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Attorneys for Plaintiff Simon Nicholas Richmond

**IN THE UNITED STATES DISTRICT COURT
FOR DISTRICT OF NEW JERSEY**

SIMON NICHOLAS RICHMOND,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
WINCHANCE SOLAR FUJIAN)	
TECHNOLOGY CO. LTD.,)	MLC-DEA
)	
Defendant.)	
)	

SEVERED FIRST AMENDED COMPLAINT AND JURY DEMAND

SEVERED FIRST AMENDED COMPLAINT AND JURY DEMAND

Plaintiff Simon Nicholas Richmond (“Richmond” or “Plaintiff”), for his claims against Defendant Winchance Solar Fujian Technology Co. Ltd., (“Winchance” 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 Winchance 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). Accordingly, Plaintiff herein submits this Third Amended Complaint.

2. THE PARTIES

A. Plaintiff Richmond.

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

B. Defendant.

2. Winchance Solar Fujian Technology Co. Ltd. (Winchance) is a corporation organized and existing under the laws of China, having a principal place of business at Jiangnan New Hi-Tech Electronic Information Industrial Park, Quanzhou, Fujian, China.. Winchance may be served through its agent for service of process at pursuant to the Hague convention.

3. Service of the prior Original and First Amended Complaints in Case No. 13-cv-1959 (MLC-DEA) was 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. Winchance 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, exposing for sale, 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 transacted and solicited business in New Jersey related to the subject matter of the claims alleged herein and, upon information and belief, has committed acts of direct infringement in the United States and/or has knowingly acted with an intent to induce infringement by others, as detailed below.

10. Upon information and belief, Defendant has knowingly induced infringement in the United States, and New Jersey, of 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), 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 the United States, and New Jersey, by their customers.

11. 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.

12. Personal jurisdiction over Defendant is also proper under principles of

general jurisdiction in that each United States Defendant either resides in this state and district and/or has regularly and purposefully conducted business in New Jersey and this district.

13. Personal jurisdiction over the Defendant is also proper under principles of general jurisdiction in that, upon information and belief, Defendant has regularly and purposefully conducted business in the United States, and pursuant to 28 U.S.C. § 1391 (c)(3), an alien may be sued in any judicial district.

D. Venue.

14. 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.

15. 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.

16. Venue also properly lies in this district over Defendant pursuant to 28

U.S.C. § 1391(c)(3) in that an alien may be sued in any judicial district.

5. FACTUAL BACKGROUND

A. Plaintiff's Patents-in-Suit

17. 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.

18. 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.

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

20. 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.

21. 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

22. Winchance imports, sells and ships solar lighting products accused of infringement in this case to vendors, distributors, or retailers in the United States. Winchance also has obtained and maintains United States trademark registrations for use in connection with its importation, sale, exposure for sale and sale of its solar lighting products in and into the United States, including those accused of infringement in the present case, which trademarks are used by it in commerce in the United States. As stated on its website, Winchance is a cooperative partner of international retailer giants like Wal-Mart, Costco and Home Depot, etc., all well known to have stores throughout the United States, including in New Jersey.

23. At least since 2007, one or more of Winchance's employee, agent, or representative have attended the National Hardware Show, held each year Las Vegas, NV, wherein Winchance's representative offers to sell solar lighting

products to customers based in the United States.

24. Winchance designs or modifies its products to accommodate the specifications of its customers.

25. Defendant has imported, sold, exposed for sale or offered for sale accused solar lighting products to at-least to one or more of the named defendants in the cases consolidated under Case No. 13-cv-1944 (D.N.J.).

26. Defendant has imported, sold, exposed for sale or offered for sale accused solar lighting products to customers located in the United States that are not named defendants in the cases consolidated under Case No. 13-cv-1944 (D.N.J.).

27. 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) Verona Lights
- b) GL23046 Lights
- c) 343-9020 Lights
- d) “Sol Mar” brand solar garden light model SP1171

6. INFRINGEMENT OF PLAINTIFF’S PATENTS

Count 1 – Winchance’s Direct Infringement of ‘D284 Patent

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

29. Winchance has notice of Plaintiff’s rights in the ‘D284 Patent.

30. Upon information and belief, Winchance 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) Verona Lights
- b) GL23046 Lights
- c) 343-9020 Lights
- d) “Sol Mar” brand solar garden light model SP1171.

31. Upon information and belief, Winchance 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 – Winchance’s Inducement of NII Northern International Inc.,

Strokin, LLC, Coleman Cable, LLC (successor to Coleman Cable, Inc.), Sears Roebuck Co., Inc., Sears Holding, Inc. and Kmart Corporation's Infringement

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

33. Upon information and belief, Winchance 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. Winchance is believed to have had such knowledge long prior to the filing of Plaintiff's Original Complaint against Winchance.

34. Winchance has an ongoing, intentional relationship with its customers, including at least NII Northern International Inc., Strokin, LLC, Coleman Cable, LLC (successor to Coleman Cable, Inc.), Sears Roebuck Co., Inc., Sears Holding, Inc. and Kmart Corporation, 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 Winchance that its products would be shipped to all of its customers' retail stores, including NII Northern International Inc., Strokin, LLC, Coleman Cable, LLC (successor to Coleman Cable, Inc.), Sears

Roebuck Co., Inc., Sears Holding, Inc. and Kmart Corporation's New Jersey stores, in accordance with NII Northern International Inc., Strokin, LLC, Coleman Cable, LLC (successor to Coleman Cable, Inc.), Sears Roebuck Co., Inc., Sears Holding, Inc. and Kmart Corporation's customary practice, something that is well known to Winchance. Upon information and belief, Winchance follows a similar practice with its other customers having retail stores in the United States. As such, Winchance 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.

35. Based upon the foregoing facts, and reasonable inferences therefrom, upon information and belief, Winchance 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, NII Northern International Inc., Strokin, LLC, Coleman Cable, LLC (successor to Coleman Cable, Inc.), Sears Roebuck Co., Inc., Sears Holding, Inc. and Kmart Corporation, and will continue to do so unless restrained by this Court.

Count 9 – Willfulness of Winchance’s Infringement

36. The allegations of Paragraphs 1-35 are incorporated by reference as if fully set forth again herein.

37. Upon information and belief, Winchance 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.

38. As a result of Richmond’s activities, Defendant is believed to have knowledge of Plaintiff’s D284 Patents and knowledge that one or more of Winchance’ previously identified products infringe Richmond’s D284 patents. Winchance is believed to have had such knowledge long prior to the filing of Plaintiff’s Original Complaint against Winchance in Case No. 13-cv-1959 (D.N.J.). As a result, Defendant’s infringement of Plaintiff’s D284 Patents is deliberate and willful.

39. 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

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

41. 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. 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 Patents, including, *inter alia*, lost profits and/or a reasonable royalty.

8. JURY DEMAND

42. 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 prejudgment 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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