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# Consultant Ducks Contempt In Fight Over Packaging Patent

By **Hayley Fowler**

Law360 (September 19, 2024, 5:22 PM EDT) -- An inventor facing allegations of abusive patent behavior by the packaging company for which he previously consulted has dodged a civil contempt finding after a North Carolina federal judge found he was not in violation of an injunction barring him from making false infringement claims.

U.S. District Judge Frank D. Whitney in an **order** Thursday declined to hold defendant David Kevin Vance and the manufacturing company in which he is a part owner, Yukon Packaging LLC, in contempt of court after they were accused of flouting a preliminary injunction preventing Vance from making "bad-faith, objectively false assertions of infringement" as to a patent he holds involving a packing method for insulated containers.

Plaintiff Eco Fiber Inc. has specifically accused Vance of lying about what's covered under the patent to collect royalties and then trying to sabotage the business after Eco Fiber stopped paying them.

Since the **injunction** was issued over the summer, the packaging company said Vance continues to mark insulated containers made and sold by Yukon with his patent. Eco Fiber had argued doing so was the equivalent of claiming infringement against its own insulated containers.

But Judge Whitney ruled Thursday that such activity doesn't amount to a violation of the injunction.

"Even if defendant Yukon Packaging's insulated container does not fall within the protection of the '872 Patent, there was not explicit notice that patent marking may fall within the scope of the preliminary injunction as prohibited conduct," he wrote.

Charlotte-based Eco Fiber makes and sells insulated containers primarily for cold chain packaging, and Vance is a consultant who has worked in the cold chain packaging industry for nearly two decades, according to an amended complaint filed in July.

Vance also owns U.S. Patent 11,772,872, which covers a 12-step method for forming and loading an insulated container, Judge Whitney said.

Eco Fiber said it started paying Vance's consulting company 5% of its sales on a container with three insulating pads in January 2023, after he reportedly told the company that he had a patent on such triple-padded containers. Eco Fiber then stopped paying the royalty about a year and \$241,000 later, once attorneys informed the company that Vance's patent doesn't cover the containers, according to Judge Whitney's injunction order.

Vance subsequently went to Eco Fiber's largest customer, Veritiv Corp., claiming the packaging company was infringing his patent, Eco Fiber said. Veritiv then stopped buying from Eco Fiber, citing legal risk.

Veritiv reportedly made up about 75% to 85% of Eco Fiber's annual sales. After its first month without Veritiv's business, it lost about 30% of its monthly sales and in turn laid off most of its employees, Judge Whitney said in the injunction order.

Eco Fiber then sued Vance under the North Carolina Abusive Patent Assertion Act, which bars bad faith infringement assertions.

In granting the injunction, Judge Whitney said Vance knew his patent didn't cover the insulated containers. While he was prosecuting his patent in April 2023, the U.S. Patent and Trademark Office made Vance choose between pursuing claims for a method of forming and loading, and claims for the insulated container apparatus. Vance chose the former, and he has since filed an application to pursue a patent on the latter.

But since the injunction, Vance has allegedly continued patent marking Yukon's insulated containers. Eco Fiber claimed such patent marking implies that its own containers infringe Vance's patent, which it argued was a direct violation of the injunction. In response, Vance accused Eco Fiber of trying to expand the scope of the injunction and improperly apply it to Yukon.

Judge Whitney agreed Thursday it does not apply to Yukon, noting the intent of the injunction was to force Vance to comply with North Carolina's abusive patent statute.

"The court was clear in stating Yukon Packaging is a business primarily engaged in manufacturing and constitutes an operating entity — a conclusion neither party seems to disagree with," the judge wrote.

"Because the court's intent was to require compliance with North Carolina's APAA statute, the court did not intend and will not apply the preliminary injunction as entered against Yukon Packaging because the law the preliminary injunction is premised on excludes Yukon Packaging from liability," he continued.

In a statement to Law360 on Thursday, Alex Long of Shumaker Loop & Kendrick LLP, who represents the defendants, said, "We believe that the district court reached the correct result and that the order will be well received by 'operating entities' throughout North Carolina."

Counsel for Eco Fiber did not immediately respond to a request for comment.

Eco Fiber is represented by Christopher P. Raab and Daniel M. Nunn of Caudle & Spears PA and Chad D. Tillman and James D. Wright of Tillman Wright PLLC.

Vance and Yukon are represented by Samuel Alexander Long Jr., Lucas D. Garber, Christina Davidson Trimmer, Tom BenGera and Spencer P. Mead of Shumaker Loop & Kendrick LLP.

The case is Eco Fiber Inc. v. Vance, case number 3:24-cv-00465, in the U.S. District Court for the Western District of North Carolina.

--Additional reporting by Dani Kass. Editing by Patrick Reagan.