type of resealable plastic bag with interlocking plastic grooves and ridges. SCJ has demanded that Plaintiff turn over ownership of the website URL ziplockplasticbags.com to SCJ. SCJ has on several occasions threatened legal action if Plaintiff refuses to follow these demands.

6. Plaintiff asserts that his use of the term ziplock is not as a trademark. Plaintiff asserts that his use of the term ziplock is descriptive only, and its use is allowed as fair use.

7. Plaintiff is asking for a declaratory judgement that the use of the term ziplock and its alternate spellings to describe a type of resealable plastic bag with interlocking plastic grooves and ridges is allowed under 15 USC § 1115(b)4 and 15 USC § 1125(c)3a.

8. SCJ as asserted that Plaintiffs have engaged in "counterfeiting, unfair competition, and false designation of origin." Plaintiff denies this. (see EXHIBIT 1, page 2)

JURISDICTION AND VENUE

9. This request is made under 28 USC § 2201 and 28 USC § 2202.
10. This court has jurisdiction because this case involves 15 USC § 1125 and 28 USC § 1338, arising out of interstate trade.
11. Venue is proper under 28 USC § 1391 in that the defendant is believed to sell products in this district and the Plaintiff is a resident of this district. In addition, SCJ has sent two cease and desist letters to Plaintiff in Ames, Iowa.

DEFENDANT'S ACTIONS CREATING ACTUAL CONTROVERSY

12. SCJ has written and telephoned Plaintiff on multiple occasions accusing the Plaintiff of infringing on the SCJ's Ziploc trademark. SCJ has threatened legal action if Plaintiff does not cease using the term ziplock to describe a type of resealable plastic bag with interlocking plastic grooves and ridges. SCJ has threatened legal action if Plaintiff does not turn over ownership of the website URL ziplockplasticbags.com to SCJ.
13. The correspondences from SCJ's attorneys are so carelessly worded that is impossible to say with certainty which threats of legal action are directed at Yarn Tree Designs Inc., and which are directed at Larry Ray Johnson (an individual). Indeed, in places the target of the threats appears to drift back and forth in the same sentence. See EXHIBIT 1 for copies of correspondence.
14. On more than one occasion (in the same sentence, and with different attorneys writing) SCJ has demanded the removal of the descriptive terms ziplock from the Yarn Tree Designs Inc. catalog and the website yarntree.com, and the transfer of ownership of the website URL ziplockplasticbags.com to SCJ. The Yarn Tree Designs Inc. catalog and the website

yarntree.com web site are owned by Yarn Tree Designs, Inc. The website URL

ziplockplasticbags.com is owned by Larry Ray Johnson (as an individual). See EXHIBIT 2.

15. Ownership of any website address can easily be found by doing a simple WHOIS query in any web browser. As it is highly unlikely that more than one attorney would demand the transfer of an asset without first determining who is the owner of that asset, Plaintiff must assume that Larry Ray Johnson (as an individual) would be named as a defendant in any lawsuit for trademark infringement brought by SCJ.

DEFINITION OF TERMS

16. Ziplock. A type of resealable plastic bag with interlocking plastic grooves and ridges. Includes, but not limited to, these phonetically identical variations in spelling: ziplock, zip lock, zip-lock, and ziploc.

17. Ziploc. A trademark for ziplock plastic bags first registered by Dow Chemical. Original application was filed with the US Patent and Trademark Office on Sept 9, 1968. Registration granted Feb 17, 1970. First use in commerce was claimed to be Nov 6, 1962. In 1998 ownership of the trademark was transferred to S C Johnson Home Storage Inc. In 2009 ownership was transferred to S C Johnson & Son, Inc.

18. Internet. The international computer network of interoperable packet switched data networks. Sometimes referred to as the World Wide Web.

19. URL. A uniform resource locator, abbreviated as URL (also known as web address, particularly when used with HTTP), is a specific character string that constitutes a reference to a resource on the internet.

20. Search engines. Software systems that associate search words entered by a user looking for information with websites on the internet that contain the words of the query. To

accomplish this linking, search engines must be backed by databases that hold words that websites use as linked lists. Google, Yahoo, and Bing are three popular search engines.

STATEMENT OF THE FACTS

21. In August 2013 Plaintiff received a letter from SCJ demanding that Plaintiff stop using the term ziplock, transfer the website URL ziplockplasticbags.com to SCJ, plus other demands. A second letter was received in September 2013 from IPHorgan, a law firm working for SCJ. Plaintiff was also contacted by phone at least four times by three different legal representatives of SCJ, as well as emails from SCJ. All contacts made threats of legal action if Plaintiff did not act as demanded. See EXHIBIT 1
22. SCJ has claimed that Plaintiff has acted illegally and engaged in "counterfeiting, unfair competition, and false designation of origin." See EXHIBIT 1.
23. SCJ has claimed that Plaintiff has acted illegally in using "exact reproductions and near reproductions of SCJ's federally registered trademarks..." See EXHIBIT 1.
24. SCJ has claimed that Plaintiff has acted illegally in registering the domain name ziplockplasticbags.com in that the URL "domain name wholly contains (SCJ's) ZIPLOC mark." See EXHIBIT 1.
25. SCJ has claimed that Plaintiff has acted illegally "as the two-word ZIP LOCK is phonetically identical to (SCJ's trademark) ZIPLOC." See EXHIBIT 1.
26. The ziplock style of bag in question is not, so far as Plaintiff is able to determine, covered by any current patents. SCJ has not raised the issue of patents in any discussions. This style of plastic bag is manufactured by numerous companies.

GROUND FOR DECLARATORY RELIEF

27. Plaintiff is seeking declaratory relief based on 15 USC § 1115(b)4 which allows the use of a term "which is descriptive of and used fairly and in good faith only to describe the goods..."; and 15 USC § 1125(c)3A which allows the use of a trademark in "advertising or promotion that permits consumers to compare goods or services."

BALANCING CUSTOMER CONFUSION AND FAIR USE

28. The US Supreme Court has ruled that a party raising the defense of fair use to a claim of trademark infringement in 15 U.S.C. § 1115(b)(4) does not have the burden to negate any likelihood that the practice complained of will confuse consumers about the origin of the goods or services affected. Some confusion is expected and allowable. The level of consumer confusion allowable is left to the trial judge to decide based on all the facts. In making this determination, the Plaintiff asks this court to take the following into consideration:

29. Plaintiff has not used type fonts, colors, or graphics that imitate SCJ's packaging or trademark in either advertising or packaging. Plaintiff has not used type fonts, colors, or graphics that would likely confuse the consumer. Plaintiff has not used the term ziplock as a trademark. See EXHIBIT 3.

30. Some confusion is to be expected because Dow Chemical (the original registrant of the Ziploc trademark) chose to register a trademark that was phonetically identical to the descriptive term ziplock. The descriptive term ziplock being in general use BEFORE Dow Chemical filed to register the trademark Ziploc in 1968. The rights to the Ziploc trademark were then sold to SCJ in 1997. EXHIBIT 4 shows examples of the use of the descriptive term ziplock prior to the registration of the trademark Ziploc.

31. The original trademark application was rejected on December 10, 1968 in part because the examiner felt that ziploc was too descriptive to be registered as a trademark. The US Department of Commerce Patent Office rejected Dow Chemical's original trademark application for ZipLoc in part "on the ground that the term is merely descriptive of the goods."... "Furthermore, the term is considered to be so highly descriptive of the goods that it is incapable of distinguishing applicant's goods from the goods of others." EXHIBIT 7.

32. Dow Chemical, in their response to the December 10, 1968 letter, admitted that ziploc (spelled without the k) is a descriptive word when they argued that ziploc "is not merely descriptive." EXHIBIT 7

33. SCJ has contributed to the confusion by not providing consumers with an alternate term for this style of bag closure. SCJ packaging shows "Ziploc brand bags". Although it is true that a ziplock bag is a "bag", the fact that there are so many types of bags requires buyers and sellers to seek a more precise term than "bag".

34. There is not a widely accepted single word, other than ziplock, which clearly and uniquely describes a resealable plastic bag with interlocking plastic grooves and ridges. There are many types of resealable and reclosable plastic bags that do not use a ziplock style closure. For example: toothed zipper closure, slider closer, hook and loop closure, drawtop closure, string and grommet closure, adhesive closure, wire crimp closure, clip closure, magnetic closure, and spring closure to name a few. See EXHIBIT 5 showing use by SCJ on packaging.

35. SCJ is claiming that the ownership of the trademark Ziploc grants SCJ exclusive use of the descriptive and generic term ziplock to describe a type of resealable plastic bag with interlocking plastic grooves and ridges. Gaining exclusive use the term ziplock by trademark registration would not be possible because of 15 USC § 1052 (e)(1).

36. The Plaintiff and other businesses selling ziplock bags will be harmed financially if SCJ is granted exclusive use of the word ziplock because of the reduced ability to reach potential buyers.

37. Consumers who use the internet to search for suppliers of bags with a ziplock style closure will be harmed if the Plaintiff and other businesses are prohibited from using the descriptive term ziplock on their websites. Internet search engines take the word(s) that the potential buyer enters, and returns a list of links to pages that contain those words. In general, each web page listed in the results for a search will contain the word(s) in the search. If only SCJ is allowed to use the term ziplock on the internet, then a consumer searching for "ziplock bags" will only find web pages controlled by SCJ. Consumers will be deprived of the opportunity to easily shop and compare products from a variety of sources.

EXAMPLES OF USE OF ZIPLOCK AS A DESCRIPTIVE TERM FOR A TYPE OF PLASTIC BAG, AND NOT AS THE SOURCE OF THE PRODUCT

38. The term ziplock is a descriptive term that refers to a type of resealable plastic bag with interlocking plastic grooves and ridges, and does not refer to SCJ as the producer.

39. There are literally millions of examples of the use of ziplock to describe a resealable plastic bag with interlocking plastic grooves and ridges without referring to a particular source of the product. EXHIBIT 4 gives examples of the use of the descriptive term ziplock prior to the year 1968. EXHIBIT 6 gives current examples of the use of the descriptive term ziplock as found in a variety of sources.

CAUSE FOR ACTION FOR DECLARATORY RELIEF

40. Plaintiff maintains that his use of the descriptive term ziplock (and alternate spellings) is fair use. Defendant maintains that Plaintiff's use is illegal.

41. Defendant's numerous threats of legal action have created an actual controversy.
42. Plaintiff seeks a declaratory judgement that the use of the descriptive term ziplock is legal and does not infringe on or dilute SCJ's trademark.
43. Plaintiff seeks a declaratory judgement that the use of the descriptive term ziplock in a web URL is legal and does not infringe on or dilute SCJ's trademark.

REQUEST FOR RELIEF.

44. Plaintiff respectfully requests that this court rule and order:
 - A. That Plaintiff's use of the descriptive term ziplock and its alternate spellings is fair use and does not infringe on or dilute SCJ's trademark.
 - B. That Plaintiff's use of of the descriptive term ziplock in the web address ziplockpasticbags.com is fair use and does not infringe on or dilute SCJ's trademark.
 - C. That Plaintiff's use of the term ziplock and its alternate spellings does not constitute "counterfeiting, unfair competition, and false designation of origin."
 - D. That the court award the Plaintiff reasonable fees and costs, and such further relief to which Plaintiff may be entitled.

_____ signed October 1 , 2014

Larry Ray Johnson, Plaintiff

3221 Magnolia Circle, Ames, IA 50010

phone 515-232-3121

fax 515-232-0789

email: LNBJOHNSON@hotmail.com

Exhibit 1

Larry Ray Johnson vs SC Johnson, Inc

Correspondence from SCJ

Larry Ray Johnson.

3221 Magnolia Circle, Ames, IA 50010

phone 515-232-3121

fax 515-232-0789

email: LNBJOHNSON@hotmail.com

Melinda Mann Mitchell
mmitche@scj.com

August 7, 2013

VIA FEDERAL EXPRESS

Mr. Larry Johnson
Yarn Tree / Ziplockplasticbags.com
117 Alexander Avenue
Ames, IA 50010

Re: Notice of Infringement of S. C. Johnson's ZIPLOC® Trademarks

Dear Mr. Johnson

I am writing with respect to your infringement of S. C. Johnson & Son, Inc.'s ("SCJ") federally registered ZIPLOC® trademark. As you likely know, SCJ is one of America's oldest and best known consumer products company and owns a host of brands that have become household names around the globe. Specifically, SCJ has used the ZIPLOC® trademark for nearly fifty years in connection with plastic bags and a wide variety of home storage products. Today, the ZIPLOC® trademark is one of SCJ's most popular and enduring brands. I enclose a list of SCJ's ZIPLOC® trademarks registered and pending in the United States Patent & Trademark Office ("USPTO").

SCJ invests substantially in the promotion and protection of its ZIPLOC® trademarks so it carefully monitors the Internet and relevant markets for infringement and unfair competition. SCJ recently discovered you are manufacturing, promoting and selling bag and packaging products using a variation of the ZIPLOC® trademark ("zip lock") at your websites at www.ziplockplasticbags.com, the domain name of which is also an infringement of SCJ's trademark rights. I enclose a copy of a print screen from your websites that shows infringement of SCJ's ZIPLOC® trademarks. As you well know, these ZIPLOC products are neither manufactured nor authorized by SCJ.

Your unauthorized use of SCJ's ZIPLOC® trademarks infringes SCJ's federal trademark rights and constitutes counterfeiting, unfair competition and false designation of origin. Specifically, you use exact reproductions and near replicas of SCJ's federally registered trademarks in connection with bag and packaging products that are highly related to those products that SCJ sells under its ZIPLOC® trademarks. The Lanham Act prohibits the use of a registered trademark or any other term and any false designation of

Page 2

origin that is likely to confuse consumers about a product's source, affiliation or sponsorship. 15 U.S.C. § 1114(1)(a) and 15 U.S.C. §1125 (a)(1)(A). Your unauthorized use of SCJ's ZIPLOC® trademarks does precisely that. Considering that the trademarks are identical and the products highly related, consumer confusion is more than likely, it is inevitable.

Your multiple Lanham Act violations entitle SCJ to a variety of remedies under United States federal laws including your profits for products sold under the "zip lock" trademark, any damages sustained by SCJ and the costs for bringing an infringement action. If your infringement and other Lanham Act violations continue in spite of SCJ's warning, your conduct will be considered willful and intentional, subjecting you to further liability for punitive damages and SCJ's attorneys' fees. 15 U.S.C. § 1117(1)(b).

SCJ demands that you immediately cease all use of the ZIPLOC® trademark and any other confusingly similar trademark (including, but not limited to, zip lock) on your website and all third-party distributor websites, in Internet domain names, meta tags and key word advertising and on all product packaging, labels and tags and any other promotional or advertising material, including the immediate transfer of the www.ziplockplasticbags.com domain name. SCJ prefers to settle this matter quickly and amicably, but will aggressively enforce its intellectual property rights against you.

We need your written assurances no later than **August 21, 2013** that it will comply with the terms of this letter. If we do not hear from you by that time, SCJ will move forward with all available remedies to stop your infringement.

Please call me, or have your attorney call me, to discuss this matter in further detail.

Sincerely,

S. C. Johnson & Son, Inc.

A handwritten signature in black ink, appearing to read "Melinda Mitchell", written in a cursive style.

Melinda M. Mitchell, Corporate Counsel



HORGAN

Intellectual Property Lawyers

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September 17, 2013

Yarn Tree / Ziplockplasticbags.com
117 Alexander Avenue
Ames, Iowa 50010

Via: Email & Courier
800 247 3952/515 232 3121
info@yarntree.com

Attn: Mr. Larry Johnson

Re: S.C. Johnson & Son, Inc.
-and-
Unauthorized Use of:
ZIPLOC Trademark
In the United States
Our Ref: SCJ 5745 US (9)

Dear Mr. Johnson:

We represent S.C. Johnson & Son, Inc. ("SCJ") in intellectual property matters. Though we understand there has been some correspondence between SCJ and your organization, we ask that all further correspondence regarding this matter be directed to the undersigned.

Our client owns a number of trademark registrations and applications in the United States and throughout the world for the mark ZIPLOC for use in connection with plastic bags and other products. These registrations include, but are not limited to, Reg. No. 886112 for ZIPLOC in the United States. The ZIPLOC mark has been used in the United States since 1962. As a result of these fifty-plus years of use and extensive marketing, the ZIPLOC mark has become well known and is recognized by consumers as indicating a high quality product from our client. This mark represents a very valuable asset to SCJ, one which it will take all reasonable steps to protect.

We have been informed by SCJ that you have registered the domain ziplockplasticbags.com and are operating a business at that website that offers what appear to be re-sealable plastic bags of the type identified in our client's ZIPLOC trademark registration. This domain name wholly contains our client's ZIPLOC mark. The website itself also mentions ZIP LOCK in a number of places. That your website displays ZIP LOCK as two words and with a different spelling is entirely irrelevant as the two-word ZIP LOCK is phonetically identical to our client's ZIPLOC. Accordingly, the mark is confusingly similar. Additionally, the goods available through the domain appear to be re-sealable plastic bags which are identical to the goods identified in our client's trademark registrations and which it brands ZIPLOC. As identical goods, these products are directly competitive with our client's own ZIPLOC goods and likely marketed to the same relevant consumer group. We also understand that not only has SCJ not authorized this use of the functionally identical ZIP LOCK, but that since at least as early as August 6, 2013 SCJ has demanded your organization cease all use of ZIP LOCK, take down the ziplockplasticbags.com domain and transfer ownership of same to SCJ.

Yarn Tree / Ziplockplasticbags.com

Attn: Mr. Larry Johnson

September 17, 2013

Page 2 of 2

We are in receipt of your email of August 9, 2013 to Ms. Melinda Mitchell arguing that "the term ZIPLOCK has long ago come into common use in the English language." Your argument is entirely misplaced in this matter. Not only has our client's ZIPLOC mark achieved incontestable status, but as noted above, the mark has become widely recognized among consumers as identifying our client's goods. Further, that a third-party source such as a dictionary entry might offer a definition of a term is entirely irrelevant to whether that term is indeed a protectable trademark. See *Jesco Imports v. O'Neill*, Opposition No. 92225853 (TTAB April 23, 2007); *In re Minnetonka, Inc.*, 212 USPQ 772, 778 (TTAB 1981). Here, your unfounded claim that this term has become generic does not detract from the confusing similarity in marks and identity of goods at issue.

In view of the functional identity and confusing similarity of marks and identity of products, your company's unauthorized use of ZIP LOCK on re-sealable plastic bags is likely to cause consumers to be confused, mistaken or deceived as to the source and origin of such goods. Due to SCJ's strong market presence and distinctiveness, it is highly likely that someone seeing your ZIP LOCK branded bags would believe that those goods are manufactured or otherwise sponsored by SCJ when in fact they are not. Therefore, your use of a functionally identical ZIP LOCK mark in connection with goods that serve the same purpose and function as our client's own goods likely violates the United States Lanham Act, 15 U.S.C. § 1114 and 1125(a). Further, given your awareness of SCJ's rights in this matter, continued use of the confusingly similar ZIP LOCK could likely be considered willful and intentional infringement, potentially exposing your organization to punitive damages and claims for attorneys' fees. 15 U.S.C. § 1117(1)(b). Also, such unauthorized use may also constitute a deceptive business practice and unfair competition in violation of state law.

As you know, SCJ wishes to avoid a conflict in this matter. We presume that in light of the foregoing facts you will wish to as well. Therefore, on behalf of SCJ, we hereby request your immediate written assurance that your organization will cease all current use and refrain from any future use of the term ZIP LOCK or any other such term confusingly similar to our client's ZIPLOC mark in the marketing of any goods like those available through the ziplockplasticbags.com website; immediately cease all sales of goods described as ZIP LOCK or anything confusingly similar thereto; take down the ziplockplasticbags.com domain and transfer ownership of same to our client.

If we do not receive this written confirmation as requested above within the next 10 business days, we will have no choice but to recommend to our client that it consider further action to protect its rights in this matter.

Very truly yours,



Mark A. Niede

MAN/vc

NOTE: Below are emails sent by attorneys for SCJ. This is not complete. Some emails have been lost. The remaining emails have been reformatted to save space.

Interspersed with the letters and emails have been phone calls with three attorneys representing SCJ. The dates and contents of the telephone conversation have not been included because a contemporaneous record was not created.

Dear Mr. Johnson,

Thank you for your prompt response to my letter. Unfortunately, your suggestion of adding a disclaimer regarding ownership of the ZIPLOC(R) brand will not satisfy my concern or the damage your misuse of ZIPLOC(R) will cause S.C. Johnson & Son, Inc. ("SCJ"). Your promotion and sale of competitive product using a confusingly similar form of the famous ZIPLOC(R) brand amounts to trademark infringement and is likely to cause consumer confusion in the marketplace.

The definition that you provided is not dispositive in this case. Indeed, ZIPLOC(R) is a famous, incontestable and federally registered brand as the result of long and continuous use and would be viewed as such by the relevant consumers. A clear example that this trademark is recognized as a brand can be found at the following dictionary reference:

<http://dictionary.reference.com/browse/ziploc>. Under standard trademark infringement analysis, the use of the identical brand used to sell the identical product with the addition of the letter "k" at the end, would undoubtedly amount to trademark infringement. Furthermore, your insistence on using an infringing formative of the ZIPLOC(R) brand is troubling considering the generic alternatives available, e.g., "zipper bags," "resealable bags," and "reclosable bags." I can come

to no other conclusion than that you intend to trade off the goodwill SCJ has developed over the years in the ZIPLOC(R) brand.

With all of this considered, I must respectfully request again that you cease all use of ZIPLOCK or any ZIPLOC(R) brand formative and that you immediately transfer your domain name to SCJ. If you choose to ignore my requests, we shall have no choice but to take further action to preserve our rights. If you would like to discuss further, I would be happy to arrange a conference call with you or your trademark counsel. In any event, I look forward to hearing from you no later than Friday, August 16, 2013.

Best regards,

Melinda Mitchell

Corporate Counsel

S. C. Johnson & Son, Inc.

1525 Howe Street, M.S. 077

Racine, WI 53403-2236

Phone: (262) 260-1946

Fax: (262) 260-4253

Email: mmmitche@scj.com

Telecommute number: (414) 962-0888

-----Original Message-----

From: Yarn Tree [<mailto:info@yarntree.com>]

Sent: Friday, August 09, 2013 12:22 PM

To: Mitchell, Melinda M.

Subject: yarn tree / ziplockplasticbags.com

Melinda Mitchell,

Thank you for your letter re: our website ziplockplasticbags.com. I set this site up to play with some features such as PayPal payments etc without damage to our main site. Sales and traffic have been underwhelming to say the least. I think sales have been about \$700 this year on this site.

I would be happy to add a disclaimer to the site ("these are not genuine ZipLoc circle R bags") if you like. However, the way search engines work this will just make the site come up when someone enters 'ziploc' into a computer search. Let me know if you would like this change made.

As far as removing the term "ziplock" I do not see any reason to do this. The term ziplock has long ago come into common use in the English language. You will find it in the Oxford and Merriam Webster dictionaries, just to name a few. <https://www.google.com/search?q=ziplock+dictionary>

If you wish to contact me I will be on vacation for about a month starting Aug 20.

Thanks,

Larry Johnson

Dear Mr. Johnson,

I provided the dictionary definition in response to what you perceived as important for this type of analysis. The fame of our ZIPLOC(R) trademark will be demonstrated by the more than 50 years of continuous and significant sales, as well as enormous time, effort and money invested in promoting and marketing the same. You will also find as this matter progresses that the number of search engine hits are irrelevant. For instance, a search for "yarn tree" resulted in over 19 million Google hits, but I trust you would be concerned if a competitor adopted the same name if it were selling the same products. Likewise, Apple Inc. would have difficulty in protecting its brands if the over 1 billion hits for "apple" on Google had any bearing on its trademark strength. The existence of a word does not render it available to all for use as a trademark for sales of competing products to the detriment of the earlier trademark owner.

I would be happy to arrange a call to discuss further. Otherwise, I will refer the matter to outside counsel for further handling.

Best regards,

Melinda

Melinda Mitchell

Corporate Counsel S. C. Johnson & Son, Inc. 1525 Howe Street, M.S. 077 Racine, WI

53403-2236 Phone: (262) 260-1946 Fax: (262) 260-4253 Email: mmmitch@scj.com

Telecommute number: (414) 962-0888

-----Original Message-----

From: Yarn Tree [mailto:info@yartree.com]

Sent: Friday, August 09, 2013 3:43 PM

To: Mitchell, Melinda M.

Subject: Re: yarn tree / ziplockplasticbags.com

Melinda Mitchell,

Sorry, but I disagree.

I found you link to <http://dictionary.reference.com/browse/ziploc> rather humorous. At the top of the page are rotating paid ads. When I went to the site both ads had the word 'ziplock' in the ad. This only underscores how the word ziplock has entered into common usage.

And when Google gives over 30 million pages for the word ziplock, you know it is in common usage.

Larry Johnson

Exhibit 2

Larry Ray Johnson vs SC Johnson, Inc

Screenshot showing that the website URL ziplockplasticbags.com is owned by Larry Johnson (an individual).

Larry Ray Johnson.

3221 Magnolia Circle, Ames, IA 50010

phone 515-232-3121

fax 515-232-0789

email: LNBJOHNSON@hotmail.com

WHOIS search results for:
ZIPLOCKPLASTICBAGS.COM
(Registered)

Domain Name: ZIPLOCKPLASTICBAGS.COM
Registry Domain ID: 1603605630_DOMAIN_COM-VRSN
Registrar WHOIS Server: whois.godaddy.com
Registrar URL: http://www.godaddy.com
Update Date: 2010-06-25 12:38:54
Creation Date: 2010-06-24 17:10:00
Registrar Registration Expiration Date: 2015-06-24 17:10:00
Registrar: GoDaddy.com, LLC
Registrar IANA ID: 146
Registrar Abuse Contact Email: abuse@godaddy.com
Registrar Abuse Contact Phone: +1.480-624-2505
Domain Status: clientTransferProhibited
Domain Status: clientUpdateProhibited
Domain Status: clientRenewProhibited
Domain Status: clientDeleteProhibited
Registry Registrant ID:
Registrant Name: Larry Johnson ←
Registrant Organization:
Registrant Street: 117 Alexander Ave
Registrant City: Ames
Registrant State/Province: Iowa
Registrant Postal Code: 50010
Registrant Country: United States
Registrant Phone: (515) 232-3121
Registrant Phone Ext:
Registrant Fax:
Registrant Fax Ext:
Registrant Email: lnjohnson@hotmail.com
Registry Admin ID:
Admin Name: Larry Johnson
Admin Organization:
Admin Street: 117 Alexander Ave
Admin City: Ames
Admin State/Province: Iowa
Admin Postal Code: 50010
Admin Country: United States
Admin Phone: (515) 232-3121
Admin Phone Ext:
Admin Fax:

Screenshot showing that the website URL ziplockplasticbags.com is owned by Larry Johnson (an individual). Registrant email is Plaintiff's personal email. Registrant organization is blank.

Exhibit 3

Larry Ray Johnson vs SC Johnson, Inc

pages 2, 3 Screenshot of website ziplockplasticbags.com
page 4 photo of packaging of ziplock bags sold on ziplockplasticbags.com

Larry Ray Johnson.

3221 Magnolia Circle, Ames, IA 50010

phone 515-232-3121

fax 515-232-0789

email: LNBJOHNSON@hotmail.com

Zip Lock Plastic Bags With He x
ziplockplasticbags.com

ZipLockPlasticBags.com

[Main page](#)
[Our other sites](#)
[Contact us](#)



Now You Can Buy As Few As 100 Zip Lock Hang Hole Bags

Perfect for when you only need a small quantity.

Most orders ship within 1 business day. Depending on the weight of your order we will ship either by First Class mail or FedEx Ground.

\$3.50 flat shipping charge per order (US only).

Size is measured below the zipper. The first number is the bag width, the second number is the length. For example, a 6"x9" zip lock bag will measure 6" side to side, and 9" from the zipper to the bottom of the bag). Bags are polyethylene, 2 mil (.002") thickness (this is probably the most common thickness for zipper bags).

The bags have 1/4" (.25") diameter hang hole punched in the middle of the flap (above the zipper) unless description says 'no hang hole'.

\$3.50 flat shipping charge per order (US only).

[View Cart](#)

Item Number	Size	Price Per 100 Bag	
2347	1.5 x 1.5 (no hang hole)	\$2.00	Add to Cart
7123	1.5 x 2 (no hang hole)	\$2.00	Add to Cart
7292	2 x 2 (no hang hole)	\$2.20	Add to Cart
8653	2 x 3	\$2.20	Add to Cart

[Office Depot® Online](#)
www.OfficeDepot.com
Save Time, Money, & The Environment Fast & Free Delivery 50+! Shop Now.

[Printed Paper Bags](#)

[Plastic Bags](#)

[ULINE - Gift Bags](#)

[Cellophane/BC Bags](#)

Screenshot of ziplockplasticbags.com (top half of page)

8055	2 x 3	\$2.20	Add to Cart
2388	2 x 5	\$2.50	Add to Cart
7048	2 x 8	\$3.00	Add to Cart
7070	2 x 12	\$4.00	Add to Cart
8657	3 x 4	\$2.50	Add to Cart
7062	3 x 5	\$2.80	Add to Cart
7293	3 x 6	\$3.00	Add to Cart
7294	4 x 4	\$2.80	Add to Cart
8662	4 x 6	\$3.20	Add to Cart
8655	5 x 8	\$3.70	Add to Cart
2000	5 x 12	\$6.00	Add to Cart
7298	6 x 6	\$3.60	Add to Cart
2395	6 x 8	\$4.80	Add to Cart
8792	6 x 9	\$4.80	Add to Cart
7299	6 x 10	\$5.90	Add to Cart
8659	8 x 10	\$6.10	Add to Cart
7667	9 x 12	\$8.70	Add to Cart
7637	10 x 13	\$10.50	Add to Cart
7922	12 x 15 (no hang hole)	\$12.25	Add to Cart
8987	18 x 24 (no hang hole. Package of 50 bags)	\$9.00	Add to Cart

Size is measured below the zipper. The first number is the bag width, the second number is the length. For example, a 6"x9" zip lock bag will measure 6" side to side, and 9" from the zipper to the bottom of the bag. The hang hole is 1/4" (.25") diameter punched in the middle of the flap (above the zipper). 2 mil (.002") thick.

[View Cart](#)

Screenshot of ziplockplasticbags.com (bottom half of page)



Picture of front and back of a package of 100 6" x 9" ziplock plastic bags with hang hole as sold on ziplockplasticbags.com site. Shipping is done by Yarn Tree Designs Inc. Print on top of left hand package is "zippouch" (the outer ziplock bag has perforated slit that the customer can tear open if desired so bags can be dispensed). The gray bar in the picture is actually purple. There can be some variation in packaging depending on which supplier Yarn Tree Designs, Inc. buys from, but this package is from the preferred vendor.

Exhibit 4

Larry Ray Johnson vs SC Johnson, Inc

Use of the descriptive term ziplock prior to Ziploc trademark registration.

These examples show that the trademark Ziploc was almost certainly derived from the descriptive term ziplock (rather than ziplock being derived from the trademark Ziploc).

Larry Ray Johnson.

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phone 515-232-3121

fax 515-232-0789

email: LNBJOHNSON@hotmail.com



1928 advertisement of zip lock closing pencil case. From Hammond Lake County Times (Indiana), September 4, 1928, page 3.

This shows that as early as 1928 consumers understood what a zip lock closure was. The advertiser did not feel that any addition description was required.

(photo not available)

From article in Pre-Pack-Age, Vol. 3, page 36, 1949. Published by American Trade Journals.
"...New Zip-Lock Pliofilm Bag. In a wide variety of sizes for Apples, Oranges, Lemons, Grapefruit, Onions, Potatoes. Also three other types of Pliofilm bags and pouches, all sizes, printed or plain. Milprint printed Cellophane. Acetate, and ..."

This is another example showing that the meaning of the descriptive term zip-lock was understood, so that no additional explanation was needed.

At least one-tenth of the women aged 45 to 54 in the U. S. are widows.

CARAVAN EAST
7707 CENTRAL N.E.

OFFICE SUPPLIES
1/2 PRICE LESS 10%
Still a Good Stock of Almost All Items

RING BINDERS
11 x 8 1/2", 2" ring, with label holder & without
11 x 8 1/4", 1 3/4" ring, black & slate duck also 1" ring
8 1/2 x 14", 3 ring 2"
8 1/2 x 5 1/2", 1" & 1 1/2"
8 1/2 x 5 1/2", 1" 8 1 1/2"
Sheets for these sizes

ANALYSIS PADS
11 x 8 1/2" 2 col. to 14 col.
14 x 8 1/2" 2 col. to 14 col.
10 1/4 x 14", 17 x 14",
25 1/2 x 14", 34 x 14"
various

ZIPLOCK BINDERS
5 1/2 x 8 1/2", up to 9 1/2 x 12",
8 1/2 x 14"

ALSO STORAGE BINDERS

Lots of Legal Size mimeograph paper, manila and pressboard file folders, school supplies — lots of narrow line note paper, and narrow line and plain spiral notebooks. Much, much more

SANDS ENTERPRISES
3812 Central SE 255-1558
CLOSED LABOR DAY

Save!

Hurry to Winrock Penn smart shopper! The sch Back-to-School! Selectio cotton fashions she'll w 9 p.m.). Girls sizes 3 to

Winrock P

5mm

You are currently viewing page 20 of:
Albuquerque Tribune September 2, 1963

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1963 advertisement for ziplock office binders. From Albuquerque Tribune, September 2, 1963, page 20.

This is another example showing that the meaning of the descriptive term zip-lock was understood, so that no additional explanation was needed.

Dairy and Ice Cream
NEWS

DAIRY AND ICE CREAM NEWS

Cheese export bid to Germany

A ton of England's finest cheeses are now on sale to Berlin's housewives as the start of a bid by the Milk Marketing Board to open up an export market in Federal Germany. Some of the cheese, which left Emberton Brothers' cheese store in Crewe on Jan. 9, was destined to be sold and sampled on Britain's stand at the Green Week, Berlin's huge food and agricultural exhibition. The MMB also hoped to get Berlin supermarkets and bars to stock samples of five varieties of their own *Dairy Crest* cheeses: Cheddar, Cheshire, Caerphilly, Double Gloucester and Blue Stilton.

'If this market probe is successful, worthwhile exports to Germany could follow,' commented Dr. David Armstrong, head of the Board's Creameries Division. 'And of course if the Milk Board get a cheese trade established in Common Market countries now, we shall be in a strong position if we eventually join the Six. Sales to Belgium and France, though small, are increasing steadily, and we are already Britain's biggest exporter of cheese to North America.'

Natural cheese consumption in Federal Germany has shown a slowly rising trend in recent years, reaching 4.2 kg. *per caput* in 1964, compared with 3.1 kg. for quarg and other fresh cheeses, and 1.1 kg. for processed cheese, making a total *per caput* consumption of 8.4 kg., which put Federal Germany fifth in the International Dairy League for cheese consumption in 1964. The UK, with 4.8 kg. *per caput*, was 12th. (Cf. *DI*, 1966, 31 (5) 359; (6) 463.)

Uddeholm expansion planned

Uddeholm AB of Sweden, who are represented in this country by Uddeholm Ltd. of Birmingham, have decided to invest some £14 million in steel plant in a five-year plan for expansion of sales through their world sales organisation. The plan provides for the doubling of production of tool steel and stainless steel, and a considerable increase in manufacturing capacity for cold rolled strip steel, tubing in stain-

less and other qualities, and stainless steel castings. Also in hand are plans for the heavy stainless steel plate mill and increased capacity for the manufacture of pressure vessels.

Export advice on corrugated containers

Bux Corrugated Containers Ltd. have recently installed machines that enable them to make corrugated containers to

precise measurements in really small quantities at prices that make this type of packing economic for the small quantity user. This facility is of particular interest to the small exporter and Bux have set up an advisory service to which he can turn for help. Further details from: Bux Corrugated Containers Ltd., Camey House, Horton Rd., West Drayton, Middx. (Tel.: West Drayton 4040).

A new Wall's family sweet

Wall's chose Jan. 2 to launch their new 2s. 6d. *Harlequin* family sweet, this being the first time a major national launch has taken place so early in the year. *Harlequin* consists of three flavours of ice cream—standard vanilla, strawberry and chocolate—in a two-layer, three-square check pattern. It is packed in the conventional family sweet carton with the zip-lock opening device.

At the same time Wall's *Strawberry Fayre*, a 2s. 6d. family sweet, was introduced in the three-portion popular sweet size at 1s. 6d. This new addition to the popular range will be welcomed by smaller families. There are almost 11 million households in the UK with three or fewer members, and when *Raspberry Ripple* was produced in both take-home sizes, purchases in the third quarter were 40% up on last year.

The 'take-home' story in 1966 has been one of great success, say Wall's, with sales 17% higher than in 1965. Price stability has played an important part in this result, as has the growing number of domestic refrigerators. It is estimated that 44% of all homes now have cabinets.

Winter promotions, all-year-round campaigns and the availability of the right products are planned to keep ice cream well in the mind of the enterprising shopkeeper.

Calorval's new factory

Calorval Cream Ices Ltd. have moved to larger premises at 109-111 Haugh Rd., Glasgow, C.3, where they have created a modern ice cream factory to handle their growing trade. The firm was founded 20 years ago by Mr. A. Jaconelli, who has been joined on the board by his son, Mr. L. S. Jaconelli, and Mr. R. E. Merrick as sales director. The new factory incorporates an upper floor, carrying raw materials, which are

gravity-fed to the manufacturing plant below. Besides increased space for transport, storage, cold stores and deep freeze, there is ample room for a further doubling of capacity.

PRODUCTION SLIGHTLY UP

More ice cream and more ice lollies were produced in July-September last year than in the corresponding period in 1965. Dairy ice cream, however, accounted for only 1.9 million gal. of the 11 million gal. July-September 1966 total, compared with 2 million gal. out of 10.3 million gal. in 1965. The other July-September figures, with 1965 figures in brackets, were as follows: ice lollies 2.4 million gal (2.3); ice cream in bulk (including mixes) 2.6 million gal. (2.5); prepacked ice cream for retail sale—chocolate coated 1.1 million gal. (1.3) and other 7.4 (6.5).

Ice cream consumption

Per caput consumption of ice cream and ice lollies in the UK is only 7 pints a year, lagging far behind New Zealand (22 pints) and the USA (40 pints) to mention only two countries.

Helping road safety

Dundee police are to use a model road safety promotion vehicle in their road safety education programme. The vehicle was presented by the North Scotland Division of the Ice Cream Alliance.

1967 article about ice cream in a zip lock type of carton. This trade magazine was distributed in both the UK and USA. From Dairy Industries, Vol. 32. 1967, page 126.

PACKAGING and new products

Ice cream desserts

New ice cream desserts by T. Wall & Sons (Ice Cream) Ltd. comprise Ice Cream Flan, Party Pieces and Ice Cream Gateau.

Ice Cream Flan is a four portion dessert with a crumble crust flan case containing vanilla ice cream topped with a layer of raspberry jelly and decorated with piping cream. It is presented in a plastic tray, sealed with a film lid, and placed in an individual carton.

Party Pieces are four individual ice cream desserts—two hearts containing vanilla ice cream and strawberry sorbet covered with milk chocolate, and two diamonds with vanilla and orange ice cream also covered in milk chocolate. The products are finished with a plain chocolate decoration and packed in a plastic tray which is presented in an individual box.

Strawberry Ice Cream Gateau consists of a light sponge base topped with a log of strawberry ice cream surrounded by vanilla and decorated with chocolate piping cream and strawberry shaped jelly sweets. The product is protected by an inner sleeve placed in an individual carton with an easy opening zip lock device.

For further information circle 260

Coffee in pouches

Coffee is being marketed by Nairobi Coffee & Tea Co. Ltd. in newly-designed 4 and 8 oz. packs, material being Rayothene XD.320, a laminate of British Sidac's Rayophane 300's MXXDT and 200 gauge polythene manufactured by the extrusion process. The material is said to keep the product moisture-proof and to prevent loss of essential flavour or intrusion of off-flavours.

The bags were designed, fabricated and printed by Pakcel Converters Ltd. in yellow and white by the flexographic process.

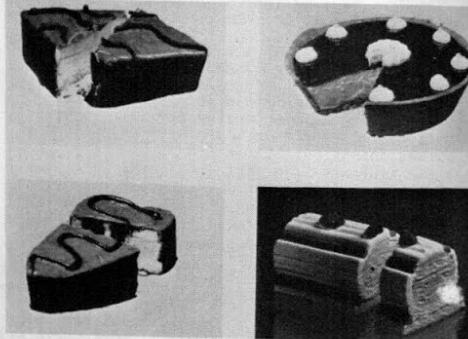
For further information circle 261



Coffee is being marketed by Nairobi Coffee & Tea Co. in these 4 and 8 oz. pouches

74

New Wall's ice cream desserts are illustrated and comprise: top, diamond shaped Party Piece and Ice Cream Flan; bottom, heart shaped Party Piece and Strawberry Gateau



Polyethylene colour masterbatches

Bakelite Xylonite Ltd., Plastics Materials Group, have recently introduced two new series of colour masterbatches for polyethylene film, PZ.131 and PZ.147 to meet the demand from polyethylene film extruders and bag makers for low cost, bold, bright colours giving good print contrast.

The PZ.131 series provides a range of bright colours with good dispersion in film above 500 gauge and is designed for use on heavy duty film applications such as shipping sacks. The masterbatches are normally used at five parts of masterbatch to 100 parts of natural polyethylene by weight.

The PZ.147 series, when used in the concentration of 10 parts of masterbatch give opaque or near opaque film between 200-400 gauge.

Both series are complementary to the existing series of Bakelite polyethylene colour masterbatches PZ.118, suitable for use in applications below 200 gauge, and PZ.128 for production of film for use in contact with foodstuffs.

Film samples pigmented with these masterbatches to show the standard range of colours available for each series are available.

For further information circle 262

Film shrinks in one direction

A transparent packaging film which provides a high degree of shrink in one direction only has been introduced by W. R. Grace Ltd. Known as Cryovac VPM film it is a monoaxially oriented plasticised PVC giving 50 per cent shrink along one axis at 100°C. This is said to provide excellent lock on open-ended sleeve packs, and applications for which the film is particularly suitable include the sleeve-wrapping of individual cans and containers, with or without premium attachments, the multi-packaging of cartons, small cans and other cylindrical containers by sleeve-wrap methods, and shrink over-wrapping of shallow cartons.

Suitable sealing methods include hot bar, sealer cooler, impulse and, for complete shrink overwrapping with maximum film economy, trim seal. The sealing temperature range is 130-140°C. Sleeve-wrap operations can be carried out without sealing if required; the film is overlapped along the length of the pack which is then passed through a shrink tunnel. This causes the film to tighten sufficiently around the enclosed item to hold the film firmly in place. The film is currently available in 75 gauge, yielding 29,400 sq. in./lb.

For further information circle 263

Polystyrene sheet for food trays

Castrol Plastics Ltd. have introduced Caplene, an extruded expanded polystyrene sheet suitable for vacuum forming into food trays, punnets and similar applications where the excellent insulation and cushioning properties of this material can be exploited.

Caplene is available in a range of thickness between 0.030 and 0.200 in. and in densities from 3½ to 8 lb. per cu. ft. Samples are available.

For further information circle 264

FOOD MANUFACTURE — July, 1968

1968 article about ice cream in zip lock type package. In Food Manufacture, July 1968.

Exhibit 5

Larry Ray Johnson vs SC Johnson, Inc

Examples of SCJ's packaging.

Larry Ray Johnson.

3221 Magnolia Circle, Ames, IA 50010

phone 515-232-3121

fax 515-232-0789

email: LNBJOHNSON@hotmail.com



SCJ packaging. Showing "Ziploc brand bags". Also shows type style and colors used by SCJ.



SCJ packaging. Showing "Ziploc brand bags". Also shows type style and colors used by SCJ.

Exhibit 6

Larry Ray Johnson vs SC Johnson, Inc

Current examples of use of the term ziplock to describe a type of product, not the source of the product.

pages 2-6 Use of the descriptive term ziplock in advertising by major companies that worked with Dow in developing the ziplock style closure for plastic bags.

page 7 Use of the descriptive term ziplock by various Dow Chemical companies in patent applications.

pages 8-24 Use of the descriptive term ziplock in various fields.

Larry Ray Johnson.

3221 Magnolia Circle, Ames, IA 50010

phone 515-232-3121

fax 515-232-0789

email: LNBJOHNSON@hotmail.com

732.873.5500



ABOUT US | NEWS | CONTACT US

Barrier Closure Protection




- HOME
- PRODUCT SOLUTIONS
 - GOVERNMENT/MILITARY
 - MAXIGRIP
 - U-MAXIGRIP
 - COMMERCIAL/CONSUMER
 - MAXIGRIP
 - U-MAXIGRIP
- PRODUCT SUPPORT
 - FREQUENT QUESTIONS
 - MAINTENANCE / INSTRUCTIONS
 - WELD COMPATIBILITY
 - RAW MATERIALS

SUPERIOR CLOSURE PROTECTION

LATEST NEWS

 **The World's Best Heavy Duty, Waterproof and Chemical Resistant Silent Plastic Zippers for Barrier Closure Protection Made in USA**

MaxiGrip
 **U-MaxiGrip**

You can count on MaxiGrip's fail-safe barrier closure products in unpredictable environments. Our state-of-the-art plastic zipper solutions are ideal for applications that must hold up in extreme conditions, contain hazardous materials, and withstand frequent abuse. Our plastic zippers function like an industrial-strength "heavy duty zip lock" that keeps what's inside safe and keeps the external elements that cause damage or contamination.

Heavy Duty Plastic Zippers Provide the Ultimate Protection from All Elements

The critical value of **MaxiGrip's** barrier closure system lies in its unmitigated protection against liquids and gases, especially where personal safety is at stake. MaxiGrip plastic zipper products are your waterproof, airtight, heavy duty, silent, closure solution that resists all of nature's elements, including heat, fire, wind, UV, pests, and allergens. Our gastight zipper components are chemical resistant and extremely dependable, protecting against

- ITW MaxiGrip to Unveil New Parking Slider System at IFAI Expo
- ITW MaxiGrip Video at IFAI Orlando 2010

EVENTS

- IFAI Orlando 2013

IFAI Video



Current ITW product literature. ITW is a major producer of ziplock style packaging. From 1987 to 1991 ITW partnered with Dow (the original owner of the Ziploc trademark) to produce food storage bags with a ziplock style closure.

732.873.5500



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Barrier Closure Protection

<p>HOME</p> <p>PRODUCT SOLUTIONS</p> <p>GOVERNMENT/MILITARY</p> <p>MAXIGRIP</p> <p>U-MAXIGRIP</p> <p>COMMERCIAL/CONSUMER</p> <p>MAXIGRIP</p> <p>U-MAXIGRIP</p> <p>PRODUCT SUPPORT</p> <p>FREQUENT QUESTIONS</p> <p>MAINTENANCE / INSTRUCTIONS</p> <p>WELD COMPATIBILITY</p> <p>RAW MATERIALS</p>	<p>GOVERNMENT/MILITARY</p>	
	 <h2>U-MaxiGrip</h2> <p>Chemical Resistant, Waterproof, Silent Zippers for Top and Vertical Use</p> <p>U-MaxiGrip is a heavy duty zip lock closure specified for top or vertical seal applications. The U-MaxiGrip geometry features flanges that overlap each other as shown in the illustration. Military zipper applications include gear/weapon bags, waterproof dry bags, E-cases, medical containers, biohazard bags, and chemical resistant protective apparel. U-MaxiGrip plastic zippers are available in a variety of strengths and sizes with different slide fastener closure tools specified based on the elements that the heavy duty zipper is protecting against.</p> <p>If you need further assistance or product samples, please do not hesitate to contact us at 1-732-873-5500 or by email at info@itwmaxigrip.com. Our versatile and comprehensive closure system is sure to fit your design requirements and protection needs. We will assist you in determining the exact requirements that will work for your intended product applications.</p>	 
	<p>Weld Compatibility GO</p> <p>Maintenance/Instructions GO</p> <p>FAQs GO</p> <p>Free Sample Request Form GO</p>	
<p>UMX 20</p> 	<p>2 Track</p> 	<p>Sliders & Rollers</p> <p>A B C</p>
<p>UMX 28</p> 	<p>2 Track</p> 	<p>Sliders & Rollers</p> <p>A B C</p>
<p>UMX 39</p> 	<p>2 Track</p>  <p>3 Track</p> 	<p>Sliders & Rollers</p> <p>A B C</p>

Current ITW product literature. ITW is a major producer of ziplock style packaging. From 1987 to 1991 ITW partnered with Dow (the original owner of the Ziploc trademark) to produce food storage bags with a ziplock style closure.

732.873.5500



ABOUT US | NEWS | CONTACT US

Barrier Closure Protection

HOME	PRODUCT SUPPORT
PRODUCT SOLUTIONS	Industrial Plastic Zipper Product Support
GOVERNMENT/MILITARY	Military, commercial, and consumer product engineers, fabricators, and converters appreciate MaxiGrip's closure system versatility because it adds value to a wide range of products. MaxiGrip airtight zipper provides a perfect seal in the form of a heavy duty zip lock element with any plastic, woven, or non-woven material. With endless heavy duty applications ranging from protection against extremely hazardous conditions to simple water leak prevention, chemical resistant and weatherproof MaxiGrip plastic zipper is available in many customizable configurations.
MAXIGRIP	
U-MAXIGRIP	
COMMERCIAL/CONSUMER	
MAXIGRIP	
U-MAXIGRIP	
PRODUCT SUPPORT	Versatile Heavy Duty Zipper Solutions
FREQUENT QUESTIONS	MaxiGrip's industrial zipper closures are offered in a wide variety of sizes, strengths, seals, and colors. Our experienced sales representatives can help you choose the configuration that will best suit your needs based on what the barrier is protecting against.
MAINTENANCE / INSTRUCTIONS	We help you consider the following closure factors and solutions:
WELD COMPATIBILITY	1) Horizontal (MaxiGrip) vs. Vertical (U-MaxiGrip) Closure
RAW MATERIALS	2) Seal <ul style="list-style-type: none">· Hand Seal· Roller· Slider
	3) Raw Material <ul style="list-style-type: none">· Chlorinated Polyethylene· Flexible PVC· Metallocene Polyolefin· Polyester· Polyethylene· Polypropylene· Polyurethane
	4) Size <ul style="list-style-type: none">· 2Track· 3Track
	5) Strength <ul style="list-style-type: none">· 20 MX/20 UMX· 28 MX/28 UMX· 39 MX/39 UMX· 53 MX· 59 MX
	6) Additives

Current ITW product literature. ITW is a major producer of ziplock style packaging. From 1987 to 1991 ITW partnered with Dow (the original owner of the Ziploc trademark) to produce food storage bags with a ziplock style closure.

products.minigrip.com/viewitems/stock-plastic-reclosable-zipper-bags/new-greenline-biodegradable-reclosable-zipper-bags

Toll Free: 800.533.1931 • Email: inforequest@minigrip.com

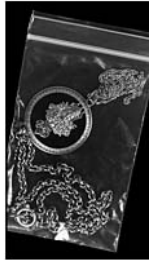
MINIGRIP
A Member of Inteplast Group
Follow the Color Line to Quality

Home About Us Brands Sustainability Latest News / Information Contact Us Search Catalog GO

All Categories > Standard Reclosable Bags (Zipper Bags) > NEW! GREENLINE™ Biodegradable, Reclosable Zipper Bags > View Items

Printable Page Email This Page Save To Favorites

NEW! GREENLINE™ Biodegradable, Reclosable Zipper Bags
Check up to five results to perform an action.



[larger image](#)

NEW GreenLine™ Reclosable Zipper Bags are ASTM D5511 tested to be biodegradable and offer the same great zip lock performance as traditional Minigrip Red Line™ Bags. In fact, recent ASTM D5511 test results showed that GreenLine Reclosable Bags biodegraded 17% within 1 year!

About "ASTM" 5511: Over the past decade, there has been increased focus on developing more earth-friendly, degradable products. Standards were developed to test the biodegradability of these products. Standard ASTM D5511 is a standard for testing and proving the biodegradation of plastic materials under anaerobic landfill conditions.

Features

- Every part of the bag is biodegradable - film material, zipper material - EVERYTHING.
- Same great performance of a Red Line™ Bag - but biodegradable.
- Made of low-density polyethylene (LDPE).
- Available in a range of sizes for use with everything from food and jewelry to industrial storage.

Request Information Compare Items

Results Per Page : 25

com Its 1 - 7 of 7 1

Current Minigrip product literature. Minigrip is owned by ITW Industries. ITW is a major producer of ziplock style packaging. From 1987 to 1991 ITW partnered with Dow (the original owner of the Ziploc trademark) to produce food storage bags with a ziplock style closure.

Corning® Centrifuge Tubes with CentriStar™ Cap Ordering Information



15 mL Conical Centrifuge Tubes, Sterile

Cat. No.	Material	Cap Style	Max RCF (x g)	Inner Pack	Qty/Pk	Qty/Cs
430790	PP	CentriStar Cap	12,000	Foam Rack	50	500
430791	PP	CentriStar Cap	12,000	Zip Lock Bag	25	500



50 mL Conical Centrifuge Tubes, Sterile

Cat. No.	Material	Cap Style	Max RCF (x g)	Inner Pack	Qty/Pk	Qty/Cs
430828	PP	CentriStar Cap	15,500	Foam Rack	25	500
430829	PP	CentriStar Cap	15,500	Zip Lock Bag	25	500
4558	PP	CentriStar Cap	15,500	Universal Rack	25	300



50 mL Self-Standing Centrifuge Tubes, Sterile

Cat. No.	Material	Cap Style	Max RCF (x g)	Inner Pack	Qty/Pk	Qty/Cs
430921	PP	CentriStar Cap	3,000	Zip Lock Bag	25	500



Foam Racks

Cat. No.	Description	Qty/Pk	Qty/Cs
431355	Standard Foam Rack for 15 mL Conical Tubes	1	20
4365	Standard Foam Rack for 50 mL Conical Tubes	1	20
4366	Universal Foam Rack for 15 mL and 50 mL Conical Tubes	1	20

Technical Support

For additional product or technical information, please e-mail us at CLStechserv@corning.com, visit our web site www.corning.com/lifesciences or call 800.492.1110. Outside the United States, call 978.635.2200.

Request a Free Sample

Current product literature from Corning Incorporated. Corning Inc is an equal partner with Dow Chemical in Dow-Corning inc. Dow Chemical was the original owner of the Ziploc trademark.

Use of the descriptive term ziplock in patent applications by various Dow Chemical companies in patent applications.

These examples show that Dow Chemical (the original registrant of the Ziploc trademark) considers ziplock to be a descriptive term for a type of bag closure, not a trademark that refers to SCJ as the source of the bag.

Patent application for "Transgenic plants expressing photorhabdus toxin"

US6590142 B1. Filed Aug 11, 2000 by Dow Agrosciences

"... They were enclosed in a zip-lock bag and plain water added ..."

[Dow Agrosciences is a Dow Chemical company, the original owner of the Ziploc trademark]

Patent application for "Film suitable for food packaging"

WO 2003074594 A1.. Filed Feb 21, 2003 by Dow Global Technologies

"...The package may include a resealing means, such as a zipper or "zip-lock" type means.."

[Dow Global Technologies is a Dow Chemical company, the original owner of the Ziploc trademark]

Patent application for "Dielectric heating of thermoplastic compositions"

WO 2002088229 A1. Filed April 17, 2002 by Dow Global Technologies

"...resealing means, e.g. a zipper or "zip-lock" type means..."

[Dow Global Technologies is a Dow Chemical company, the original owner of the Ziploc trademark]

Patent application for "Sealable and reusable pouch"

US 5372429 A. Filed Oct 13, 1992 by Dow Corning Corporation

"...The pouch for this test was a 10" wide.times.15" long, 4 mil thick zip lock bag with cellulose fibers (recycled newspaper) contained within by the use of a Veratec(R) or Sontara(R) cloth inner bag (liner)..."

[Dow Corning is an equally owned joint venture of Dow Chemical and Corning]

Current uses of the term ziplock in various fields

The use of the terms ziplock, zip lock or zip-lock to describe a type of plastic bag is so widespread that it would be impossible to list them all. In deciding which examples to list I used the following general criteria:

1. I chose business writing, rather than personal writing. When writing for business purposes, writers are more careful with what words they use and are more careful about the incorrect use of trademarks. In a personal conversation or personal writing a person might say, "do not use a Kleenex to clean your iPad or iPhone screen" ; in business writing they would be more likely to correctly say, "do not use a paper tissue to clean your tablet or smartphone screen."
2. I chose examples from large business and government sites because there is more likelihood that the text was composed by a professional writer who would be aware of trademark issues. Also, this writing is more likely to be reviewed by an editor or supervisor. This would further reduce the incorrect use of trademarks.
3. I chose several examples written by members of the legal profession because these writers would be especially cognizant of trademarks and their correct usage.

Indication Of The Level Of General Useage

A search of the internet using Google.com for all three terms plus both words "plastic" and "bag" [search phrase: plastic bag ziplock OR "zip lock" OR "zip-lock"] yields over 2.4 million pages (as of Oct 26, 2013). In other words, Google.com has indexed over 2.4 million web pages that contain the words "plastic" and "bag" plus one of the words ziplock, "zip lock", or zip-lock.

Dictionary Definitions

Merriam-Webster dictionary. ziplock: adjective. Having an interlocking groove and ridge that form a tight seal when pressed together <a ziplock plastic bag>

Oxford Dictionaries. ziplock: adjective. Denoting a sealable plastic bag with a two-part strip along the opening that can be pressed together and readily reopened.

Collins American English Dictionary. ziplock: adjective. Designating or of a plastic storage bag of the Ziploc type. (of re-sealable plastic storage bags) fastened or sealed with interlocking plastic grooves and ridges. Examples of use: Ilie reached into his jacket pocket and took out a small ziplock envelope of white powder.

WordSymth Dictionary. ziplock: adjective. Of or denoting a plastic storage bag sealed by pressing together the top edges, such as those with the trademark Ziploc.

Use In Education

<http://www.lsac.org> Official site for LSAT exams.

"Test takers may bring into the test room only a clear plastic ziplock bag, maximum size one gallon (3.79 liter), which must be stored under the chair and may be accessed only during the break. The sealed ziplock bag may contain only the following items: valid ID; wallet; keys; analog (nondigital) wristwatch; medical or feminine hygiene products; #2 or HB wooden pencils, a highlighter, erasers (no erasers with sleeves), pencil sharpener (no mechanical pencils); tissues; and beverage in plastic container or juice box (20 oz./591 ml maximum size) and snack for break only. No aluminum cans permitted. All items must fit in the ziplock bag such that the bag can be sealed."

Use In Government

USA.gov

<http://www.USA.gov> is the U.S. government's official web portal, that is, USA.gov is a link to other state and federal government run websites. From their site: "USA.gov makes it easy for the public to get U.S. government information and services on the web." Using the search feature on the usa.gov web site, a search for the term "ziplock" returns 13,300 government run web pages that contain the term "ziplock". A search for the term "zip-lock" returns 20,500 pages that contain the term "zip-lock" or "zip lock". (Results as of Oct 11, 2013). Some examples are shown below:

US Government purchases and specifications

Ziplock bag, 4x4, NSN 8105-00-837-7753

Ziplock bag, 6x6, NSN 8105-00-837-7754

Ziplock bag, 8x8, NSN 8105-00-837-7755

Ziplock bag, 10x10 1/2, NSN 8105-00-837-7756

Ziplock bag, 12x12, NSN 8105-00-837-7757

A NATO Stock Number, or National Stock Number (NSN) as it is known in the US, is a 13-digit numeric code, identifying all the 'standardized material items of supply' as they have been recognized by all NATO countries including United States Department of Defense. Pursuant to the NATO Standardization Agreements, the NSN has come to be used in all treaty countries, where it is also known as a NATO Stock Number. However, many countries that use the NSN program are not members of NATO, e.g. Japan, Australia and New Zealand.

Food and Drug Administration (FDA)

Product recall notices.

recall notice for "Superior Raw pistachios in zip-lock bag"

recall notice for "Peppermint Tea leaves ... in 2, 5 & 10 lbs. plastic (zip lock) bags"

voluntary recall for "roasted peanuts ... bags, zip-locks, tubs, and bulk"

recall notice for Dispos-a-Shield "...two devices per clear plastic zip lock type bag"

Centers For Disease Control and Prevention (CDC)

Interim Guidelines for Collecting, Handling, and Testing Clinical Specimens from Patients Under Investigation (PUIs) for Middle East Respiratory Syndrome Coronavirus (MERS-CoV) – Version 2

"Specimen containers should be sealed with Parafilm® and placed in ziplock bags. "

National Health And Nutrition Examination Survey III Cycle 2 Pulse And Blood Pressure
Procedures For Household Interviewers

"...Remove the sponge from the plastic ziplock bag...place it back into its
plastic ziplock bag."

Petitioned Public Health Assessment E.I. Du Pont Nemours Pompton Lakes, Passaic County,
New Jersey

"...they were labeled, placed in double ziplock bags, and stored on ice ..."

Environmental Protection Agency (EPA)

Mercury Releases and Spills

"Fold the paper towel and place in a zip lock bag"

El Dorado Hills Naturally Occurring Asbestos Multimedia Exposure Assessment

"Sample containers - plastic ziplock bags (pint and gallon size)"

Analysis of Surface Waters for Trace Elements by Inductively-Coupled Plasma Mass
Spectrometry

"place bottle in appropriately sized polyethylene (PE) zip-lock bag. Double bag with another PE zip-lock bag labeled with sample bottle ID."

Environmental and Sustainable Technology Evaluation -Biomass Co-firing in Industrial Boilers –
University of Iowa

"...fuel samples were collected at the fuel blending facility (coal yard) and sealed in plastic zip lock bags."

Great River Ecosystems Field Operations Manual Environmental Monitoring and Assessment
program

"Place all the sample envelopes for a site in a zip-lock plastic bag labeled with the site ID"

2012 National Lakes Assessment Field Operations Manual

"...simply place each newly encountered macrophyte into a bucket with water or a ziplock bag kept in a cooler..."

Department of Agriculture (USDA)

Fremont-Winema National Forests Noxious Weed Population Sighting Report

"...collect a specimen (preferably with a flower) in a ziplock bag with a moist paper towel and submit to Forest Botanist..."

Protocols for shipping seeds from wild populations for research projects at NCGRP

"Package the fruits in ziplock bags and put them in an insulated box. "

To ship DNA samples to the Genotyping Center at Raleigh, NC

"Samples may be shipped in styrofoam boxes on dry ice, freezer ice packs, or regular ice if samples are contained in ziplock bags."

Phenology and demography of *Homalodisca coagulata* (Hemiptera: Cicadellidae) in southern California citrus and implications for management

"The contents collected at all five locations per tree were placed into a labelled ziplock bag and constituted a sample unit."

US Department of Defense

Solicitation Number: W912NW-09-T-0040 for the US Army "... Zip Lock bags with pouches.

Specifications contained in solicitation package. To obtain a copy of the solicitation package..."

Experts Develop Future Food for Future Warriors By Phil Copeland

American Forces Press Service

"We put three zip-lock bags in with the rations, so the person can break it up into three separate meals and easily store unused portions in the uniform pockets, wherever is most comfortable and fits the best"

Instructions Sample Collection, Preparation And Shipment. This manual contains information and step-by-step procedures for preparing and shipping samples to ViroMed to be tested under the Navy HIV Testing Contract (N00140-03-D-N800).

"Serial-numbered stickers to be applied to the closure of each ziplock bag containing samples."

Patent Office. Use in patent applications

Zip-lock closure

US 7029178 B2. Patent for a zip-lock bag with sliding closer. Michael S. Gzybowski. Published April 18, 2006

Zip-lock bag with slider

EP 0978458 A1. Patent for zip-lock bag with sliding closer. Paul Tilman, published Feb 9, 2000

Food pouch with spout and zip lock

US 20130084028 A1. The invention relates to a disposable pouch having a function for storing, transporting, and serving food with both a spout and a zip lock like device. by James Richard Cross. Filed Aug 28, 2012

Use In The Courts

A search of the FindLaw.com web site (<http://lp.findlaw.com/#dirsearch2>) found 466 court opinions that use the term "ziplock". Another 268 opinions were found for the term "zip-lock". (Results as of Oct 11, 2013) Below are the first 5 listed for the term ziplock:

District of Columbia Court of Appeals. Ramirez v. United States. Jose A. Ramirez, Appellant, v. United States, Appellee. No. 11–CF–680. August 16, 2012. Referring to a plastic bag, the descriptive term ziplock was used 20 times by Chief Justice Washington.

Supreme Court, Appellate Division, First Department, New York. IN RE: Leslie R. Whitted. In RE: Leslie R. Whitted, Petitioner, v. New York City Housing Authority, Respondent. October 03, 2013. Referring to a plastic bag, the descriptive term ziplock was used 4 times

Court of Appeals of Georgia. Gay v. State. Gay v. The State. No. A97A2106. August 25, 1997. Referring to a plastic bag, the descriptive term ziplock was used 5 times by Judge Eldridge.

District of Columbia Court of Appeals. Parker v. United States. Wilbert Parker, Appellant, v. United States, Appellee. No. 96-CO-778. December 30, 1997. Referring to a plastic bag, the descriptive term ziplock was used 7 times by Chief Justice Wagner

United States Court of Appeals, Second Circuit. United States v. Wallace United States of America, Appellee, v. Ricky P. Wallace, Defendant-Appellant. Docket No. 05-1424-cr. Argued: April 22, 2008. July 08, 2008. Referring to a plastic bag, the descriptive term ziplock was used 14 times by Chief Judge Dennis Jacobs.

Use By Federal Appeals Court, 8th District

United States v. POLK United States of America, Plaintiff–Appellee v. Aaron William POLK, Defendant–Appellant.

No. 12–1303. -- May 17, 2013

Before Smith, Beam, and Gruender, Circuit Judges.

"...They also found a one-gallon ziplock baggie filled with marijuana..."

Equal Employment Opportunity Commission v. Crst Van Expedited Inc

Equal Employment Opportunity Commission, Plaintiff–Appellant, Janet Boot, Intervenor Plaintiff, Remcey Jeunenne Peeples; Monika Starke, Intervenor Plaintiffs–Appellants, v. Crst Van Expedited Inc., Defendant–Appellee. Nos. 09–3764, 09–3765, 10–1682.-- May 08, 2012
Before Murphy, Smith, and Benton, Circuit Judges.

"... in plastic bottles and ziplock bags while in transit..."

United States v. Guzman Tlaseca

United States of America, Appellee, v. Modesto Guzman Tlaseca, Appellant.

No. 07-3836.-- November 17, 2008

Before Murphy, Bye, and Shepherd, Circuit Judges.

"...uncovered other items consistent with a narcotics operation, such as heat-sealed bags that had been opened, unused ziplock bags, and a white powdery substance..."

United States v. Crumley

United States of America, Plaintiff/Appellee, v. Ann Marguerite Crumley, Defendant/Appellant.

United States of America, Plaintiff/Appellee, v. David Jon Myers, Defendant/Appellant.

Nos. 06-1974, 06-2708.-- June 12, 2008

Before Loken, Chief Judge, John R. Gibson, and Wollman, Circuit Judges.

"...vacuum sealer, a box of small ziplock bags, and a digital scale..."

United States v. Sanchez Garcia

United States of America, Plaintiff-Appellee, v. Victor Sanchez-Garcia, also known as Sergio Barraza-Ayon, also known as Mauricio Borjas-Madrid, Defendant-Appellant.

No. 05-3561.-- September 05, 2006

Before Arnold, John R. Gibson and Smith, Circuit Judges.

"...an officer found a ziplock bag containing 145.7 grams of crystal..."

United States v. 117 920 00 IN United States Currency

United States of America, Plaintiff/Appellee, v. \$117,920.00 IN United States Currency, Defendant, Mehrdad Abdali Soosan, also known as John Soosan, Claimant/Appellant.

No. 04-3435.-- July 13, 2005

Before Murphy, Bye, and Smith, Circuit Judges.

"... trash compactor bags, ziplock bags, plastic wrap, and three cans of air freshener..."

United States v. Ruiz

United States of America, Plaintiff-Appellee, v. Adolfo Martinez RUIZ, Defendant-Appellant.

United States of America, Plaintiff-Appellee, v. Evencio Martinez Ruiz, also known as Juan Zabala, Defendant-Appellant.

United States of America, Plaintiff-Appellee, v. Steven Anthony Martinez, Defendant-Appellant.

Nos. 04-3205, 04-3248, 04-3251.-- July 05, 2005

Before Morris Sheppard Arnold, Murphy, and Benton, Circuit Judges.

"...About half a pound was in a ziplock bag containing several smaller sandwich bags of methamphetamine..."

United States v. Selwyn

United States of America, Appellee, v. Shelbourne Selwyn, Appellant.

No. 04-2164.-- February 23, 2005

Before Wollman, Heaney, and Fagg, Circuit Judges.

"...methamphetamine were separated by size, with smaller baggies in one ziplock bag, and larger baggies in another ziplock bag..."

United States v. Gamble

United States of America, Appellee, v. Tyrone Gamble, Appellant.

No. 02-3707.-- May 02, 2003

Before Bowman, Riley, and Melloy, Circuit Judges.

"...two .357 caliber revolvers, plastic ziplock baggies, and an electronic scale..."

United States v. Atkins

United States of America, Appellee, v. James F. Atkins, Appellant.

No. 00-1588.-- May 30, 2001

Before Wollman, Chief Judge, and McMillian and Bye, Circuit Judges.

"...for the manufacture of methamphetamine, ziplock baggies and a scanner programmed with police frequencies..."

Beaulieu III v. Ludeman

Wallace James Beaulieu; Lionel Tohannie Yazzie; Larry DeLaney, Sr.; Emery Eugene Bush;

John Louis Beaulieu, III; Michael J. Gimmestad, Plaintiffs--Appellants v. Cal R. Ludeman; Joan

Fabian; Terry Carlson; Jack Erskine; Dean Mooney; Paula Johnson; Denise Considine; Eric

Hattenberg; Dennis Benson; Greg Carlson; Brian Ninneman; Ann Linkert, in their official and personal capacities, Defendants–Appellees.

No. 11–1845.-- August 29, 2012

Before Riley, Chief Judge, Smith and Colloton, Circuit Judges.

"...the package and found seven small clear glassine zip lock baggies containing cocaine and marijuana ..."

United States v. Frausto

United States of America, Appellee, v. Antonio Rigberto Frausto, Appellant.

No. 09-2165.-- August 06, 2010

Before Smith, Benton, and Shepherd, Circuit Judges.

"...two full 10-pound containers of MSM and one empty one, several zip-lock bags, two digital scale..."

United States v. Cisneros-Gutierrez

United States of America, Appellee, v. Alfonso Cisneros-Gutierrez, Appellant.

Nos. 09-1890, 09-2590, 09-2728.-- March 23, 2010

Before Wollman, Riley, and Melloy, Circuit Judges.

"...observed plastic bags containing numerous empty zip-lock storage bags in the kitchen sink..."

United States v. Lop Bounmy

United States of America, Plaintiff-Appellee, v. Lop Bounmy, Defendant-Appellant.

No. 04-3418.-- April 14, 2005

Before Murphy, Heaney, and Smith, Circuit Judges.

"... The drugs were divided into three zip lock bags, each containing one ounce..."

United States v. Bustos-Torres

United States of America, Plaintiff/Appellee, v. Jaime Eleazar Bustos-Torres,
Defendant/Appellant.

Nos. 03-3364, 03-3365.-- February 02, 2005

Before Wollman, Hamilton, and Bye, Circuit Judges.

"The officers also discovered a zip-lock bag of cocaine hidden behind a dresser..."

United States v. Baker

United States of America, Plaintiff-Appellant, v. Kerry L. Baker, Defendant-Appellee.

No. 02-1775.-- May 11, 2004

Before Bye, John R. Gibson, and Melloy, Circuit Judges.

"...in the garage, Officers found a marijuana cigarette and a gallon-size zip-lock bag with
marijuana..."

United States v. Harris

United States of America, Appellee, v. Deon Harris, Appellant.

No. 03-1813.-- December 12, 2003

Before Riley, Beam, and Smith, Circuit Judges.

"...found several individually wrapped, yellow zip-lock baggies containing crack..."

United States v. Gregory

United States of America, Appellee, v. Michael Steven Gregory, Appellant.

No. 01-3613.-- September 09, 2002

Before Bowman, Loken, and Bye, Circuit Judges.

"...found approximately 19.1 ounces of cocaine and cocaine base in zip-lock bags and a loaded .38 caliber pistol..."

Johnson v. Norris

Janice Marie Johnson, Appellee, v. Larry Norris, Director, Arkansas Department of Correction, Appellant.

No. 98-2078.-- March 10, 1999

Before Richard S. Arnold, Heaney, and Morris Sheppard Arnold, Circuit Judges.

"...that the evidence was in a zip-lock bag that was in a heat-sealed plastic bag..."

United States v. Rouse

United States of America, Appellee, v. Christopher Mark Rouse, Also Known as Michael Gibbins, Appellant.

No. 98-1705.

-- July 10, 1998

Before Richard S. Arnold and Morris Sheppard Arnold, Circuit Judges, and Panner, District Judge.

"...and discovered a zip-lock plastic bag containing a white powder..."

Use By The United States Supreme Court

United States v. Cotton et al.

Certiorari to the United States Court of Appeals for the fourth circuit No. 01-687. Argued April 15, 2002--Decided May 20, 2002. Chief Justice Rehnquist delivered the opinion of the Court
"...resulted in the seizure of 795 ziplock bags and clear bags..." and. "...where the drug operation bagged one kilogram of cocaine base into ziplock bags..."

House v. Bell, Warden

Certiorari to the United States Court of Appeals for the sixth circuit No. 04-8990. Argued January 11, 2006--Decided June 12, 2006. Justice Kennedy delivered the opinion of the Court.
"...blood evidently spilled inside the evidence container when the jeans were protected inside a plastic zip lock bag, as shown..."

Nbuyen v. United States

Certiorari to the United States Court of Appeals for the ninth circuit
No. 01-10873. Argued March 24, 2003--Decided June 9, 2003 Stevens, J., delivered the opinion of the Court.
"... a hundred little plastic zip lock bags..."

United States v. Jacobsen, 466 U.S. 109 (1984) 466 U.S. 109

United States v. Jacobsen et al.

Certiorari to the United States Court Of Appeals For The Eighth Circuit
No. 82-1167. Argued December 7, 1983 Decided April 2, 1984. Justice Stevens delivered the opinion of the Court.
"... and found a series of four zip-lock plastic bags, the outermost enclosing..."

United States Department Of Housing And Urban Development, Petitioner v. Pearlie Rucker, et al.

Oakland Housing Authority, et al., Petitioners v Pearlie Rucker, et al.

On petition for a writ of certiorari to the United States Court Of Appeals For The Ninth Circuit

No. 00-1770 In the Supreme Court of the United States

"A search of Lee's left front jacked [sic] revealed a ziplock baggie containing marijuana. Lee was cited for possession of marijuana."

Exhibit 7

Larry Ray Johnson vs SC Johnson, Inc

Page 2 December 10, 1968 letter from US Department of Commerce Patent Office rejecting the trademark application for ZipLoc "on the ground that the term is merely descriptive of the goods. " "Furthermore, the term is considered to be so highly descriptive of the goods that it is incapable of distinguishing applicant's goods from the goods of others."

Page 3 - 7 Response from Dow Chemical to the rejection letter. In page 6 and 7 Dow Chemical seeks a trademark registration on the grounds that ziploc is "not merely descriptive."

Larry Ray Johnson.

3221 Magnolia Circle, Ames, IA 50010

phone 515-232-3121

fax 515-232-0789

email: LNBJOHNSON@hotmail.com



U.S. DEPARTMENT OF COMMERCE
 PATENT OFFICE
 WASHINGTON, D.C. 20231

ADDRESS ONLY
 THE COMMISSIONER OF PATENTS
 TRADEMARK EXAMINING OPERATIONS
 WASHINGTON, D.C. 20231

J. W. Jedelund
 c/o The Dow Chemical Company
 Midland, Michigan, 48640

(Please Furnish Your Zip Code In All Correspondence)

Paper No. 1	
IN REPLY PLEASE REFER TO:	
Serial No. 306,841	Mailed DEC 10 1968
Mark ZIPLOC	
Applicant The Dow Chemical Company	

This case is being processed in accordance with applicant's request for accelerated prosecution of its application.

Upon examination, registration is refused because the mark, as applied to applicant's goods, so resembles the mark cited below as to be likely to cause confusion, mistake or deception:

n/d

Reg. No. 751,489 (See attached copy).

Registration is also refused on the Principal Register under Section 2(e)(1) on the ground that the term is merely descriptive of the goods.

Furthermore, the term is considered to be so highly descriptive of the goods that it is incapable of distinguishing applicant's goods from like goods of others.

Dr. K. C. Cahoon
 Examiner, Div. I

RKolakoski:lec (557-3273)



2

IN THE UNITED STATES PATENT OFFICE

Trademark ZIPLOC ✓
Class No. 2
Div. I

Applicant: The Dow Chemical Company ✓
Serial No.: 306,841 ✓
Filed: September 9, 1968

Commissioner of Patents
Washington, D. C. 20231

The following is in response to the Office
Action mailed December 10, 1968.

The undersigned wishes to acknowledge the
interview courteously granted by the Examiner handling
this application at which time the merits of this
application were discussed.

Firstly, Applicant's trademark ZIPLOC for
plastic bags was refused registration over the cited
trademark ZIP-LOK, Registration No. 751,489, for
demountable, knock-down containers--namely, bins. While
Applicant's goods and the goods of the cited registration
are both receptacles and are thus classified in Class 2,
this is substantially the only similarity between
Applicant's ZIPLOC plastic bags and the Registrant's
ZIP-LOK demountable, knock-down bins. That is to say,
Applicant's ZIPLOC plastic bags and the Registrant's
ZIP-LOK demountable, knock-down bins are entirely differ-
ent in composition, appearance, and size, and they are
sold to entirely different classes of customers through
non-overlapping channels of trade for entirely different

uses as will be apparent from the following.

Applicant's ZIPLOC plastic bags are made of clear polyethylene film in two sizes, namely 6-1/2 x 7 inch bags which are packaged in 2-1/2 x 2-1/2 x 7 inch cardboard cartons and 11 x 11 inch bags which are packaged in 2-1/2 x 2-1/2 x 11 inch cardboard cartons. The smaller ZIPLOC bags hold about 14 to 16 ounces of liquids or solids. Applicant's ZIPLOC plastic bags are sold to the home consumers, chiefly housewives, through grocery stores, food chain stores, etc. for household use in cooking and storing foods, including sandwiches.

Registrant's ZIP-LOK demountable, knock-down bins are made of 5/8 inch plywood held together by interlocking aluminum extrusions in large sizes, e.g., 36 x 40 x 48 inches. These ZIP-LOK bins hold about 70,000 cubic inches of solids. Registrant's ZIP-LOK demountable, knock-down bins are sold to manufacturers and to wholesalers for use in shipping their products, e.g., to retailers. The ZIP-LOK demountable, knock-down bins of Registrant L. E. Herman are made in accordance with U.S. Patent 3,079,025 issued to L. E. Herman (copy attached) and as shown in the attached sketches and drawing.

Furthermore, as will be apparent from the attached photocopy of a letter of undertaking dated April 29, 1963, Mr. L. E. Herman through his attorney Keith D. Beecher gave to Applicant The Dow Chemical Company his assurance that the use of Registrant's trademark ZIP-LOK would not be used on goods other than plywood shipping containers of the type described and claimed in U.S. Patent 3,079,025. This assurance was requested by the Applicant for ZIPLOC for plastic bags and given in

behalf of the Registrant for ZIP-LOK for demountable, knock-down containers--namely, bins to insure that the Registrant's use of the ZIP-LOK trademark would be confined to plywood shipping containers of the type described and claimed in U.S. Patent 3,079,025, and would thereby not give rise to any confusion, or even any likelihood of confusion, with Applicant's use of its ZIPLOC trademark on plastic bags, or with any of the many other ZIP prefix trademarks registered by Applicant in Class 2 prior to the cited Registration No. 751,489 of Leslie E. Herman for the trademark ZIP-LOK for demountable, knock-down containers--namely, bins.

Applicant for the trademark ZIPLOC for plastic bags in Class 2 is the owner of two registrations (see attached photocopies) for the trademark ZIPLOC in Class 1 and Class 5 as follows:

<u>U.S. Reg. No.</u>	<u>Date</u>	<u>Class</u>
743,203	1/8/63	5
836,486	10/10/67	1

It is noteworthy that the trademark ZIPLOC, the identical trademark of the subject application, is already registered in two other classes. The following is also noteworthy:

Registration No. 743,203 for ZIPLOC for gummed box tape in Class 5 matured out of an application alleging first use on October 20, 1960, filed on December 7, 1960, and published on April 11, 1961.

Registration No. 836,486 for ZIPLOC for synthetic latex in Class 1 matured out of an application alleging first use on

August 26, 1966, filed on October 14, 1966, and published on July 25, 1967.

In neither case did the Office raise any objection whatsoever, but instead promptly passed both applications to publication.

Applicant is also the owner of the following eight registrations for ZIP prefix trademarks in Class 2, six of which specifically name bags:

<u>Trademark</u>	<u>Reg. No.</u>	<u>Date</u>
ZIP-LIP	658,393	2/18/58
ZIP TOP	670,432	12/2/58
ZIP-STRING	707,936	12/6/60
ZIP-STRIP	712,331	3/14/61
ZIP TAPE	737,692	9/18/62
ZIP-HANDLE	757,077	9/24/63
ZIP'N TAC	782,633	1/5/65
ZIP-ZAG	862,967	1/7/69

Additionally, Applicant owns the following registrations:

<u>Trademark</u>	<u>Reg. No.</u>	<u>Date</u>	<u>Class</u>
ZIP-TAPE	379,629	7/16/40	1
ZIP TAPE	738,437	10/2/62	1
ZIP-WRAP	373,377	12/5/39	37
ZIP-STRIP	765,914	3/3/64	37

Because the trademark ZIPLOC is already registered by Applicant in Class 1 and in Class 5, Applicant submits that its trademark ZIPLOC is also registrable in Class 2 for plastic bags, and is therefore not merely descriptive of plastic bags, and is not so highly descriptive of plastic bags that it is incapable of distinguishing Applicant's plastic bags from those of others. Applicant finds that to be merely descriptive, the mark must "picture in words" the goods for which Applicant seeks registration "and nothing else". Therefore, the mark ZIPLOC must only picture in words the identification of goods, namely "plastic bags" and nothing more. Applicant therefore

submits that the mark is not merely descriptive and is therefore registrable.

Applicant draws attention to a passage from the following case to the Examiner's attention:

Ex parte Coloni, Mendelhoff Co., 98 U.S.P.Q. 415 (Conr., 1953) at page 416:

"In determining the question of whether or not a given mark is merely descriptive, one is not required to go through mental gymnastics. Marks should not be denied registration simply because there are dictionary definitions of the words which, after remote and round-about reasoning, might possibly be deemed to be descriptive of the involved goods or services. The statute provides for refusal only when the mark is merely descriptive as applied to the applicant's goods or services."

Applicant submits that the above passage and particularly the last sentence of the passage is relevant to the case herein and that the instant mark is thus not merely descriptive as applied to Applicant's goods.

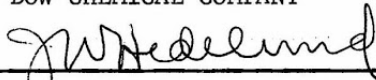
Instead, the trademark ZIPLOC is already registered to Applicant in respect of goods of Class 1 and Class 5, and is also capable of distinguishing, and in fact does now distinguish, the Class 2 plastic bags of Applicant.

Indeed the trademark ZIPLOC has been used on plastic bags since November 6, 1962, and in any event has become distinctive by such long use on plastic bags.

In view of the above explanation, it is believed that the instant application may now be passed to publication and such action is respectfully requested.

THE DOW CHEMICAL COMPANY

By


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Encl.
Midland, Michigan
June 5, 1969