

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

NO. 13-cv-00055 (PJS/JJK)

Candella, LLC, and Luminara Worldwide,
LLC,

Plaintiff,

JURY TRIAL DEMANDED

v.

Two's Company, Inc., and Bachman's Inc.,

Defendants.

SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs Candella, LLC ("Candella") and Luminara Worldwide, LLC
("Luminara"), for their Second Amended Complaint against Defendants Two's
Company, Inc. and Bachman's Inc. allege as follows:

JURISDICTION, VENUE AND JOINDER

1. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 1 *et seq.* and, more particularly, 35 U.S.C. §§ 271 and 281.
2. This Court has subject matter jurisdiction pursuant to 28 U.S. C. §§ 1331 and 1338(a).
3. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) and 1400(b).
4. Joinder is proper under 35 U.S.C. § 299. Defendants have acted in concert with one another and related third parties. The allegations of infringement contained herein arise out of the same series of occurrences relating to the import, sale and/or

offering for sale of the same flameless candle products by Defendant Two's Company, Inc., and used, offered for sale and/or sold in the United States by Defendant Bachman's Inc., as well as other third parties.

THE PARTIES

5. Candella is a California limited liability company having its principal place of business in Orange County, California. Candella is the exclusive licensee possessing all substantial right, title and interest to patents issued by the United States Patent and Trademark Office for inventions relating to flameless candles. Candella does business in the State of Minnesota and in this District. Candella has entered into an exclusive distribution agreement in this District with Luminara.

6. Luminara is a Minnesota limited liability company having its principal place of business in Eden Prairie, Minnesota. Luminara obtained from Candella the exclusive right to make, use and sell products utilizing Candella's licensed flameless candle technology. Luminara received Candella's promise that all others shall be excluded from practicing Candella's flameless candle technology. Luminara products, including flameless candles sold under the mark Dreamcandles™, utilize Candella's flameless candle intellectual property. Luminara does business in the State of Minnesota and in this District.

7. Upon information and belief, Defendant Two's Company, Inc. ("Two's Company") is a New York company with a place of business at Elmsford, New York. Upon information and belief, Two's Company offers for sale and sells the flameless candles at issue herein throughout the United States, including in this District, including

the products sold under the name “Dazzler™.” Upon information and belief, Two’s Company places infringing flameless candles into the stream of commerce with the reasonable expectation and/or knowledge that the actual and potential ultimate purchasers and users of the products are located in Minnesota, as well as elsewhere in the United States. Upon information and belief, Two’s Company has had continuous and systematic contacts with the State of Minnesota and this District through its efforts to solicit, market and/or sell flameless candles.

8. Upon information and belief, Defendant Bachman’s, Inc. (“Bachman’s”) is a Minnesota corporation with a place of business in Minneapolis, Minnesota. Upon information and belief, Bachman’s offers for sale, and sells, the flameless candles at issue herein in this District, including the product sold under the name “Dazzler,” offered for sale at Bachman’s stores in Minneapolis. Upon information and belief, Bachman’s has had continuous and systematic contacts with the State of Minnesota and this District as a result of its presence and business activities within Minnesota.

THE PATENTS-IN-SUIT

9. Plaintiffs are the exclusive licensees possessing all substantial right, title and interest in United States Patent No. 7,837,355 (“‘355 patent”), entitled “Kinetic Flame Device,” which issued November 23, 2010. Accordingly, Plaintiffs have standing to sue for infringement of the ‘355 patent.

10. Plaintiffs are the exclusive licensees possessing all substantial right, title and interest in United States Patent No. 8,070,319 (“‘319”), entitled “Kinetic Flame

Device,” which issued December 6, 2011. Accordingly, Plaintiffs have standing to sue for infringement of ‘319 patent.

COUNT I – PATENT INFRINGEMENT

11. Plaintiffs reallege the allegations in the preceding paragraphs as if fully restated in Count I of this Complaint.

12. Upon information and belief, Defendants have been, and still are, directly infringing, either literally or under the doctrine of equivalents, one or more claims of the ‘355 and ‘319 patents by importing, making, using, selling and/or offering to sell in the United States flameless candles which realistically simulate the flame of a burning candle, including but not limited to the products sold under the names Dazzler™.

13. Upon information and belief, Defendants have been and still are indirectly infringing, either literally or under the doctrine of equivalents, one or more claims of the ‘355 and ‘319 patents by inducing one another, other third parties, and end-users to infringe claims of the ‘355 and ‘319 patents by using, offering for resale and/or reselling in the United States flameless candles which realistically simulate the flame of a burning candle, including but not limited to the products sold under the name Dazzler™.

14. Upon information and belief, Defendants’ infringement of the ‘355 and ‘319 patents has been willful and deliberate, rendering this case “exceptional” within the meaning of 35 U.S.C. § 285.

15. Plaintiffs have been damaged by Defendants’ infringement of the ‘355 and ‘319 patents. Unless restrained and enjoined by this Court, Defendants will continue to

infringe the '355 and '319 patents resulting in substantial, continuing, and irreparable damage to Plaintiffs.

16. Plaintiffs have complied with the notice requirements of 35 U.S.C. § 287(a) with respect to the '355 and '319 patents.

DEMAND FOR JUDGMENT

WHEREFORE, Plaintiffs demand judgment as follows:

- A. That Defendants be adjudged to have infringed the '355 and '319 patents;
- B. That the '355 and '319 patents be adjudged valid and enforceable;
- C. That Defendants be adjudged to have willfully and deliberately infringed the '355 and '319 patents;
- D. That Defendants, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, be preliminarily and permanently restrained and enjoined from further infringement of the '355 and '319 patents;
- E. An accounting and an award of damages by virtue of Defendants' infringement of the '355 and '319 patents;
- F. An award of treble damages because of Defendants' willful infringement of the '355 and '319 patents, in accordance with 35 U.S.C. § 284;
- G. An assessment of prejudgment and post-judgment interest and costs against Defendants, together with an award of such interest and costs, all in accordance with 35 U.S.C. § 284;

H. That the present case be adjudged an “exceptional case” within the meaning of 35 U.S.C. § 285 and reasonable attorneys’ fees be awarded pursuant thereto; and

I. An award of such other and further relief as this Court may deem just and proper.

JURY TRIAL DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and the Seventh Amendment to the Constitution of the United States, Plaintiffs hereby demand a trial by jury of all issues triable in the above action.

Dated: May 3, 2013

ANTHONY OSTLUND BAER
& LOUWAGIE, P.A.

By: s/Courtland C. Merrill
Joseph W. Anthony (#2872)
Courtland C. Merrill (#311984)
3600 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402
Tel: (612) 349-6969
Fax: (612) 349-6996
Email: janthony@aoblaw.com
cmerrill@aoblaw.com

*Attorneys for Plaintiffs Candella, LLC
and Luminara Worldwide, LLC*