

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Candella, LLC,

Plaintiff,

v.

Liown Electronics Co. Ltd., Shenzhen
Liown Electronics Co. Ltd., Liown
Technologies/Beauty Electronics, LLC,
BJ's Wholesale Club, Inc., Primitives By
Kathy, Inc., Boston Warehouse Trading
Corp., Von Maur, Inc., Zulily, Inc., and
Smart Candle, LLC,

Defendants.

NO. 12-cv-02803 (PJS/JJK)

JURY TRIAL DEMANDED

SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Candella, LLC (“Candella”), for its Second Amended Complaint against Defendants Liown Electronics Co. Ltd., Shenzhen Liown Electronics Co. Ltd., Liown Technologies/Beauty Electronics, LLC, BJ's Wholesale Club, Inc., Primitives By Kathy, Inc., Boston Warehouse Trading Corp., Von Maur, Inc., Zulily, Inc., and Smart Candle, LLC alleges 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 are related business entities and/or affiliates who have acted in concert with one another. The allegations of infringement contained herein arise out of the same series of occurrences relating to the manufacture, use, import, sale and/or offering for sale of the same flameless candle products manufactured and imported into the United States by Defendants Liown Electronics Co. Ltd., Shenzhen Liown Electronics Co. Ltd., Liown Technologies/Beauty Electronics, LLC, and/or unknown affiliated companies, and used, offered for sale and/or sold in the United States by Defendants BJ's Wholesale Club, Inc., Primitives By Kathy, Inc., Boston Warehouse Trading Corp., Von Maur, Inc., Zulily, Inc. and Smart Candle, LLC.

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 Worldwide, LLC ("Luminara"), located in Eden Prairie, Minnesota. Luminara products, including flameless candles sold under the mark Dreamcandles™, utilize Candella's flameless candle intellectual property.

6. Upon information and belief, Defendant Liown Electronics Co. Ltd., is a company formed under the laws of the People's Republic of China, with a place of business in China. Upon information and belief, Defendant Shenzhen Liown Electronics Co. Ltd., is a company formed under the laws of the People's Republic of China, with a place of business in China. Defendant Liown Technologies/Beauty Electronics, LLC, upon information and belief, is a Delaware limited liability company with a place of business in Azusa, California. Defendants Liown Electronics Co. Ltd., Shenzhen Liown Electronics Co. Ltd., and Liown Technologies/Beauty Electronics, LLC, are upon information and belief, affiliated companies operating in concert with one another, and are hereafter referred to collectively as "Liown."

7. Upon information and belief, Liown, either alone or in concert with unknown affiliated companies, manufactures the infringing flameless candle product at issue herein for sale throughout the United States, including in this District, including the products sold under the names "Flameless LED Candle with Linalool Mosquito Repellent, 2-Pk," "Flameless Pillar," "Forever Flame," and "Smart Flame." Upon information and belief, Liown 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, Liown has had continuous and systematic contacts with the State of Minnesota and this District through its efforts to solicit, market and/or sell flameless candle products throughout the United States.

8. Upon information and belief, Defendant BJ'S Wholesale Club, Inc. ("BJ's") is a Massachusetts corporation with a place of business in Westborough, Massachusetts. Upon information and belief, BJ's offered for sale, and sold, flameless candles manufactured by Liown at issue herein throughout the United States, including in this District, including the product sold under the name "Flameless LED Candle with Linalool Mosquito Repellent, 2-Pk," offered for sale on the internet. Upon information and belief, BJ's placed 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 flameless candle products are located in Minnesota, as well as elsewhere in the United States. Upon information and belief, BJ's has had continuous and systematic contacts with the State of Minnesota and this District through its efforts to solicit, market and/or sell flameless candle products.

9. Upon information and belief, Primitives By Kathy, Inc. ("PBK") is a Pennsylvania corporation with a place of business in Lancaster, Pennsylvania. Upon information and belief, PBK offers for sale, and sells, flameless candles manufactured by Liown at issue herein throughout the United States, including in this District, including the product sold under the name "Flameless Pillar," offered for sale on the internet. Upon information and belief, PBK 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 flameless candle products are located in Minnesota, as well as elsewhere in the United States. Upon information and belief, PBK has had

continuous and systematic contacts with the State of Minnesota and this District through its efforts to solicit, market and/or sell flameless candle products.

10. Upon information and belief, Boston Warehouse Trading Corp. (“Boston Warehouse”) is a Massachusetts corporation with a place of business in Norwood, Massachusetts. Upon information and belief, Boston Warehouse offers for sale, and sells, flameless candles manufactured by Liown at issue herein throughout the United States, including in this District, including the product sold under the name “Forever Flame.” Upon information and belief, Boston Warehouse 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 flameless candle products are located in Minnesota, as well as elsewhere in the United States. Upon information and belief, Boston Warehouse has had continuous and systematic contacts with the State of Minnesota and this District through its efforts to solicit, market and/or sell flameless candle products and other products generally.

11. Upon information and belief, Defendant Von Maur, Inc. (“Von Maur”) is an Illinois corporation with a place of business in Davenport, Iowa. Upon information and belief, Von Maur offers for sale, and sells, flameless candles manufactured by Liown at issue herein throughout the United States, including in this District, including the product sold under the name “Forever Flame,” offered for sale on the internet and at a store location in Eden Prairie, Minnesota. Upon information and belief, Von Maur 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

flameless candle products are located in Minnesota, as well as elsewhere in the United States. Upon information and belief, Von Maur has had continuous and systematic contacts with the State of Minnesota and this District through its efforts to solicit, market and/or sell flameless candle products and other products generally.

12. Upon information and belief, Defendant Zulily, Inc. (“Zulily”) is a Delaware corporation with a place of business in Seattle, Washington. Upon information and belief, Zulily offers for sale, and sells, flameless candles manufactured by Liown at issue herein throughout the United States, including in this District, including the product sold under the name “Forever Flame,” offered for sale on the internet. Upon information and belief, Zulily 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 flameless candle products are located in Minnesota, as well as elsewhere in the United States. Upon information and belief, Zulily has had continuous and systematic contacts with the State of Minnesota and this District through its efforts to solicit, market and/or sell flameless candle products and other products generally.

13. Upon information and belief, Defendant Smart Candle, LLC (“Smart Candle”) is a Minnesota corporation with a place of business in Bloomington, Minnesota. Upon information and belief, Smart Candle offers for sale, and sells, flameless candles manufactured by Liown at issue herein throughout the United States, including in this District, including the product sold under the name “Smart Flame.” Upon information and belief, Smart Candle has had continuous and systematic contacts with the State of

Minnesota and this District through its efforts to solicit, market and/or sell flameless candle products and other products generally.

THE PATENTS-IN-SUIT

14. Candella is the exclusive licensee 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, Candella has standing to sue for infringement of the ‘355 patent.

15. Candella is the exclusive licensee 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, Candella has standing to sue for infringement of ‘319 patent.

COUNT I – PATENT INFRINGEMENT

16. Candella realleges the allegations in the preceding paragraphs as if fully restated in Count I of this Complaint.

17. 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: Flameless LED Candle with Linalool Mosquito Repellent, 2-Pk; Flameless Pillar; Forever Flame; and Smart Flame.

18. 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 names: Flameless LED Candle with Linalool Mosquito Repellent, 2-Pk; Flameless Pillar; Forever Flame; and Smart Flame.

19. 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.

20. Candella has 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 Candella.

21. Candella has complied with the notice requirements of 35 U.S.C. § 287(a) with respect to the '355 and '319 patents.

DEMAND FOR JUDGMENT

WHEREFORE, Candella demands 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, Candella hereby demands a trial by jury of all issues triable in the above action.

Dated: July 10, 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 Plaintiff Candella, LLC