

SEVERED FIRST AMENDED COMPLAINT AND JURY DEMAND

Plaintiff Simon Nicholas Richmond (“Richmond” or “Plaintiff”), for his claims against Defendant Sears Holdings Corp., (“Sears Holdings” or “Defendant”) makes and files this Complaint and alleges as follows:

1. STATEMENT OF RELATED CASES AND PRIOR PROCEEDINGS

This case is related to *Simon Nicholas Richmond v. Winchance Solar Fujian Technology Co. ltd., et al.*, 13-cv-1959 (MLC-DEA), and alleges infringement of the same United States Patents that are at issue in the aforementioned case, i.e., United States Patent Nos. D554,284. This case is further related to case docket nos. 13-cv-1944 (MLC-DEA), 13-cv-1949 (MLC-DEA), 13-cv-1950 (MLC-DEA), 13-cv-1951 (MLC-DEA), 13-cv-1952 (MLC-DEA), 13-cv-1953 (MLC-DEA), 13-cv-1954 (MLC-DEA), 13-cv-1957 (MLC-DEA), 13-cv-1959 (MLC-DEA), 13-cv-1960 (MLC-DEA), 13-cv-2916 (MLC-DEA), all of which have been consolidated with *Simon Nicholas Richmond v. Lumisol, et al.*, 13-cv-1944 (MLC-DEA).

The allegations contained in this Complaint against Defendant were originally filed in *Simon Nicholas Richmond v. Winchance Solar Fujian Technology Co. ltd., et al.*, 13-cv-1959 (MLC-DEA). In an Order dated July 3, 2014, the claims against Defendant Sears Holdings were severed, and Plaintiff was

ordered to file a severed complaint against each individual defendant in Case No. 13-cv-**1959** (MLC-DEA) by August 1, 2014. (Case No. 13-cv-1944, Dkt. 122, p.10).

2. THE PARTIES

A. Plaintiff Richmond.

1. Plaintiff Richmond is an individual and a resident of New Jersey.

B. Defendant.

2. Sears Holdings Corp. (Sears Holdings) is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business at 3333 Beverly Road, Hoffman Estates, Illinois 60179. Sears Holdings may be served through its agent for service of process at The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801.

3. Service of the prior Original and First Amended Complaints in 13-cv-**1959** (MLC-DEA) was previously properly effectuated on Defendant.

3. SUBJECT MATTER JURISDICTION

4. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code, including 35 U.S.C. §§ 271 and 281-285. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331

and 1338(a).

4. PERSONAL JURISDICTION AND VENUE

A. General.

5. Personal jurisdiction over Defendant is proper pursuant to New Jersey Long-Arm Statute, N.J. CT. R. 4:4-4 and principles of due process.

6. Sears Holdings has sufficient minimum contacts with New Jersey and this district and the maintenance of this suit does not offend traditional notions of fair play and substantial justice.

B. Specific Jurisdiction.

7. Personal jurisdiction over Defendant is proper under principles of specific jurisdiction.

8. Upon information and belief, Defendant has transacted and solicited business in New Jersey and in this district related to the subject matter of the claims alleged herein and, upon information and belief, has committed direct infringement in this state and district by importing, offering to sell and/or selling goods infringing one or more of the Patents-in-Suit, to customer(s) in this state.

9. Upon information and belief, Defendant has knowingly induced infringement in New Jersey by its customer(s) by offering to sell and/or selling

goods that infringe one or more of the Patents-in-Suit (as detailed in the Counts below) to customer(s) in New Jersey, with specific knowledge of Plaintiff's applicable patent(s), and with a specific intent and/or willful blindness to the fact that their infringing products will be imported into and offered for sale, sold and/or used in New Jersey by Defendant's customers.

10. The infringement by Defendant that is the subject of the claims alleged has caused Plaintiff to suffer damages and other losses in New Jersey and this district, a result that was reasonably foreseeable to Defendant at the time Defendant committed its misconduct.

C. General Jurisdiction.

11. Personal jurisdiction over Defendant is also proper under principles of general jurisdiction in that Defendant either resides in this state and district and/or has regularly and purposefully conducted business in New Jersey and this district.

D. Venue.

12. Venue also properly lies in this district pursuant to 28 U.S.C. § 1400(b) because Defendant has committed acts of infringement in this district.

13. Venue also properly lies in this district under 28 U.S.C. § 1391(b)(2) and/or (3) because, upon information and belief, either a substantial part of the

events or omissions giving rise to the claims recited below occurred in this district, or a substantial part of the property that is the subject of the action is in this district, or because there is no district in which the action may otherwise be brought as provided in 28 U.S.C. § 1391, and this court has personal jurisdiction over Defendant.

5. FACTUAL BACKGROUND

A. Plaintiff's Patents-in-Suit

14. For many years, Richmond has engaged in the development, manufacture, and sale of solar-powered garden lighting. Richmond has taken steps to protect his innovative inventions and designs. In particular, Richmond owns United States utility and design patents relating to his solar-powered garden lights.

15. Richmond is the inventor and owner of all right, title, and interest to the United States patent number D554,284, entitled "Solar Powered Light," ("D284 Cap Design Patent"), which duly and legally issued to Richmond on 10/30/2007.

16. Plaintiff's 'D284 Patent is valid and enforceable.

17. Richmond continues to engage in the development and sale of solar-powered garden lighting and continues to take steps to protect his innovative

inventions and designs and in this regard has applied for additional patent protection for his inventions. For example, on March 29, 2012, United States Patent Publication No. US 2012/0075104 A1 (the “’104 Published Application”) was published, and on April 5, 2012, United States Patent Publication No. US 2012/0081888 A1 (the “’888 Published Application”) was published. Copies of the ‘104 and ‘888 Published Applications may be obtained for free from the official United States Patent and Trademark website, uspto.gov.

18. At all times relevant to this action, Richmond has complied with any notice provisions of 35 U.S.C. § 287 as they may relate to the Patents-in-Suit.

B. Facts relevant to Defendant

19. According to the first page of Sears Holdings’ 2013 Annual Report: Sears Holdings Corporation (“Holdings”) is the parent company of Kmart Holding Corporation (“Kmart”) and Sears, Roebuck and Co. (“Sears”). Holdings (together with its subsidiaries, “we,” “us,” “our,” or the “Company”) was formed as a Delaware corporation in 2004 in connection with the merger of Kmart and Sears (the “Merger”) on March 24, 2005. . . . We currently operate a national network of stores with 1,980 full-line and specialty retail stores in the United States operating through Kmart and Sears

and 449 full-line and specialty retail stores in Canada operating through Sears Canada Inc. ("Sears Canada"), a 51%-owned subsidiary. Further, we operate a number of websites under the sears.com and kmart.com banners which offer more than 110 million products and provide the capability for our members and customers to engage in cross-channel transactions such as free store pickup; buy in store/ship to home; and buy online, return in store.

20. According to the "Whois.com" registrant information, the owner of both "sears.com" and "kmart.com" is Sears Brands LLC, which is a wholly owned subsidiary of Sears Holdings Corporation.

21. Sears Holdings exercises at sufficient control over its subsidiaries to cause at least Sears Roebuck & Co., Kmart Corporation and Sears Brands LLC jointly act in the same infringement.

22. Since issuance of one or more of the foregoing Richmond patents, Defendant has or has been importing, exposing for sale, offering for sale, or selling the following products:

a) "Moonrays" Verona Light Models

6. INFRINGEMENT OF PLAINTIFF'S PATENTS

Count 1 – Sears Holdings's Direct Infringement of 'D284 Patent

23. The allegations of Paragraphs 1-21 are incorporated by reference as if fully set forth again herein.

24. Sears Holdings has notice of Plaintiff's rights in the 'D284 Patent.

25. Upon information and belief, Sears Holdings directly infringes, and has infringed, Plaintiff's D284 Cap Design Patent by, at-least, importing, exposing for sale, offering to sell, and selling one or more solar-powered garden light products that infringe 'D284 Patent. Upon information and belief, those solar-powered garden lights include, at least, the following products:

a) "Moonrays" Verona Light Models.

26. Upon information and belief, Sears Holdings has and is importing, exposing for sale, offering to sell, and selling other solar-powered garden light products which infringe Plaintiff's D284 Cap Design Patent and will continue to do so unless restrained by this Court.

Count 2 – Sears Holdings's Inducement of Kmart Corp. and Sears Roebuck & Co.'s Infringement

27. The allegations of Paragraphs 1-26 are incorporated by reference as if fully set forth again herein.

28. Upon information and belief, Sears Holdings has had actual

knowledge of Plaintiff's D554,284 Patents, and knowledge that its solar-powered garden lights as accused of infringement earlier in this Complaint ("Accused Infringing Products") would infringe Plaintiff's D554,284 Patents if imported into, offered for sale or sold in the United States. Sears Holdings has had such knowledge of Plaintiff's Patents, as alleged in this Complaint and no later than on or about 6/13/2013, by means of service of the First Amended Complaint on Sears Holdings.

29. Sears Holdings has an ongoing, intentional relationship with its customers, including at least Kmart Corp. and Sears Roebuck & Co., with the clear aim of inducing their nationwide distribution and sale in the United States. Upon information and belief, the quantity of purchase would indicate to Sears Holdings that its products would be shipped to all of its customers' retail stores, including Kmart Corp. and Sears Roebuck & Co.'s New Jersey stores, in accordance with Kmart Corp. and Sears Roebuck & Co.'s customary practice, something that is well known to Sears Holdings. Upon information and belief, Sears Holdings follows a similar practice with its other customers having retail stores in the United States. As such, Sears Holdings knew and intended, or was willfully blind to the fact that its Accused Infringing Products would be imported into the United States,

and then offered for sale and sold by its customers in the United States, including in New Jersey.

30. Based upon the foregoing facts, and reasonable inferences therefrom, upon information and belief, Sears Holdings has, with knowledge of Plaintiff's D554,284 Patents and specific intent to infringe, and/or willful blindness to the infringement, actively induced and is inducing infringement of Plaintiff's D554,284 Patents by the direct infringement of its customers in the United States, including but not limited to, Kmart Corp. and Sears Roebuck & Co., and will continue to do so unless restrained by this Court.

Count 3 – Willfulness of Sears Holdings's Infringement

31. The allegations of Paragraphs 1-30 are incorporated by reference as if fully set forth again herein.

32. Upon information and belief, Sears Holdings has had actual knowledge of Plaintiff's D284 Patents, and knowledge that its solar-powered garden lights as accused of infringement of these patents earlier in this Complaint ("Accused Infringing Products") would infringe Plaintiff's D284 Patents if imported into, offered for sale or sold in the United States. Sears Holdings is believed to have had such knowledge long prior to the filing of Plaintiff's Original

Complaint against Sears Holdings in Case No. 13-cv-1959 (D.N.J.).

33. As a result of Richmond's activities, Defendant is believed to have knowledge of Plaintiff's '477 and '827 Patents and knowledge that one or more of Coleman's previously identified products infringe Richmond's aforementioned patents. As a result, Defendant's infringement of Plaintiff's Patent is willful.

34. The allegations and factual contentions set forth in this Count are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. See Fed. R. Civ. P. 11(b)(3).

7. PLAINTIFF'S DAMAGES AND IRREPARABLE HARM

35. Richmond has offered for sale but has never sold any solar lights bearing the design claimed in the D284 Cap Design Patent.

36. Plaintiff has been damaged as a result of Defendant's infringing activities and will continue to be damaged unless such activities are enjoined by this Court. Pursuant to 35 U.S.C. § 284, Plaintiff is entitled to damages adequate to compensate for the infringement of Plaintiff's Patent, including, inter alia, Plaintiff's lost profits and/or a reasonable royalty. Alternatively, pursuant to 35 U.S.C. § 289, Plaintiff is entitled to an award of Defendant's total profits to compensate for the infringement of Plaintiff's Patent.

8. JURY DEMAND

37. Plaintiff hereby demands a trial by jury, pursuant to Fed. R. Civ. Proc. 38(b), for all issues so triable.

9. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the court enter judgment granting Plaintiff the following relief:

- a. Judgment that Defendant infringed the Plaintiff's D284 Cap Design Patent in violation of 35 U.S.C. § 271(a);
- b. For the Richmond D284 Cap Design Patent, either an award of damages adequate to compensate Plaintiff for the patent infringement that has occurred pursuant to 35 U.S.C. § 284, and/or a reasonable royalty, or an award of Defendant's total profits from the Defendants' infringement pursuant to 35 U.S.C. § 289, whichever is greater, together with prejudgment interest and costs;
- c. Awarding treble of the damages and/or reasonable royalty, and that those damages be trebled on account of the willful nature of the infringement, pursuant to 35 U.S.C. § 284;
- d. Declaring this case to be exceptional under 35 U.S.C. §285 and awarding Plaintiff his attorneys' fees, costs and expenses related to bringing this

action, with prejudice interest;

e. Enjoining Defendants, their directors, officers, employees, agents, parents, subsidiaries, affiliates, and anyone else in active concert or participation with them, from infringing the Richmond D284 Cap Design Patent; and

f. Awarding Plaintiff such further and other relief as the Court deems just and equitable.

Respectfully submitted,

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