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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91184529
Party	Plaintiff Georgia-Pacific Consumer Products LP
Correspondence Address	CHARLENE R. MARINO KILPATRICK STOCKTON, LLP 1100 PEACHTREE STREET, SUITE 2800 ATLANTA, GA 30309 UNITED STATES cmarino@kilpatrickstockton.com
Submission	Opposition/Response to Motion
Filer's Name	Charlene R. Marino
Filer's e-mail	cmarino@kilstock.com, chenn@kilstock.com, kteilhaber@kilstock.com, tmadmin@kilstock.com
Signature	/Charlene R. Marino/
Date	06/16/2010
Attachments	2010.06.16 Opposer's Response to Motion to Compel.pdf ( 12 pages )(35767 bytes ) Exhibit A to Opposition to Motion to Compel.PDF ( 7 pages )(246127 bytes ) Exhibit B to Opposition to Motion To Compel.PDF ( 55 pages )(1577141 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

GEORGIA-PACIFIC CONSUMER  
PRODUCTS LP,

Opposer,

v.

GLOBAL TISSUE GROUP, INC.

Applicant.

Opposition No.: 91184529  
Serial No.: 77/364,616

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**OPPOSER’S OPPOSITION TO APPLICANT’S MOTION TO COMPEL DISCOVERY**

Opposer Georgia-Pacific Consumer Products LP (“Georgia-Pacific”) responds to Applicant Global Tissue Group, Inc.’s (“Global Tissue”) Motion to Compel as follows:

**A. INTRODUCTION**

The Board already denied Global Tissue’s motion to compel additional depositions, and it should not alter its prior decision. On March 25, 2010, following a telephone conference with the interlocutory attorney, the Board expressly denied Global Tissue’s motion to take the depositions of Ms. Boss, Mr. Olson, and Mr. Davis -- the very same witnesses it again asks to depose. (*See* Dkt. 33). The Board’s Order was explicit that Global Tissue only was entitled to take one 30(b)(6) deposition of Andrew Towle:

*[A]pplicant’s request to conduct all six requested depositions is denied. Applicant’s motion is granted as modified, with respect to the deposition of opposer’s designee. Accordingly, opposer shall make its Fed. R. Civ. P. 30(b)(6) designee, Mr. Andrew Towle, available for depositions, as designee and as witness, within forty-five days from the mailing date of this order.*

(*Id.* at 9.)

Mr. Towle fully satisfied his obligation under Rule 30(b)(6) to provide information reasonably known to the company regarding the topics set forth in the deposition notice, and

Global Tissue provides no authority for its attempted abrogation of the Board's March 25 Order. A review of Mr. Towle's complete testimony in the context of the deposition (rather than as strategically selected and quoted in Global Tissue's motion) proves that the only questions not fully answered by Mr. Towle pertain to either (1) irrelevant issues outside of the scope of the noticed deposition topics; or (2) privileged information. For these reasons, the Board should -- once again -- deny Global Tissue's motion to compel. *See Int'l Fin. Corp. v. Bravo Co., Opp.* Nos. 111,276, 111,760, 2002 WL 1271687, at \*9 (T.T.A.B. Jun. 5, 2002) (denying second motion to compel 30(b)(6) deposition, finding "no merit in opposer's attempt to depose [the original witness] under a second Fed. R. Civ. P. 30(b)(6) notice or in opposer's attempt to depose some other witness on the same topics").

## **B. ARGUMENT AND CITATION OF AUTHORITY**

### **1. Georgia-Pacific Fulfilled its Obligations Under Rule 30(b)(6) to Provide Testimony Reasonably Known to the Company.**

Under Rule 30(b)(6), a corporate deponent has the obligation to investigate only "facts reasonably known to the corporation, not *any* fact potentially relevant to the described topic known by any employee of the corporation." *See Banks v. Office of the Senate Sargeant-At-Arms*, 241 F.R.D. 370, 373 (D.D.C. 2007) (denying motion for sanctions on the ground that the Rule 30(b)(6) deponent had reasonably responded to the questions presented in the deposition); *see also Kay Beer Distrib., Inc. v. Energy Brands, Inc.*, 2009 WL 3170886, at \*4 (E.D. Wisc. Sept. 29, 2009) ("The person designated does not become a private investigator of the party noticing the deposition-he is only required to provide testimony 'about information known or reasonably available to the organization.'"); *Google Inc. v. Am. Blind & Wallpaper Factor Inc.*, No. 03-5340, 2006 WL 2318803, at \*3 (N.D. Cal. Aug. 10, 2006) ("Deponents under Rule

30(b)(6) must be prepared and knowledgeable, but they need not be subjected to a memory contest.”).

Although Global Tissue selectively quoted a few “I don’t know” answers from Mr. Towle’s entire deposition, a review of the complete transcript shows that he answered the proper questions asked of him regarding the noticed deposition topics. As discussed further below, the questions to which he could not respond involved either (1) irrelevant issues outside of the scope of the noticed deposition topics; or (2) privileged information. Because Georgia-Pacific has no obligation under Rule 30(b)(6) to proffer a witness that can testify as to information that is outside the scope of the deposition notice or is privileged, Global Tissue’s motion should be denied.

**a. Mr. Towle Provided all Information Reasonably Known to Georgia-Pacific Regarding Advertising for QUILTED NORTHERN.**

Global Tissue grossly mischaracterizes the testimony of Mr. Towle that it claims pertains to “advertising and marketing of products sold under Opposer’s marks.” Global Tissue’s counsel asked Mr. Towle a series of questions relating to a number of historical advertisements for QUILTED NORTHERN® bath tissue pictures of historical packaging. (*See* Towle Dep., at 64-77.) As is apparent from a review of this entire section of the deposition (rather than the discrete questions plucked out of context by Global Tissue), Mr. Towle answered the vast majority of the questions posed to him on this issue. The only questions that Mr. Towle was unable to answer involved either old advertising that has not been used by Georgia-Pacific for over six years or photographs of product packaging that pre-dated his arrival at the company. (*See, e.g.* Exs. 12, 13, and 15). But, merely because Mr. Towle “could not answer every question posed to him does not equate to the fact that [Georgia-Pacific] did not satisfy its obligation to prepare its 30(b)(6) witness.” *See Costa v. County of Burlington*, 254 F.R.D. 187, 190 (D.N.J. 2008); *see*

*also Wilson v. Lakner*, 228 F.R.D. 524, 529 n. 7 (D. Md. 2005) (stating “[t]here is no obligation to produce witnesses who know every single fact” and that a “rule of reason” applies in determining adequacy of preparation for a 30(b)(6) deposition); *Fraser Yachts Florida, Inc. v. Milne*, No. 05-21168-Civ-Jordon, 2007 WL 1113251, at \*2 (S.D. Fla. Apr. 13, 2007) (“A corporation’s obligation under Rule 30(b)(6) does not mean that the witness can *never* answer that the corporation lacks knowledge of a certain fact.”).

Because Mr. Towle answered the majority of questions posed to him regarding Georgia-Pacific’s advertising of QUILTED NORTHERN®, the Board should deny Global Tissue’s motion as to this topic. *See Chick-fil-A v. ExxonMobil Corp.*, No. 08-61422, 2009 WL 3763032 (S.D. Fla. Nov. 10, 2009) (denying motion to compel after finding that 30(b)(6) designee answered the majority of questions posed, and that her testimony was responsive and informative).

**b. Mr. Towle Testified Completely Regarding all Non-Privileged Information Pertaining to Trademark Search Reports.**

Global Tissue admits in its motion that the only search report Georgia-Pacific has in its possession pertaining to the “Quilted” marks is a search report for the mark IT’S ALL IN THE QUILTING. Global Tissue also admits Georgia-Pacific produced that search report to Global Tissue. No other search reports exist. Thus, a further deposition on this topic is entirely unnecessary and inappropriate -- it would not reveal any additional, non-privileged information not already disclosed by Georgia-Pacific.

Global Tissue also complains that Mr. Towle did not discuss Georgia-Pacific’s general “process of clearing a mark.” But Global Tissue fails to explain how Georgia-Pacific’s process of clearing a trademark is reasonably calculated to lead to the discovery of admissible evidence on an issue before the Board. The two issues before the Board are (i) whether Global Tissue’s

QUILTY mark is likely to be confused with Georgia-Pacific's QUILTED marks and (ii) whether Georgia-Pacific's QUILTED marks are merely descriptive and lack secondary meaning. What non-privileged information could Global Tissue possibly obtain on these issues by asking a Georgia-Pacific witness about its "process of clearing a mark"?

Moreover, the procedure by which Georgia-Pacific's in-house legal department clears a mark for use is privileged information that is not discoverable. *See Miles Laboratories, Inc. v. Instrumentation Laboratory, Inc.*, 185 U.S.P.Q. 432, (TTAB 1975) ("any comments or opinions provided by opposer's attorney in relation [to a search report] are privileged and need not be supplied"); TBMP § 414(6) ("Search reports are discoverable, but the comments or opinions of attorneys relating thereto are privileged and not discoverable."). Mr. Towle testified in his deposition that Georgia-Pacific does have a trademark clearance process that is conducted by its in-house legal department, which then reports the search results to the marketing department. (Towle Dep. at 32-34.) Any further information regarding the process by which the in-house legal department reviews and reports on these trademark clearances searches would be protected as privileged. Accordingly, the Board should deny Global Tissue's motion to compel an additional deposition related to trademark searches and reports.

**c. Georgia-Pacific has Disclosed all Information in its Possession Regarding its Objections to Third Party Use of "Quilt."**

Mr. Towle provided substantial testimony concerning Georgia-Pacific's knowledge of or objection to third party use of the terms "quilt" or "quilted." For example:

Q. Now, I'm going to ask you to take a look at interrogatory number 5.

A. Okay.

Q. Now, the answer to interrogatory number 5 identifies two lawsuits, Irving Tissue lawsuit and the Potlatch Corporation lawsuit, and on page 6 identifies three cease and desist letters which were sent by Georgia-Pacific, one to Atlantic Paper, one to Cascades Tissue, and one to Valterra Products.

A. Uh-huh.

- Q. As you sit here today are you aware of any other -- let me rephrase that. As we sit here today are you aware of any registrations that consist or include the term “quilt” or variations thereof?
- A. I don’t understand what you're asking.
- Q. Let me rephrase that question....Interrogatory number 5 asks you to identify each party – each third party that has used or registered a name, mark, or designation that includes the term “quilt” or a variation, which would be quilted, quilting. Now, in response you identify two lawsuits and three cease and desist letters. Are there other lawsuits that you're aware of where a third party was using the term “quilt” or a variation thereof?
- A. I believe we've listed all the ones that have been -- we've listed -- I believe we've listed all the actions that we've taken to protect the mark with these five cases as far as I know.
- Q. Thank you.

(Towle Dep., at 27:11-29:2.)

- Q. From a marketing standpoint do you feel that any usage by a third party of the terms “quilt,” “quilts,” “quilting,” or “quilted” is acceptable in the marketplace on bath tissue?
- A. By a third party?
- Q. By a third party, correct.
- A. It's not acceptable.
- Q. And to the best of your knowledge GP has objected to third parties using those terms in the marketplace?
- A. As far as I know every single time we have or are in the process of objecting to those terms being used by other brands.
- Q. Thank you.

(*Id.* 56:5-18; *see also id.* 53:19-23 (discussing Georgia-Pacific’s objections to third party use of “quilt”); 54:18-55:2 (discussing Georgia-Pacific’s objections to third party use of “quilting”); 55:24-56:4 (discussing Georgia-Pacific’s objections to third party use of “quilted”).)

Global Tissue conveniently ignores this testimony and instead identifies only a small handful of questions Mr. Towle did not answer concerning Procter & Gamble’s use of “quilted” in connection with its BOUNTY®-brand paper towels. (*See* Global Tissue’s Motion, at 12-13.) Procter & Gamble, not Georgia-Pacific, can answer questions about its BOUNTY® brand. Indeed, Global Tissue *already has served a subpoena on Procter & Gamble requesting the same information.* (*See* Ex. A.) Additionally, Georgia-Pacific previously disclosed to Global Tissue

the information known to the company regarding Procter & Gamble's use of "quilted" on paper towels in response to Global Tissue's written interrogatories. (*See* Ex. A.)<sup>1</sup>

Because "the discovery sought . . . can be obtained from some other source that is more convenient, less burdensome, or less expensive," the Board should not compel an additional deposition of Georgia-Pacific. *See* Fed. R. Civ. P. 26(b)(2)(C)(i).

**d. Global Tissue's Cited Questions Regarding "Competitive Brands" are Irrelevant and Beyond the Scope of the Deposition Notice.**

Global Tissue claims Mr. Towle was unable to answer questions regarding "brand awareness and competitive brands" responsive to Category 7 of the deposition notice. As is obvious from the transcript, this assertion blatantly misconstrues the nature of the questions asked of Mr. Towle.

When asked whether Georgia-Pacific keeps copies of competitive ads in the marketing department, Mr. Towle answered in the affirmative. (*See* Towle Dep., at 46:4-5.) The only question Mr. Towle could not answer was "whether those ads were reviewed as part of [Georgia-Pacific's] document production process." (*Id.* at 46.) The process of collecting and producing documents in discovery has nothing whatsoever to do with "brand awareness and competitive brands" as listed in Category 7 of the deposition notice.

More importantly, none of Global Tissue's written document requests even asked for production of "competitive ads." Therefore, Georgia-Pacific had no obligation to search or produce these documents. The only document request even remotely related to this topic is Request No. 15, which states:

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<sup>1</sup> Any additional information with respect to Georgia-Pacific's position vis-à-vis Procter & Gamble's use of "quilt" would reveal privileged communications or the mental impressions, conclusions, opinions or legal theories of counsel, and is thus not discoverable.

All documents and things in Opposer's possession or control referring or relating to any third-party use or registration of any name, Mark, or designation that consists of or includes the term "QUILT" or variations thereof, in connection with goods or services in connection with bathroom tissue, facial tissue and/or directed related to the goods identified in the registrations for Opposer's marks.

To the extent that Georgia-Pacific has in its possession any competitive advertisements making use of "quilt" or other variation formative, it already has produced those in discovery.

The only other unanswered question that Global Tissue contends relates to "competitive brands" is a question regarding one statement in a declaration given by Georgia-Pacific's in-house counsel in a lawsuit against Procter & Gamble involving its use of an emboss design on bath tissue. (*See* Global Tissue's Motion, at 11.) The declaration contains a statement that Georgia-Pacific discovered Procter & Gamble's use of this design during a "routine field investigation." (*see* Towle Dep., at 47:13-17.) Mr. Towle stated in his deposition that he could not identify what a "routine field investigation" was as referenced in the declaration. Again, this question has nothing whatsoever to do with "brand awareness and competitive brands" and falls squarely outside the scope of topics listed in Category 7. Georgia-Pacific complied fully with its discovery obligations as to this issue, and Global Tissue's motion does not provide any justification for ordering a further deposition.

**e. Questions Pertaining to an Unrelated Lawsuit are not within the Scope of the Deposition Notice.**

Finally, Global Tissue's motion cites a number of deposition questions that Global Tissue wrongly characterizes as pertaining to "objections made by opposer" pursuant to Category 9 of the deposition notice, which states, "Objections made by Opposer as to any third party's use and/or registration of any name, mark or designation *which includes the term 'QUILT' or variations thereof.*" (*See* Global Tissue's Motion, at 12-13 & Ex. A.) However, in the line of questioning cited by Global Tissue, Mr. Towle was asked a series of questions regarding a

Complaint filed in a false advertising lawsuit that Georgia-Pacific brought against Procter & Gamble, in which Georgia-Pacific alleged that Procter & Gamble ran a television commercial that made false and misleading statements regarding its BOUNTY®-brand paper towels. (*See Towle Dep.*, at 98:19-100:3.)<sup>2</sup> That lawsuit is irrelevant to this proceeding. More importantly, Global Tissue asked questions outside the scope of any of the noticed deposition topics. Therefore, the Board should not compel Georgia-Pacific to proffer yet another witness on this issue.

**2. Georgia-Pacific’s Privilege Log Complies with Rule 26.**

Global Tissue cites no authority supporting its claim that Georgia-Pacific’s privilege log fails to meet the requirements of Rule 26. Georgia-Pacific provided Global Tissue with two privilege logs: one listing privileged documents withheld from Georgia-Pacific’s production of hard-copy documents (Ex. 3 to Towle Deposition), and the other listing electronically-stored information (“ESI”) withheld (Ex. 4 to Towle Deposition). The privilege log complained of by Global Tissue is the latter relating to Georgia-Pacific’s production of ESI, which involved the review and production of over 32,000 electronically-stored files. In this production, Georgia-Pacific withheld approximately 1,500 emails and other electronic documents on the basis of privilege.

The 21-page privilege log contains detailed information regarding each file withheld, including the date, type of document, sender, recipient, description of the subject matter, and nature of the privilege asserted. (*See Ex. M to Global Tissue’s Motion.*) The information provided thus more than satisfies the requirements of Rule 26(b)(5) to “describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a

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<sup>2</sup> A copy of the Complaint referenced as Exhibit 39 in the Towle Deposition is attached at Exhibit B.

manner that, without revealing information itself privileged or protected, will enable parties to assess the claim.” FED. R. CIV. P. 26(b)(5).

Indeed, courts have held that privilege logs similar to that produced by Georgia-Pacific provided sufficient notice of the nature of the documents withheld and privilege asserted, and thus met the requirements of Rule 26. *See Jordan v. Wiley*, No. 07-00498, 2009 WL 2913231, at \*3 (D. Colo. Sept. 8, 2009) (privilege log satisfied requirements of Rule 26 where it “describe[d] the documents, identify[d] the creators and recipients of the documents, and specify[d] the privilege claimed for each document”); *Cencast Servs, L.P. v. United States*, 91 Fed. Cl. 496, 503 (Fed. Cl. 2010) (“The descriptions in defendant’s privilege log-many of which are quoted below-while somewhat skeletal, meet the requirements of [Rule 26(b)(5)] by adequately describing the communications and circumstances surrounding the occurrence of communications between employees of the [defendants] and the [defendant’s] attorneys.”); *In re Grand Jury Investigation v. The Corporation*, 974 F.2d 1068, 1071 (9th Cir. 1992) (privilege log met the requirements of Rule 26 where it identified (a) the attorney and client involved, (b) the nature of the document, (c) all persons or entities shown on the document to have received or sent the document, (d) all persons or entities known to have been furnished the document or informed of its substance, and (e) the date the document was generated, prepared, or dated.”)

The only evidence that Global Tissue cites to support its argument is Mr. Towle’s testimony that he could not specifically identify in his deposition one email listed on the 21-page privilege log. However, it is highly unreasonable to expect Mr. Towle to specifically recall one email of the thousands he receives each year, and his testimony is in no way sufficient to show that the privilege log itself is deficient. “The basic objective [of Fed. R. Civ. P. 26(b)(5)] is a sufficient description of the matters withheld to satisfy the needs of the case,” and Global Tissue

failed to show how the privilege log fails to satisfy this requirement. *See* 8 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2016.1. Therefore, the Board should deny Global Tissue's motion to compel a revised privilege log.

**C. CONCLUSION**

For all of these reasons, the Board should not alter its March 25 Order denying Global Tissue's Motion to Compel, and the current Motion should be denied in its entirety.

DATED: June 16, 2010.

Respectfully submitted,

/s/Charlene R. Marino  
R. Charles Henn Jr.  
Charlene R. Marino  
KILPATRICK STOCKTON LLP  
1100 Peachtree Street, Suite 2800  
Atlanta, Georgia 30309-4530  
Tel: (404) 815-6500  
Fax: (404) 815-6555  
chenn@kilpatrickstockton.com

Attorneys for Opposer  
Georgia-Pacific Consumer Products LP

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

GEORGIA-PACIFIC CONSUMER )  
PRODUCTS LP, )  
 )  
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 ) Opposition No.: 91184529  
v. )  
 )  
GLOBAL TISSUE GROUP, INC., )  
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Applicant. )  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing OPPOSER'S RESPONSE IN OPPOSITION TO APPLICANT'S MOTION TO COMPEL has been served on counsel for Global Tissue Group, Inc. by mailing a copy on June 16, 2010, via email and overnight mail, postage prepaid, and addressed as follows:

Charles R. Hoffmann  
R. Glenn Schroeder  
Hoffmann & Baron, LLP  
6900 Jericho Turnpike  
Syosset, New York 11791

choffmann@hoffmannbaron.com  
gschroeder@hoffmannbaron.com

/s/Charlene R. Marino  
Charlene R. Marino  
Attorney for Opposer  
Georgia-Pacific Consumer Products LP

## **EXHIBIT A**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

GEORGIA-PACIFIC CONSUMER PRODUCTS LP,	)	
	)	
Opposer,	)	
	)	Opposition No.: 91184529
v.	)	
	)	
GLOBAL TISSUE GROUP, INC.,	)	
	)	
Applicant.	)	
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**OPPOSER’S RESPONSES TO  
APPLICANT’S SECOND SET OF INTERROGATORIES**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer Georgia-Pacific Consumer Products LP (“Georgia-Pacific” or “Opposer”) responds to Applicant Global Tissue Group, Inc.’s (“Global Tissue” or “Applicant”) Second Set of Interrogatories as follows:

**GENERAL RESPONSES AND OBJECTIONS**

1. Georgia-Pacific objects to the interrogatories in their entirety and to each interrogatory to the extent that the information sought is protected from discovery by the attorney-client privilege or the work product doctrine or would disclose the mental impressions, conclusions, opinions or legal theories of counsel, and, as such are protected from discovery.
  
2. Georgia-Pacific objects to the interrogatories in their entirety and to each interrogatory to the extent that they attempt to impose obligations upon Georgia-Pacific inconsistent with or greater than the Federal Rules of Civil Procedure or the Trademark Rules of Practice.

3. Georgia-Pacific objects to the interrogatories in their entirety and to each interrogatory to the extent they seek disclosure of confidential or proprietary business information or trade secrets of Georgia-Pacific.

4. Georgia-Pacific objects to the interrogatories in their entirety and to each interrogatory to the extent that they prematurely call for the disclosure of information that Georgia-Pacific may obtain through discovery.

5. The following responses are based on information presently known by Georgia-Pacific, and Georgia-Pacific reserves the right to supplement the responses to these interrogatories during and upon completion of discovery.

6. By answering these interrogatories, Georgia-Pacific does not in any way waive or intend to waive, but instead intends to preserve, all objections as to the competency, relevancy, materiality, and admissibility of the answers or the subject matter thereof.

#### **SPECIFIC RESPONSES AND OBJECTIONS**

**Interrogatory No. 13:** Identify the date when Georgia-Pacific first learned that Proctor [sic] & Gamble was using the marks “Quilted-Quicker-Picker-Upper”, “Quilted-Picker-Upper”, or variations thereof, in the marketplace.

**Response:** Georgia-Pacific objects to this interrogatory as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and to the extent that the information sought is protected from discovery by the attorney-client privilege or the work product doctrine or would disclose the mental impressions, conclusions, opinions or legal theories of counsel. Subject to these objections and the general objections, Georgia-Pacific responds that it believes Procter & Gamble never has used the phrases “Quilted-Quicker-Picker-Upper” or “Quilted-Picker-Upper” in commerce in connection with bath tissue, facial tissue, or napkins. Georgia-Pacific further believes Procter & Gamble never has used the phrases “Quilted-Quicker-Picker-

Upper” or “Quilted-Picker-Upper” in commerce in connection with paper towels that do not also prominently feature the BOUNTY® trademark. Georgia-Pacific further believes it learned that Procter & Gamble used the mark “Quilted-Quicker-Picker-Upper” or “Quilted-Picker-Upper” only in connection with BOUNTY®-brand paper towels on or about late 2003.

**Interrogatory No. 14:** Identify the date when Georgia-Pacific first learned that Proctor [sic] & Gamble was using the term “Quilts” in the marketplace in connection with the sale of paper towel. [sic]

**Response:** Georgia-Pacific objects to this interrogatory as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and to the extent that the information sought is protected from discovery by the attorney-client privilege or the work product doctrine or would disclose the mental impressions, conclusions, opinions or legal theories of counsel. Subject to these objections and the general objections, Georgia-Pacific responds: (1) it believes Procter & Gamble has never used the term “Quilts” in commerce in connection with bath tissue, facial tissue, or napkins; (2) it believes Procter & Gamble never has used the term “Quilts” in commerce in connection with paper towels that do not also prominently feature the BOUNTY® trademark; (3) Georgia-Pacific learned that Procter & Gamble used the phrase “25% Thicker Quilts” in the marketplace in connection with BOUNTY®-brand paper towels on or about February 2009, but that usage ceased later in 2009.

**Interrogatory No. 15:** Identify the date when Georgia-Pacific first learned that Proctor [sic] & Gamble was using the mark “Bounty Quilted Napkins” in the marketplace.

**Response:** Georgia-Pacific objects to this interrogatory as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and to the extent that the information sought is protected from discovery by the attorney-client privilege or the work product doctrine

or would disclose the mental impressions, conclusions, opinions or legal theories of counsel. Subject to these objections and the general objections, Georgia-Pacific responds that it believes Procter & Gamble has never used the term “Bounty Quilted Napkins” in commerce in connection with bath tissue, facial tissue, or paper towels. Georgia-Pacific further believes Procter & Gamble never has used the term “Quilted Napkins” in commerce in connection with napkins that do not also prominently feature the BOUNTY® trademark. Georgia-Pacific further believes it learned that Procter & Gamble used the term “Bounty Quilted Napkins” on BOUNTY®-brand paper napkins in 2000.

**Interrogatory No. 16:** Explain in detail why Georgia-Pacific has not objected to Proctor [sic] & Gamble’s usage of the terms “Quilts” and “Quilted” in the marketplace in connection with Proctor [sic] & Gamble’s sales of its paper towel and napkin products.

**Response:** Georgia-Pacific objects to this interrogatory on the ground that the information sought is protected from discovery by the attorney-client privilege or the work product doctrine or would disclose the mental impressions, conclusions, opinions or legal theories of counsel. Georgia-Pacific further objects to this interrogatory on the ground that it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

**Interrogatory No. 17:** Explain in detail why Georgia-Pacific has not objected to usage of the term “Quilt”, or variations thereof, in the marketplace by CVS, King Kullen, BJ’s, Whole Foods and the WebSTAURANT store in connection with the sale of consumer and industrial paper products, namely, facial tissues, napkins, towels and/or bathroom tissues.

**Response:** Georgia-Pacific objects to this interrogatory on the ground that the information sought is protected from discovery by the attorney-client privilege or the work product doctrine or would disclose the mental impressions, conclusions, opinions or legal

theories of counsel. Georgia-Pacific further objects to this interrogatory on the ground that it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Georgia-Pacific further objects to this interrogatory because it lacks foundation and assumes facts not in evidence, namely, whether these purported “usages” exist and, if so, to what extent.

DATED: June 9, 2010

Respectfully submitted,

By: Charlene R. Marino

R. Charles Henn Jr.

Charlene R. Marino

KILPATRICK STOCKTON LLP

1100 Peachtree Street, Suite 2800

Atlanta, Georgia 30309-4530

Tel: (404) 815-6500

Fax: (404) 815-6555

chenn@kilpatrickstockton.com

Attorneys for Opposer

Georgia-Pacific Consumer Products LP



## **EXHIBIT B**

**ORIGINAL**

FILED IN CLERK'S OFFICE  
U.S.D.C. Atlanta

SEP 30 2003

LUTHER D. THOMAS, Clerk  
By: *[Signature]* Deputy Clerk

THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

GEORGIA-PACIFIC CORPORATION, )  
and FORT JAMES OPERATING )  
COMPANY, )

Plaintiffs, )

v. )

THE PROCTER & GAMBLE )  
COMPANY, )

Defendant. )

**1:03-CV-2957 RWS**  
Civil Action No. \_\_\_\_\_

**COMPLAINT**

Plaintiffs Georgia-Pacific Corporation ("Georgia-Pacific") and Fort James Operating Company ("FJOC"), collectively "Georgia-Pacific," state their Complaint against Defendant, The Procter & Gamble Company ("P&G"), as follows:

**Nature of the Action**

1. This is an action for false advertising, and deceptive and unfair business practices, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), the Georgia Uniform Deceptive Trade Practices Act, O.C.G.A. § 10-1-370 *et. seq.*, the Georgia False Advertising Statute, O.C.G.A. § 10-1-421 *et. seq.*, and the common law of the State of Georgia.



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Pretrial Instructions   
Title VII NTC   
*BL*

2. P&G's "Lock In Spills" advertising campaign for its BOUNTY® paper towel is at best misleading to the public, and at worst outright false and deceptive. The advertising states and implies that BOUNTY® will not drip, and that Georgia-Pacific's BRAUNNY® (which is the "Next Leading Brand") will drip, when used to clean up spills. P&G stages a demonstration in its TV commercial as supposed proof of that claim. The staged demonstration occurs with a relatively small spill (30 ML, which is about 1 ounce, or 2 tablespoons), and uses a towel carefully folded twice to create four layers (to enhance the absorbency as compared to a single, unfolded sheet). What P&G does not reveal in its advertising is that with a slightly larger spill – more than 31 ML, or only 1/5th of a teaspoon more than in the commercial – BOUNTY may drip. Similarly, P&G does not reveal that with a slightly smaller spill – as much as 26 ML, which is not even a teaspoon less than used in the TV ad – the BRAUNNY towel may not drip. Instead, by design, consumers are left with the misleading impression that BOUNTY does not drip across a broad range of spill sizes, and that BRAUNNY will. Consumers do not understand the BOUNTY claims to be limited to a specific spill size (nor do they interpret or understand that there are specific limitations on how the towel must be handled to provide even that result). P&G exacerbates this misleading TV advertising by adding a broad claim of "Lock(s) in Spills" to its packaging, print

and TV advertising. Of course, P&G does not advertise that BOUNTY only locks in spills of 3 IML or less. The overall effect of the television and print advertisements, and the manner in which those advertisements were staged and/or are depicted, misleads the public about the absorption-retention properties of BOUNTY® and BRAWNY® paper towels, and thus the public and Georgia-Pacific are injured.

#### Parties

3. Georgia-Pacific is a corporation organized under the laws of the State of Georgia, with its principal place of business in Atlanta, Georgia.

Georgia-Pacific is a leading producer and distributor of paper and paper-related products, including paper towels marketed under the brand names BRAWNY®, SPARKLE®, GREEN FOREST®, MARDI GRAS®, and SO-DRI®.

4. Fort James Operating Company ("FJOC") is a corporation organized under the laws of the State of Virginia with its principal place of business in Atlanta, Georgia. FJOC is the owner of the BRAWNY® brand name and United States trademark registrations for the BRAWNY® trademark. FJOC is a wholly owned subsidiary of Georgia-Pacific, and the goodwill of the BRAWNY® brand inures to the benefit of FJOC's parent company, Georgia-Pacific. For purposes of

this Complaint, FJOC and Georgia-Pacific will be referred to collectively as "Georgia-Pacific."

5. P&G is a corporation organized under the laws of the State of Ohio, with its principal place of business in Cincinnati, Ohio. P&G manufactures a wide variety of consumer, household and health care products, which are marketed throughout the world, including in the State of Georgia. Those products include paper towels marketed under the brand name BOUNTY®.

#### **Jurisdiction and Venue**

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338, and 15 U.S.C. § 1121 because it arises in part under 15 U.S.C. § 1125. This Court has jurisdiction over Georgia-Pacific's state law claims under 28 U.S.C. § 1338(b) because these claims are joined with substantial and related claims under federal trademark law, and pursuant to the doctrine of supplemental jurisdiction under 15 U.S.C. § 1367.

7. Venue is proper and appropriate in this District pursuant to 28 U.S.C. § 1391 in that P&G resides in and is subject to personal jurisdiction in this District.

## Facts

### The Parties' Products

8. P&G's BOUNTY® brand is the top-selling brand of paper towels in the United States. The "Next Leading Brand," or number two selling paper towel in the United States, is Georgia-Pacific's BRAWNY® brand.

9. In May 2003, P&G launched a "New" paper towel under the BOUNTY® brand. The "New" paper towel is touted as having "Now Bigger Quilts," and that those bigger quilts now "Lock In Spills." Presumably P&G highlights the new "bigger quilts" because what is also "new" is that with this re-launch P&G reduced the sheet count in the two sizes of rolls it markets from 64 to 60 and from 96 to 90.

### P&G's First Misleading Television Advertisement

10. In the Summer of 2003, P&G released a television commercial for BOUNTY® paper towels, which was widely televised throughout the United States. A videotape depicting that television commercial (the "Lock In Spills Commercial") is attached as Exhibit A, and a storyboard showing the narration of the commercial is attached as Exhibit B.

11. The Lock In Spills Commercial opens with a depiction of a person using a paper towel to wipe up liquid on a countertop. During this part, a fleeting

disclaimer – the phrase “30 ml spill” – is superimposed in small print in the lower left side of the screen.

12. The wipe up scene is followed by a close up view of the paper towel saturated with liquid, and then several close up views of a large drop of liquid falling from the paper towel and splashing on the floor. The narration accompanying those scenes states: “You see it. But you can’t stop it. Until now.”

13. The commercial then shifts to a depiction of a roll of BOUNTY paper towels, followed by an animated close up depiction of a quilted portion of a paper towel absorbing liquid. The narration accompanying those scenes states: “Introducing new BOUNTY. With bigger quilts to lock in spills,” representing that the new product is more absorbent than the old in order to induce the public to change brands.

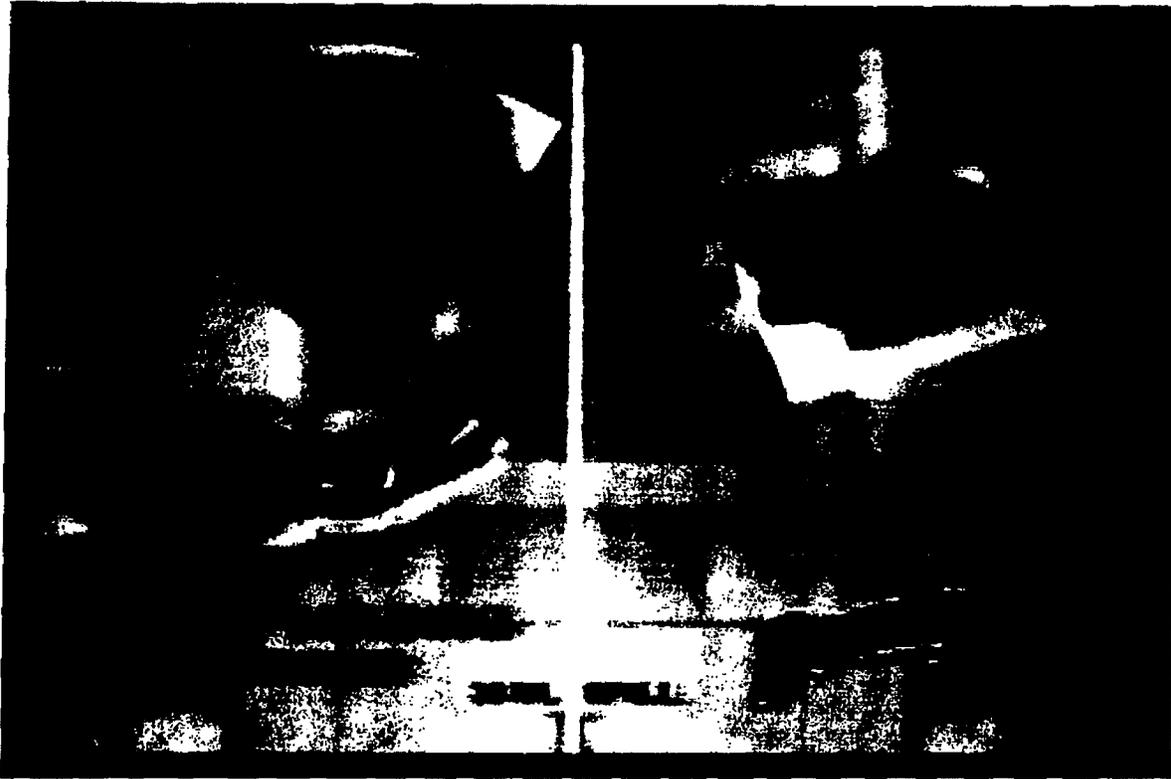
14. The commercial then shifts to a scene depicting a side-by-side comparison (the “Side-By-Side Scene”). The screen is split in two, with both sides of the screen depicting folded paper towels held over countertops with liquid apparently spilled on them. The left side of the screen depicts the words “Next Leading Brand,” while the right side of the screen depicts the stylized BOUNTY trademark. In very small print at the bottom center of the screen the phrase “30 ml spill” appears. Again, this disclaimer is not conveyed verbally, or in any other

potentially effective manner, even though this fact severely limits the message otherwise received from the prominent pictures and other claims in the commercial.

15. The Side-By-Side Scene begins with the narration, “See, other brands drip,” while the hand holding the “Next Leading Brand” paper towel wipes the liquid from the left countertop, then holds the paper towel – the bottom of which is saturated – while liquid drips from the bottom edge of the paper towel into another hand.

16. As the “Next Leading Brand” paper towel drips, the narration continues, “BOUNTY with Quick Lock, doesn’t,” while the hand holding the BOUNTY paper towel wipes the liquid from the countertop on the right and holds the paper towel vertically.

17. Unlike the depiction of the “Next Leading Brand” paper towel, the top of which appears to be dry and the bottom of which appears to be saturated, the top of the BOUNTY paper towel appears to be saturated while the bottom appears to be dry. This is illustrated by the following screen shot from the commercial:



18. After the Side-By-Side Scene, the commercial shifts to several additional scenes not directly relevant to this proceeding.

**Georgia-Pacific's Initial Protest**

19. In late July 2003, Georgia-Pacific sent P&G the letter attached as Exhibit C, objecting to P&G's Lock In Spills Commercial as false and misleading.

The letter specifically put P&G on notice as follows:

This spot introduces "new Bounty with bigger quilts to lock in spills" and states that Bounty does not drip (i.e., "you see it, but you can't stop it" ... "until now"). The spot further claims that "other brands drip" but "Bounty with quick lock doesn't". These claims are clearly false and misleading. Bounty cannot "lock in" spills ordinarily

encountered by a consumer (i.e., spills much greater than 30 ml) and will drip whenever its absorbent capacity is exceeded. In fact, as noted below, an unfolded sheet of Bounty cannot even clean 30-mls of liquid without dripping. Since Bounty will immediately start dripping when used to clean ordinary sized spills and leaks even if used to clean 30-mls of liquid, these claims are false and misleading.

The demonstration in the advertisement shows a side-by-side comparison between new Bounty and the "Next Leading Brand." According to ACNielsen data, the next leading brand is Brawny. This demonstration is false and misleading because the towels are not handled similarly. The "Next Leading Brand" is wiped in a different manner resulting in more liquid contacting the bottom of the towel so that it leaks faster than Bounty. The "Next Leading Brand," after wiping the liquid, is also held at a different angle resulting in additional wicking at the tip of the towel. Finally, the Bounty towel is not held as long as the "Next Leading Brand" and therefore has less time to start leaking.

As P&G is well aware, a single, unfolded 11x11 inch Bounty towel cannot absorb a 30-ml spill. As the NAD has previously determined in case #3873, consumers could reasonably interpret this type of demonstration to mean that a single, unfolded sheet of Bounty can absorb an entire 30-ml spill without dripping. As a result, the NAD recommended that P&G either discontinue use of the demonstration or modify it to show that the paper towel must be folded in order to perform as demonstrated. P&G agreed to abide by NAD's decision. However, P&G has apparently chosen to ignore this direction from NAD when it developed this new spot because P&G is again using a quarter folded towel without disclosing that an unfolded sheet of Bounty is incapable of cleaning the same mess without dripping. Therefore, the demonstration is false and misleading.

20. The reference in Georgia-Pacific's letter to "NAD" refers to a case decided by the National Advertising Division of the Council for Better Business Bureaus.

21. P&G responded to Georgia-Pacific's objection in a letter attached as Exhibit D. In that response, P&G denied that its commercial was false or misleading, and refused to stop running the commercial, although it did agree to modify the commercial "to more clearly communicate that the paper towel has been folded." P&G's letter also acknowledged that BRAWNY<sup>®</sup> is the "Next Leading Brand" of paper towels referred to in the television commercial. An exhibit to the P&G letter, labeled "Absorbency Technical Data," states that the "Absorbent Retention" is 31 ML for BOUNTY and 26 ML for BRAWNY.

**P&G's Second Misleading Television Commercial and Print Ads**

22. In August 2003, P&G released a modified version of the Lock In Spills Commercial. A videotaped copy of the commercial is attached as Exhibit E, and a storyboard showing the narration of the commercial is attached as Exhibit F. This commercial is identical to the previous commercial, except that the phrase "Towel Folded Twice" appears in small script superimposed on the screen beneath the phrase "30 ml spill" twice – briefly in the first scene of the commercial, and in the Side-By-Side Scene.

23. In addition to the television advertising, P&G's packaging and promotional materials claim that the "Bigger Quilts" of the new BOUNTY paper

towels “Lock In Spills.” Representative examples of print advertisements making such claims, including “Lock In Spills,” are attached as Exhibits G to N.

**P&G’s Television Advertising Misleads and Deceives The Public**

24. P&G’s Lock In Spills Commercial is false and/or misleading, and thus deceives and has a tendency to deceive, because consumers understand the commercial to be stating that BOUNTY will not drip across a broad range of spills, and that BRAWNY will. Consumers do not understand the BOUNTY claims to be limited to a specific, limited spill size.

25. P&G’s Lock In Spills Commercial makes a variety of explicit statements (*i.e.*, “Introducing new BOUNTY with bigger quilts to lock in spills” and “Other brands drip, BOUNTY with Quick Lock doesn’t”), and implicit claims (*i.e.*, “You see it, but you can’t stop it ... until now”). Those spoken claims, together with the close up image(s) of the dripping BRAWNY towel and the non-dripping BOUNTY towel, create false and misleading impressions for consumers.

26. While a twice-folded BOUNTY paper towel in fact may be able to absorb and retain 30 milliliters of liquid, P&G’s own research indicates that a BOUNTY paper towel may not retain more than 31 milliliters of liquid without dripping. P&G’s own research also indicates that BRAWNY paper towels can

absorb and retain at least 26 milliliters of liquid. That difference of 5 milliliters equates to approximately one teaspoon of liquid.

27. P&G's Lock In Spills Commercial presents a false and misleading description and representation of fact because consumers are confused, misled or deceived, and do not understand, that the amount of liquid that paper towels can retain depends, in part, on the manner in which the paper towel is used. It is unrealistic to expect most consumers to carefully fold a paper towel twice while rushing to clean up a spill.

28. Notwithstanding the minor and immaterial difference between the absorption-retention qualities of the two brands, the Side-By-Side Scene of the Lock in Spills Commercial was staged and/or filmed in a manner that overstates and misrepresents that difference, and creates the false and misleading impression that BOUNTY paper towels will absorb and retain significantly more liquid than BRAUNY paper towels across a range of spills, which is not true, and thus results in consumer confusion and deception. In addition, the Lock In Spills Commercial and related P&G print advertising convey the false and misleading representations that: (a) BOUNTY paper towels never will drip after cleaning a typical liquid spill; (b) BOUNTY paper towels never will drip after cleaning a typical liquid spill, regardless of how the towels are used (e.g., folded or unfolded); and (c)

BRAWNY paper towels, the “Next Leading Brand,” will drip in connection with any spill.

29. The express and implied representations of fact made in the P&G advertisements described above misrepresent an inherent quality or characteristic of the product, are material to the purchasing decisions of consumers, and are false and likely to deceive and mislead consumers about the properties and characteristics of BOUNTY<sup>®</sup> paper towels and those of BRAWNY<sup>®</sup> paper towels.

30. Based on Georgia-Pacific’s letter providing notice of the false and misleading nature of the Lock In Spills Commercial, as well as P&G’s extensive prior history as a defendant in false advertising cases, P&G was on actual notice that its advertising is false and misleading to consumers.

31. The false and misleading advertising described above has injured and is likely to injure Georgia-Pacific. In particular, if P&G’s false advertising continues, P&G will benefit from the deception and Georgia-Pacific’s BRAWNY brand will be harmed, and Georgia-Pacific will lose sales, market share and good will that cannot readily be quantified or recaptured. Accordingly, Georgia-Pacific and the public have a strong interest in preventing the further dissemination of P&G’s deceptive claims.

**Count I:**  
**False Advertising Under 15 U.S.C. § 1125(a)**

32. Georgia-Pacific realleges and incorporates by reference the allegations of paragraphs 1 through 31 above.

33. P&G has made and is making false and/or misleading representations of fact regarding P&G's products, and those of Georgia-Pacific, in connection with the sale or offering for sale of P&G's products in interstate commerce.

34. P&G has made and is making false and misleading representations concerning the nature, characteristics, or qualities of P&G's products, and those of Georgia-Pacific, in commercial advertising or promotion for P&G's products.

35. P&G's actions violate Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

36. P&G's actions demonstrate an intentional, willful, and bad faith intent to deceive the public and to harm Georgia-Pacific's business and the goodwill and reputation of Georgia-Pacific's BRAUNNY products.

37. P&G is causing, and is likely to cause, substantial injury to the public and to Georgia-Pacific. Georgia-Pacific has no adequate remedy at law and is entitled to preliminary and permanent injunctive relief, and to recover P&G's profits and Georgia-Pacific's actual and trebled damages, costs and reasonable attorneys' fees under 15 U.S.C. §§ 1125, 1116 and 1117.

**Count II:**  
**Deceptive Practices Under The Georgia Uniform**  
**Deceptive Trade Practices Act, O.C.G.A. § 10-1-370 et. seq.**

38. Georgia-Pacific realleges and incorporates by reference the allegations of paragraphs 1 through 37 above.

39. P&G, in the course of its business, has represented that its goods and those of Georgia-Pacific have characteristics or benefits that they do not have in violation of O.C.G.A. § 10-1-372(a)(5).

40. P&G, in the course of its business, has represented that its goods and those of Georgia-Pacific are of a particular standard or quality when they were of another in violation of O.C.G.A. § 10-1-372(a)(7).

41. P&G, in the course of its business, has disparaged Georgia-Pacific's goods and business by false or misleading representations of fact in violation of O.C.G.A. § 10-1-372(a)(8).

42. P&G, in the course of its business, has engaged in other conduct that creates a likelihood of confusion or of misunderstanding in violation of O.C.G.A. § 10-1-372(a)(8).

43. P&G has willfully made false or misleading representations of fact knowing them to be deceptive and has otherwise engaged in unfair and deceptive trade practices in violation of the Georgia Uniform Deceptive Trade Practices Act.

44. P&G's actions demonstrate an intentional, willful, and bad faith intent to harm Georgia-Pacific's business and the goodwill and reputation of Georgia-Pacific's BRAWNY products.

45. P&G is causing, and is likely to cause, substantial injury to Georgia-Pacific. Georgia-Pacific has no adequate remedy at law and is entitled to preliminary and permanent injunctive relief, costs and reasonable attorneys' fees pursuant to O.C.G.A. § 10-1-373.

**Count III:**  
**False Advertising Under O.C.G.A. § 10-1-421**

46. Georgia-Pacific realleges and incorporates by reference the allegations of paragraphs 1 through 45 above.

47. P&G made and disseminated television and print advertisements in the State of Georgia with the intent to induce the public to purchase P&G products, which advertisements contained untrue statements of fact about those P&G products, in violation of O.C.G.A. § 10-1-421. P&G knew or, by the exercise of reasonable care, should have known the statements about those P&G products were untrue.

48. P&G is causing, and is likely to cause, substantial injury and damage to Georgia-Pacific, and Georgia-Pacific has no adequate remedy at law and is entitled to injunctive relief pursuant to O.C.G.A. § 10-1-423.

**Count IV:**  
**Common Law False Advertising and Unfair Trade Practices**

49. Georgia-Pacific realleges and incorporates by reference the allegations of paragraphs 1 through 48 above.

50. P&G's conduct constitutes false advertising and unfair trade practices under the common law.

51. P&G's actions demonstrate an intentional, willful, and bad faith intent to harm Georgia-Pacific's business and the goodwill and reputation of Georgia-Pacific's Brawny<sup>®</sup> products.

52. P&G is causing, and is likely to cause, substantial injury to Georgia-Pacific, and Georgia-Pacific is entitled to preliminary and permanent injunctive relief, and to recover P&G's profits and Georgia-Pacific's actual damages, punitive damages, costs and reasonable attorneys' fees.

**Prayer For Relief**

WHEREFORE, Georgia-Pacific prays for judgment as follows:

1. That P&G, its officers, agents, servants, affiliates, employees, parent and subsidiary corporations, attorneys and representatives, and all those in privity or acting in concert or participation with P&G, be preliminarily and permanently enjoined and restrained from directly or indirectly:

A. Disseminating the advertisements attached as Exhibit A, Exhibit E and Exhibits G to N, and any other substantially similar advertisements or promotional materials;

B. Claiming, whether directly or by implication, in any advertising or promotional medium, that Bounty<sup>®</sup> paper towels “lock in spills” or that Bounty<sup>®</sup> paper towels do not drip;

C. Making any other expressly or impliedly false representation of fact regarding Bounty<sup>®</sup> paper towels or Brawny<sup>®</sup> paper towels (whether it is identified by brand name or as the “Next Leading Brand”), or the nature, characteristics or qualities of those products.

2. An order directing P&G to disseminate, in a form approved by the Court, advertising designed to correct the false and misleading claims made by P&G to date for its Bounty<sup>®</sup> paper towels.

3. An order pursuant to 15 U.S.C. § 1116(a) directing P&G to file with the Court and serve on Georgia-Pacific’s counsel within thirty (30) days after entry of judgment, or at such earlier time as the Court may order, a report in writing and under oath, setting forth in detail the manner and form in which P&G has complied with the injunction.

4. An award of P&G's profits attributable to P&G's false advertising, in an amount to be determined at trial.

5. A declaration that this is an "exceptional case" due to the willful nature of P&G's false advertising, and awarding Georgia-Pacific its actual and treble damages, together with its reasonable attorneys' fees and costs pursuant to 15 U.S.C. § 1117.

6. Pursuant to O.C.G.A. § 10-1-373, an award of the costs and disbursements incurred by Georgia-Pacific in this action, including reasonable attorneys' fees.

7. That punitive damages be awarded to Georgia-Pacific by reason of P&G's willful, intentional, malicious, and bad faith actions in order to deter such actions in the future.

8. An award of interest, including prejudgment interest.

9. That Georgia-Pacific have such other and further relief as the Court may deem just and proper.

Dated: September 30, 2003.

Respectfully submitted,



---

Jerre B. Swann (Georgia Bar No. 694050)  
William H. Brewster (Georgia Bar No. 080422)  
Michael W. Rafter (Georgia Bar No. 591855)

**KILPATRICK STOCKTON LLP**  
Suite 2800  
1100 Peachtree Street  
Atlanta, Georgia 30309-4530  
Telephone: (404) 815-6500  
Facsimile: (404) 815-6555

**Attorneys for Plaintiffs**  
**Georgia-Pacific Corporation and**  
**Fort James Operating Company**

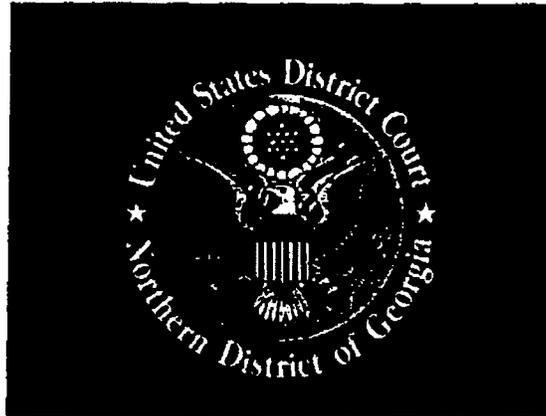


EXHIBIT / ATTACHMENT

A

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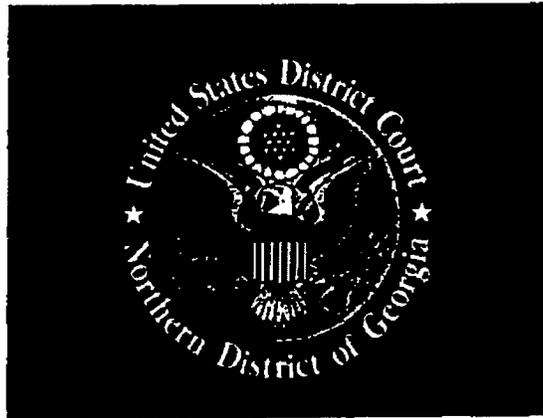


EXHIBIT / ATTACHMENT

B

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PRODUCT - BOUNTY  
 TITLE - UNTIL NOW  
 PROGRAM - JUDGE JUDY

LENGTH - :30  
 TIME - 4:20 P.M.

MARKET - NEW YORK CITY  
 AIR DATE - JUNE 30, 2003

LIBRARY NUMBER - T681766  
 NETWORK - NBC / PAGE 1 OF 3

353 Lexington Avenue, New York, NY 10016 • Tel: 212.683.9113 • www.aisnyc.com



[SUSPENSEFUL MUSIC]



[DRAMATIC MUSIC]



[MUSIC]



[MUSIC]



[MUSIC]



[MUSIC]



MALE ANNCR: You see it.



[MUSIC]



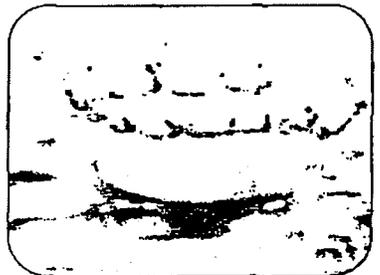
But you can't



stop it.



[MUSIC]



[SFX: DROPLET]

Material supplied by AIS may be used for internal review, analysis or research. Any publication, re-broadcast or public display for profit is forbidden. AIS strives to maintain the accuracy of its product, but cannot be liable for errors or omissions.

ALSO AVAILABLE ON VIDEO CASSETTE.



PRODUCT - BOUNTY  
 TITLE - UNTIL NOW  
 PROGRAM - JUDGE JUDY

LENGTH - :30  
 TIME - 4:20 P.M.

MARKET - NEW YORK CITY  
 AIR DATE - JUNE 30, 2003

LIBRARY NUMBER - T681766  
 NETWORK - NBC / PAGE 2 OF 2

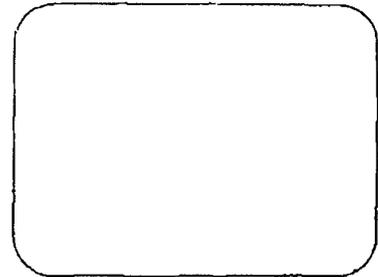
353 Lexington Avenue, New York, NY 10016 • Tel: 212.683.9113 • www.aisnyc.com



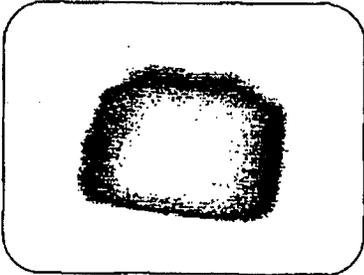
Until now.



Introducing new Bounty.



With bigger quilts to



lock in spills.



See, other brands drip.



Bounty with Quick Lock, doesn't.



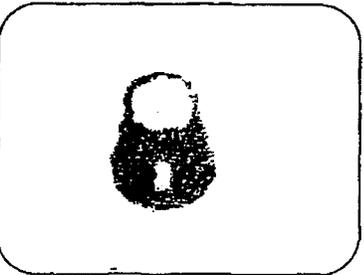
Even on a trip to the trash.



And it's stronger, too.



SONG: *The quilted,*



quicker locker-upper...



[MUSIC]



Bounty!

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ALSO AVAILABLE ON VIDEO CASSETTE.

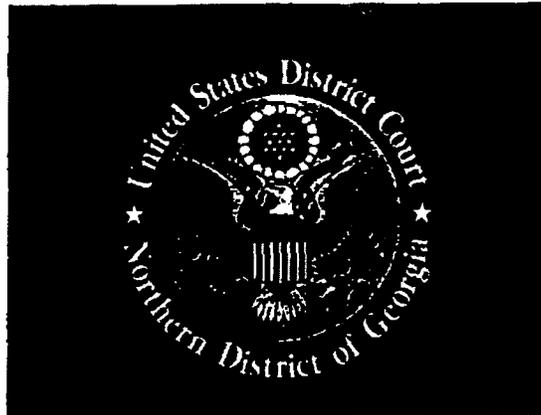


EXHIBIT / ATTACHMENT

C

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**Georgia-Pacific**

Georgia-Pacific Corporation  
Law Department

133 Peachtree Street NE (30303-1847)  
P.O. Box 105605  
Atlanta, Georgia 30348-5605  
(404) 652-5703  
(404) 584-1461 fax  
www.gp.com

July 21, 2003

VIA TELEFAX and REGULAR MAIL

**Michael J. Betz**  
Division Counsel  
Consumer Products

Carl Steinmanis, Esq  
Legal Counsel  
The Procter & Gamble Company  
1 Procter & Gamble Plaza  
Cincinnati, OH 45202-3315

Re: New Bounty Bigger Quilts Advertisement

Dear Mr. Steinmanis:

Georgia-Pacific Corporation ("GP") has just reviewed Procter and Gamble's ("P&G") new Bounty with bigger quilts television advertisements comparing Bounty to the "next leading brand." GP believes that this advertisement is false and misleading under Section 43(a) of the Lanham Act and is in contradiction of FTC guidelines and previous decisions by the National Advertising Division of the Better Business Bureau ("NAD"). Therefore, GP hereby demands that you immediately cease utilizing this advertisement for the following reasons:

1. This spot introduces "new Bounty with bigger quilts to lock in spills" and states that Bounty does not drip (i.e. "you see it, but you can't stop it" ... "until now"). The spot further claims that "other brands drip" but "Bounty with quick lock doesn't." These claims are clearly false and misleading. Bounty cannot "lock in" spills ordinarily encountered by a consumer (i.e. spills much greater than 30 ml) and will drip whenever its absorbent capacity is exceeded. In fact, as noted below, an unfolded sheet of Bounty cannot even clean 30-mls of liquid without dripping. Since Bounty will immediately start dripping when used to clean ordinary sized spills and leaks even if used to clean 30-mls of liquid, these claims are false and misleading.
2. The demonstration in the advertisement shows a side-by-side comparison between new Bounty and the "Next Leading Brand". According to ACNielsen data, the next leading brand is Brawny. This demonstration is false and misleading because the towels are not handled similarly. The "Next Leading Brand" is wiped in a different manner resulting in more liquid contacting the bottom of the towel so that it leaks faster than Bounty. The "Next Leading Brand", after wiping the liquid, is also held at a different angle resulting in additional wicking at the tip of the towel. Finally, the Bounty towel is not held as long as "Next Leading Brand" and therefore has less time to start leaking.

July 21, 2003

Page 2

3. As P&G is well aware, a single, unfolded 11x11 inch Bounty towel cannot absorb a 30-ml spill. As the NAD has previously determined in case #3873, consumers could reasonably interpret this type of demonstration to mean that a single, unfolded sheet of Bounty can absorb an entire 30-ml spill without dripping. As a result, the NAD recommended that P&G either discontinue the use of the demonstration or modify it to show that the paper towel must be folded in order to perform as demonstrated. P&G agreed to abide by NAD's decision. However, P&G has apparently chosen to ignore this direction from NAD when it developed this new spot because P&G is again using a quarter folded towel without disclosing that an unfolded sheet of Bounty is incapable of cleaning the same mess without dripping. Therefore, the demonstration is false and misleading.

Given the clearly false and misleading nature of this advertisement, GP demands that P&G immediately cease utilizing these spots. Please respond in writing by July 28, 2003, and indicate that you will immediately remove this advertisement from broadcast.

Sincerely,



Michael J. Betz



EXHIBIT / ATTACHMENT

D

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Tara C. Hogan  
Legal Counsel  
Phone: (513) 983-4374  
Fax: (513) 983-7635  
e-mail: [hogan.t.l@pg.com](mailto:hogan.t.l@pg.com)

The Procter & Gamble Company  
Legal Division  
1 P&G Plaza  
Cincinnati, OH 45202-3315  
[www.pg.com](http://www.pg.com)

July 28, 2003

**Via Facsimile and Overnight**

Michael J. Betz, Esq.  
Division Counsel, Consumer Products  
Georgia Pacific Law Department  
133 Peachtree Street NE  
P.O. Box 105605  
Atlanta, GA 30348-5605

**Re: New Bounty Bigger Quilts Advertising**

Dear Mr. Betz:

This letter serves as Procter & Gamble's ("P&G") response to your letter dated July 21 concerning the new Bounty<sup>®</sup> "Drip" television advertising. As explained in greater detail below, the claims in this commercial, including the side-by-side demonstration, are wholly substantiated, supported and compliant with all advertising laws, FTC guidelines and NAD decisions. Accordingly, P&G does not intend to discontinue its use of this commercial.

The Claims

We disagree with your interpretation of the claims in the Bounty "Drip" commercial. This commercial is a dramatic and humorous way of communicating Bounty's superior absorptive capacity, superior absorptive retention and superior rate of absorbency versus the next leading brand, Brawny. (See Exhibit 1) Despite the assertions in your letter, the wording of the claims in the commercial as well as the use of supers, limit the context of the commercial to a 30ml spill and does not communicate that Bounty does not drip at all or that Bounty absorbs spills larger than 30ml.<sup>1</sup>

During the monadic spill wipe up in the beginning of the commercial, the size of the spill is clearly communicated to the consumer via a large super that states "30ML SPILL." The super appears in black font on a neutral background for the entire duration of the spill wipe up. This super serves to clearly limit the context of the commercial to a 30ml spill only. Additionally, during the comparative side-by-side spill wipe up

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<sup>1</sup> We know that all paper towels drip when their absorptive capacity is exceeded. This is true for any brand of paper towels, including those manufactured by Georgia Pacific. This claim is not communicated in this commercial or any other Bounty advertising.



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demonstration, another "30ml SPILL" super appears at the bottom of the screen, again emphasizing to consumers the context of the commercial. The use of supers during every spill wipe up demonstration in this commercial prevents the communication that Bounty wipes up spills larger than 30ml.

Furthermore, the voiceover that leads into the comparative side-by-side demonstration states, "See, other brands drip, but Bounty with drip lock doesn't." The demonstration, discussed in greater detail below, shows that Bounty can completely wipe up a 30ml spill and hold on to it while Brawny can neither completely wipe up the spill nor hold on to it. By leading into the demonstration with the word "See," the consumer is explicitly told and understands that the context of the demonstration is limited to a 30ml spill and prevents the broader message that Bounty absorbs spills larger than 30ml. We note that your letter conveniently presents only a portion of the claim and omits the use of the word "See."

In sum, we believe the wording of the claims, when interpreted in their entirety, and the use of supers prevent a broader interpretation that Bounty absorbs spills larger than 30ml.

#### The Demonstration

Your letter asserts that the side-by-side demonstration is false and misleading because the two towels are not handled similarly. This allegation is simply not true. Both paper towels were treated fairly and equally and in the exact same manner. In an effort to assist you in gaining a true assessment of our demonstration, we have attached the Spill Wipe Up Demonstration Protocol ("Protocol") as Exhibit 2. We invite you to use the Protocol to duplicate the demonstration. You will see that your results will mirror the results shown in the commercial.

We believe any minor discrepancies you see in how the towels appear on screen are merely the result of how each towel handles the spill when used to wipe it up. As set forth in Exhibit 1, Bounty has superior absorbent capacity, superior rate of absorbency and superior absorptive retention. Bounty's superior rate of absorbency enables Bounty to pick up spills faster than Brawny, its superior absorbent capacity means that Bounty can hold more fluid than Brawny, and Bounty's superior absorptive retention means that when held vertically, Bounty will hold onto fluid better than Brawny.

We are fully aware of the guidance from the NAD regarding a previous and unrelated spill wipe up demonstration. However, the demonstration in this commercial is clearly distinguishable from the previous spill reviewed in the NAD case. In the previous demonstration, a "diminutive" hand was holding the product making the size of the folded paper towel more ambiguous, whereas here, the hand of an adult male is seen and the proportion of the man's hand to the paper towel makes it clear that the towel is folded. More importantly, however, when the towels are held vertically, the corners of the paper towel are not perfectly even so one can visually see that overlap of the corners.



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Page 3

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Corners only overlap if the paper towel is folded. Notwithstanding our belief that the paper towels are clearly folded, to resolve this issue and to show our good faith in addressing your concerns, we are moving forward with a modification of the commercial to include a super during the side-by-side demonstration to more clearly communicate to consumers that the towel has been folded.

Conclusion

As explained above, Bounty's superior absorptive retention versus Brawny enables Bounty to completely pick up a 30ml spill and hold on to it while Brawny fails to completely pick up the spill or hold on to what it was able to pick up. Every aspect of the commercial clearly communicates that message. Because these claims are supported and true, we do not intend to discontinue its use. We will, however, modify the demonstration to more clearly communicate that the paper towel has been folded.

Very truly yours,

Tara C. Hogan

TCH:er

Enclosures

\\Hogan\Georgia Pacific\Bounty\BountyDrip7-28-03.doc

**Exhibit 1**

Exhibit 1

Absorbency Technical Data

Measure	Units	Bounty		Brawny
Absorbent Capacity	g <sub>water</sub> /sheet	78	-s-	63
Absorbent Retention	g <sub>water</sub> /sheet	31	-s-	26
Absorbent Rate	g <sub>water</sub> /sec.	0.75	-s-	0.23

A -s- signifies a statistically significant difference at 95% confidence.

**Exhibit 2**

## Side-By-Side Spill Wipe Up Protocol

This product demonstration has been developed to show Bounty's superior absorbent retention versus leading national 2-ply paper towels.

### ¼ Fold Procedure

1. Place the towel on a table so that the side facing outward on the roll faces down. Orient the towel so that the perforations on are the right and left sides.
2. Fold the towel in half from top to bottom.
3. Fold the towel in half again from left to right.

The perforated edges should now be aligned on the right side. The primary folded edge is the edge on the left side. The open-folded edge is aligned on the topside.

### Spill Preparation

1. Place 30mL of colored water onto a countertop surface.

### Spill Wipe-up Protocol

1. Grasp a sample in hand by the open-folded edge between your thumb and forefinger. The perforated edge should face your palm, and the primary folded edge should face away from your palm. Make sure to spread your fingers over the folded sample.
2. Place the sample with the open-folded edge leading into the spill.
3. Begin the wiping process by placing the towel onto the edge of the spill.
4. Wipe the towel through the spill by moving the hand forward while rolling the hand slightly backwards through the spill using as much of the dry area of the towel as possible throughout the wiping motion.
5. As part of Step #4, the trailing edge of the towel should be used to absorb any residual water.
6. Hold the towel in a vertical position after the wiping process is complete to allow the fluid to drip from the towel.



EXHIBIT / ATTACHMENT

E

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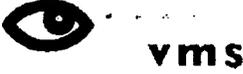
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EXHIBIT / ATTACHMENT

F

(To be scanned in place of tab)



PRODUCT Bounty Paper Towels  
 MARKET New York, NY  
 PROGRAM The Young And The Restles  
 CODE # 030904024  
 TITLE Drip Lock Stops Drip/Towel Folded Twice

LENGTH 30  
 STATION WCBS  
 DATE 09/15/2003  
 TIME 12:35 PM  
 REV OF # 030608396



(MUSIC IN)



(MUSIC)



(MUSIC)



MALE ANNCR: You see it,



but you can't stop it.



(SFX: LIQUID DROP IN & OUT)



Until now.



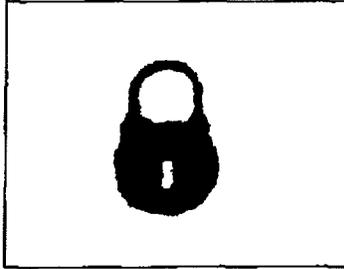
Introducing new Bounty, with bigger quilts to lock in spills.



See, other brands drip. Bounty with drip lock doesn't.



even on a trip to the trash. And it's stronger too.



CHORUS SINGS: The quilted quicker



locker-upper, Bounty. (MUSIC/SINGING OUT)

ALSO AVAILABLE ON VIDEO CASSETTE

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330 West 42nd Street, New York, NY 10036 T 212 736 2010



## EXHIBIT / ATTACHMENT

G

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**Now Bigger Quilts  
Lock in Spills.**

Bounty now  
picks up  
spills 15%  
quicker\* Even  
when wet.

Now at



\*vs. standard Bounty

"The spirit of life"



03-07 85356 NEWS AMERICA MARKETING



EX

H

ACHMENT

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(To be scanned in place of tab)

**Now, Bigger Quilts  
Lock in Spills.**



Bounty® now  
picks up spills  
15% quicker.\*  
And it's soft  
enough for  
baby too.  
Now at



The stuff of life



## EXHIBIT / ATTACHMENT

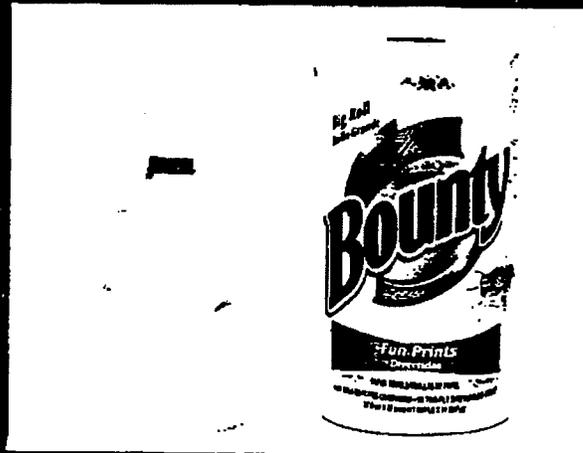
I

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**Now Bigger Quilts  
Lock in Spills.**

One Big Roll  
of Bounty® can  
absorb a  
full gallon  
of milk.  
Now at



03-07 85338 NEWS AMERICA MARKETING

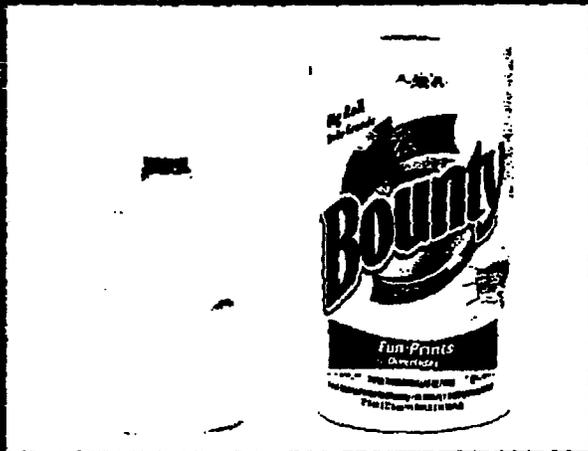


## EXHIBIT / ATTACHMENT

J

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**Now Bigger Quilts  
Lock in Spills.**



One Big Roll  
of Bounty® can  
absorb a  
full gallon  
of milk.

Now at



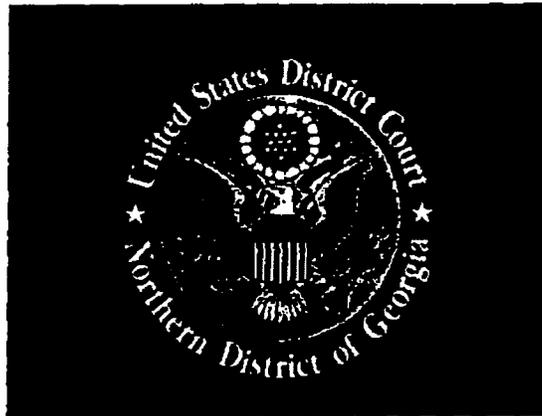


EXHIBIT / ATTACHMENT

K

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**Now Bigger Quilts  
Lock in Spills.**

**One Big Roll  
of Bounty  
can absorb  
over 10 cans  
of soda.  
Now at**

**more**

**The stuff of life.**

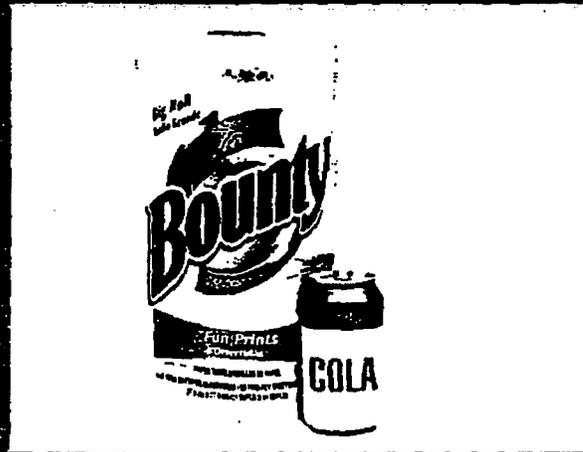




EXHIBIT / ATTACHMENT

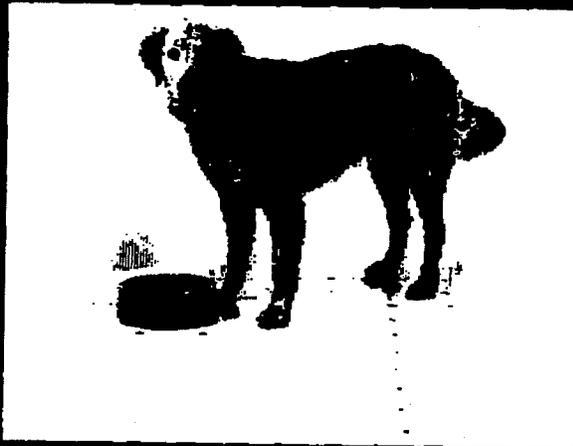
L

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Good For Life™  
**IAMS**

**Satisfaction  
Guaranteed**

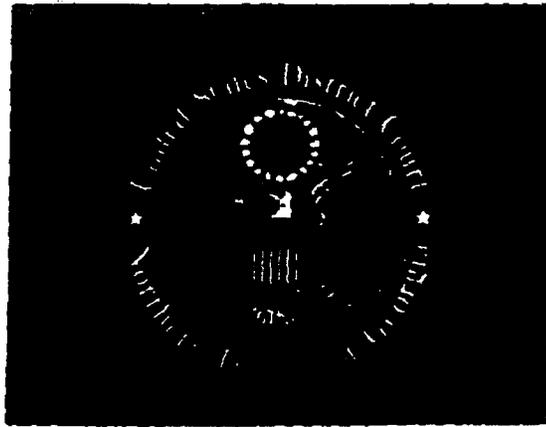
**Now, Bigger Quilts  
Lock in Spills.**



Bounty® now  
picks up  
spills 15%  
quicker.\*  
Now at



03-07 85348 NEWS AMERICA MARKETING



**EXHIBIT / ATTACHMENT**

M

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**COSTCO**  
WHOLESALE

**NEW!**

**Bigger  
Quilts!**

**Lock In Spills!**

**Bounty**

*Locker*

**The Quilted Quicker Picker-Upper**

- ✓ locks in spills
- ✓ faster absorbing
- ✓ more absorbent\*
- ✓ stronger when wet\*

\* vs. next leading 2-ply towel



**EXHIBIT / ATTACHMENT**

N

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**(To be scanned in place of tab)**

See What's NEW!  
Quicker  
Picker  
Upper.com

# It's Bounty or Bust!



\*3.4 pounds of tomatoes

Bounty is  
**stronger**  
when wet

vs. the next leading  
two-ply towel.

NEW!  
**Bigger  
Quilts!**  
Lock In Spills.



**Locker**  
The Quilted Quicker Picker-Upper



# BRILLIANT WHITES

without chlorine bleach