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

_____)	
SIMON NICHOLAS RICHMOND,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
KMART CORP.)	_____
)	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 Kmart Corp., (“Kmart” 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 Kmart 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. Kmart Corp. (Kmart) is a corporation organized and existing under the laws of the State of Michigan, having a principal place of business at 3333 Beverly Road, Hoffman Estates, Illinois 60179. Kmart 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. Kmart 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. 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.

10. 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.

D. Venue.

11. 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.

12. 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

13. 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.

14. 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.

15. Plaintiff’s ‘D284 Patent is valid and enforceable.

16. 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.

17. 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

18. Kmart Corp. is a wholly owned subsidiary of Kmart Management Corp., which is a wholly owned subsidiary of Kmart Holding Corp., which is a wholly owned subsidiary of Sears Holdings Corp.

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. An example of an accused infringing product believed to be sold in their Kmart stores is entitled “SOLAR COLOR CHANGING LED GLASS ORB” set. Although the item is packaged in a “Garden Oasis” box (which is a brand used in the Kmart stores), and has the model number “KSN: 04012986-8,” where “KSN” is believed to stand for “Kmart Serial Number,” the bottom of the box shows the stylized “sears” logo, the words “Distributed by Sears, Roebuck and Co. Hoffman Estates, IL 60179”, and the sears.com website address, owned by Sears Brands LLC.

22. Defendant has imported, sold, exposed for sale or offered for sale accused solar lighting products supplied by vendors other than the named defendants in the cases consolidated under Case No. 13-cv-1944 (D.N.J.).

23. 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

24. In addition to the products identified in the preceding paragraph, Defendant has or has been importing, exposing for sale, offering for sale, and selling the solar lighting products identified in Exhibit A.

6. INFRINGEMENT OF PLAINTIFF’S PATENTS

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

25. The allegations of Paragraphs 1-24 are incorporated by reference as if fully set forth again herein.

26. Kmart has notice of Plaintiff’s rights in the ‘D284 Patent.

27. Upon information and belief, Kmart directly infringes, and has infringed, Plaintiff’s D284 Cap Design Patent by, at-least, 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.

28. The attached “Preliminary Product List - Kmart, attached as Exhibit A, contains a non-comprehensive list of products that, upon information and belief,

are believed to constitute infringement of Richmond's patents, where a "Y" under the column labeled 'D284 Patent indicates that the product identified in the corresponding row is believed to be an infringement of Plaintiff's D284 Cap Design Patent.

29. Upon information and belief, Kmart has and is 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 – Willfulness of Kmart's Infringement

30. The allegations of Paragraphs 1-29 are incorporated by reference as if fully set forth again herein.

31. Upon information and belief, Kmart 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. Kmart is believed to have had such knowledge long prior to the filing of Plaintiff's Original Complaint against Kmart in Case No. 13-cv-1959 (D.N.J.). As a result, Defendant's infringement of

Plaintiff's Patent is willful.

32. 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

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

34. 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.

35. Plaintiff will be irreparably harmed if Defendant's patent infringement continues. Plaintiff relies upon his patents for protection of his business' intellectual property and the rampant infringement of his patents by Defendant robs Plaintiff's business of its intellectual assets and denies Plaintiff the exclusivity in

the marketplace for offering and selling his products to which he is entitled under the Patent Laws. This seriously damages Plaintiff in a manner that cannot be adequately compensated by money alone. Plaintiff is entitled to a permanent injunction prohibiting Defendant, its directors, officers, employees, agents, parents, subsidiaries, affiliates, and anyone else in active concert or participation with them, from taking any other actions that would infringe Plaintiff's Patents.

9. JURY DEMAND

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

10. PRAYER FOR RELIEF

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

- a. Judgment that Defendant infringed the Plaintiff's Richmond 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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