

Brita Lands Win At ITC Against Water Filter Rivals

By **Andrew Karpan**

Law360 (February 28, 2023, 9:28 PM EST) -- The Clorox Co.'s Brita brand scored a win Tuesday in its legal fight against a trio of rival water filter manufacturers, landing a ruling from a U.S. International Trade Commission judge who found that other companies infringed claims in a patent that covers Brita LP's "gravity flow" filter.

While the entirety of U.S. Administrative Law Judge MaryJoan McNamara's 316-page decision on Brita's allegations of patent infringement has been filed under seal, a two-page notice indicated that the Clorox subsidiary had come out on top. The company had mounted a case there in 2021, targeting products made by Bermuda-based consumer goods brand Helen of Troy Ltd., Swiss health brand Vestergaard Frandsen Inc. and Illinois water treatment business Culligan International Co.

"Brita LP has proven by a preponderance of evidence that respondents ... have infringed asserted claims 1-6 and 23 of U.S. Patent No. 8,167,141," wrote the judge. That patent covers various specifications used in a "gravity flow filter," which Brita landed a patent on in 2012.

Tuesday's decision marked the first time that Brita's patent infringement allegations against the companies reached a judge. The company is also asserting the same patent in suits against two of the companies in separate cases, in Delaware and Texas federal court, against Culligan's ZeroWater brand and Helen of Troy's Kaz brand, respectively.

Both of those cases, however, had been put on hold pending the ITC's final decision on Brita's allegations. After getting approved by Judge McNamara, the case there will then head to the trade body's five-member commission, who will vote on whether to adopt the recommendations that the ruling lays out. In the notice, the ITC judge wrote that she had recommended issuing a "limited exclusion order," which would ban imports of the water filters that were found to infringe the patent.

Jennifer Reilly, a Clorox spokeswoman, told Law360 in an email that the company believes the decision "protects Brita's intellectual property and technology, as well as the substantial investments that went into them." Representatives for the three other companies did not return a request for comment.

In Pennsylvania federal court, Culligan's ZeroWater brand has accused both Brita and its parent company of using its power on standard-setting organizations to secretly plot what ZeroWater's lawyers call "a patent ambush of the industry" that has monopolized the market on home water-filtration systems.

That suit says the language in Brita's 2012 patent had been deliberately written out "to be required for products to meet the NSF/ANSI [National Sanitation Foundation/American National Standards Institute] ... standard" for commercial water filters.

Clorox and Brita are fighting those allegations. In January, the companies asked the Pennsylvania federal court to throw out the suit, as they say that ZeroWater "has already asserted many of its purported grievances in the existing patent infringement cases brought by Brita."

The patent-at-issue is U.S. Patent No. 8,167,141.

Brita is represented by Paul A. Ainsworth, Uma Everett, Kyle Conklin and Josephine Kim of Sterne Kessler Goldstein & Fox PLLC.

Helen of Troy is represented by Adam D. Swain of Alston & Bird LLP.

Vestergaard is represented by Jeffrey R. Gargano, Devon C. Beane, Philip A. Kunz and Nelson Hua of K&L Gates LLP.

Culligan is represented by Jared A. Brandyberry of Baker & Hostetler LLP.

The case is in the matter of Certain High-Performance Gravity-Fed Water Filters and Products Containing the Same, case number 337-TA-1294, in the U.S. International Trade Commission.

--Additional reporting by Brian Steele. Editing by Andrew Cohen.