

DAY PITNEY LLP
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Attorneys for Plaintiff Espro, Inc.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

ESPRO INC.,	:	
	:	
Plaintiff,	:	Civil Action No.: 16cv4115
	:	
v.	:	JURY TRIAL DEMANDED
	:	
MADE SIMPLI LLC	:	
	:	
Defendant.	:	
	:	

COMPLAINT

Plaintiff Espro Inc., by its attorneys, Day Pitney LLP, files this complaint against Made Simpli LLC, stating and alleging, upon information and belief, as follows:

THE PARTIES

1. Plaintiff Espro Inc. (“Espro”) is a corporation organized and existing under the laws of Canada, having a principal place of business at 169-3381 Cambie Street, Vancouver, BC V5Y 2R3, Canada.

2. Upon information and belief, Defendant Made Simpli LLC (“Made Simpli”) is a company organized and existing under the laws of California, with its principal place of business at 648 Loma Drive, Hermosa Beach, CA 90254.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a), as the action arises under Acts of Congress related to patents.

4. This Court has personal jurisdiction over Defendant Made Simpli by virtue of, among other things, Defendant's transacting, doing, and soliciting business in this District.

5. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and 1400.

FACTUAL BACKGROUND

6. Espro is a young and growing company that manufactures products for use in connection with the preparation of beverages such as coffee and tea. Among Espro's products are coffee presses, tea presses, espresso tampers and steaming pitches. Espro is known as an innovator in the coffee and tea products field.

7. Espro distributes its products throughout the United States and around the world, and has numerous intellectual property assets. Among its intellectual property assets is U.S. Patent No. 9,392,900 ("the '900 Patent" or "the Asserted Patent"), which is entitled "Apparatus and Method For Extracting an Infusion." A copy of the '900 Patent is attached hereto as **Exhibit A**.

8. Espro is the lawful owner, by assignment, of all rights, title, and interest in the '900 Patent.

9. Upon information and belief, Defendant Made Simpli has made, used and offered to sell in this District and/or elsewhere in the United States a coffee press product called "simpli press" ("the Infringing Press").

10. In the fall of 2015, Espro viewed an early prototype of the Infringing Press, and became immediately concerned that it might infringe its intellectual property. In order to

provide fair warning to Made Simpli, on or about October 30, 2015 Espro contacted Jennifer Morse of Made Simpli to request that Made Simpli respect, and not infringe, Espro's patent rights. A true and correct copy of an electronic email exchange concerning this communication is annexed hereto as **Exhibit B**.

11. Espro did not hear further from Made Simpli, but was surprised to see Made Simpli's Kickstarter campaign to fund the manufacture and marketing of the Infringing Press. A true and correct copy of Made Simpli's Kickstarter campaign page promoting the Infringing Press printed July 22, 2016 is annexed hereto as **Exhibit C**.

12. Espro again contacted Made Simpli on May 16, 2016, again asking Made Simpli to respect its patent rights. A true and correct copy of this communication is annexed hereto as **Exhibit D**. On May 26, Made Simpli's counsel responded in part to Espro's May 16 letter (**Exhibit E**), stating that they were "investigating the matter" and that they would respond in "due course." To date, no further response has been received from SimpliPress. Espro has concluded that SimpliPress is not taking Espro or its patents seriously, and that Espro must unfortunately resort to filing suit to protect its valuable intellectual property.

13. The Infringing Press infringes at least claim 5 of the '900 Patent. The Infringing Press, as displayed on Made Simpli's website, (<http://www.simplipresscoffee.com/>) is depicted below:



14. Espro has no agreement or license with Made Simpli that would authorize the Defendant to make, sell, offer to sell, use or import the Infringing Press.

COUNT ONE
(Infringement of U.S. Patent No. 9,392,900)

15. Plaintiff repeats and realleges Paragraphs 1-14 as if fully set forth herein.

16. By making, using, offering to sell, selling, and/or importing into the United States the Infringing Press, Defendant has infringed and continues to infringe the '900 Patent, in violation of 35 U.S.C. § 271.

17. In addition, this case is exceptional, entitling Espro to attorneys' fees and costs pursuant to 35 U.S.C. § 285.

18. As a direct and proximate result of Defendant's conduct, Espro has suffered, and

will continue to suffer, irreparable harm, for which it has no adequate remedy at law.

19. Unless enjoined by the Court, Defendant will continue to infringe the '900 Patent.

20. Unless this Court preliminarily and permanently enjoins Defendant's infringing product, Espro will continue to be irreparably harmed by Defendant's infringement of the '900 Patent.

WHEREFORE, Plaintiff prays:

A. For judgment that the claims of the '900 Patent have been infringed by Defendant;

B. For damages adequate to compensate Plaintiff for Defendant's patent infringement, but in no event less than a reasonable royalty, together with interest thereon;

C. For judgment preliminarily and permanently restraining and enjoining Defendant (and its officers, directors, employees, agents, servants, successors, assigns, and any and all persons in privy or in concert with them, directly or indirectly) from infringing the '900 Patent;

D. For an assessment and award of interest, costs, and attorneys' fees against Defendant; and

E. For such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury of all issues so triable.

DAY PITNEY LLP
7 Times Square
New York, NY 10036
(212) 297-5800

By: s/ Brian R. Pollack
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Brian R. Pollack (BP4740)

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Attorneys for Plaintiff Espro, Inc.

Date: July 25, 2016

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

ESPRO, INC.

(b) County of Residence of First Listed Plaintiff Foreign (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Richard H. Brown III, Brian R. Pollack Day Pitney, LLP, 7 Times Sq., New York, NY 10036 212-297-5800

DEFENDANTS

MADE SIMPLI LLC

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship in US and foreign states, and incorporation status.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 35 U.S.C. 271
Brief description of cause: Patent Infringement

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: X Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 07/25/2016 SIGNATURE OF ATTORNEY OF RECORD /s/ Brian R. Pollack

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Brian R. Pollack, counsel for Espro, Inc., do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- the complaint seeks injunctive relief,
- the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

N/A

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? No
- 2.) If you answered "no" above:
 - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? No
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? _____

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

- Yes
- No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

- Yes (If yes, please explain)
- No

I certify the accuracy of all information provided above.

Signature: Brian R. Pollack

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

ESPRO INC.

Plaintiff(s)

v.

MADE SIMPLI LLC

Defendant(s)

Civil Action No. 16cv4115

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Made Simpli LLC, 648 Loma Drive, Hermosa Beach, CA 90254

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Richard H. Brown III and Brian R. Pollack Day Pitney LLP, 7 Times Sq., New York, NY 10036

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 16cv4115

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: