

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

NO. 14-cv-03103-SRN-FLN

Luminara Worldwide, LLC,

Plaintiff,

JURY TRIAL DEMANDED

v.

Liown Electronics Co. Ltd., Shenzhen
Liown Electronics Co. Ltd., Liown
Technologies/Beauty Electronics, LLC,
Boston Warehouse Trading Corp., Abbott
of England (1981), Ltd., BJ's Wholesale
Club, Inc., Von Maur, Inc., Zulily, Inc.,
Smart Candle, LLC, Tuesday Morning
Corp., Ambient Lighting, Inc., The Light
Garden, Inc., and Central Garden & Pet
Co.,

Defendants.

THIRD AMENDED COMPLAINT

Plaintiff Luminara Worldwide, LLC (“Luminara,” or “Plaintiff”), for its Third Amended Complaint against Defendants Liown Electronics Co. Ltd., Shenzhen Liown Electronics Co. Ltd., Liown Technologies/Beauty Electronics, LLC, Boston Warehouse Trading Corp., Abbott of England (1981), Ltd., BJ's Wholesale Club, Inc., Von Maur, Inc., Zulily, Inc., Smart Candle, LLC, Tuesday Morning Corp., Ambient Lighting, Inc., The Light Garden, Inc., and Central Garden & Pet Co. (collectively “Defendants”), 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. This is also an action for a Declaratory Judgment pursuant to 28 U.S.C. § 1221. This is also an action for trademark infringement, unfair competition, injunctive relief, and damages arising under the United States Trademark Act, 15 U.S.C. §§ 1051 *et seq.*, and for common law trademark infringement and unfair competition, breach of contract, tortious interference, and misappropriation of trade secrets.

2. This Court has subject matter jurisdiction pursuant to 15 U.S.C. §§ 1121 and 1125, 28 U.S.C. §§ 1331 and 1338(a), and also pursuant to 28 U.S.C. § 1367 in that other matters at issue are so related to claims in the action within the original jurisdiction of this Court that they form part of the same case or controversy under Article III of the United States Constitution.

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., and/or Liown Technologies/Beauty Electronics, LLC (collectively “Liown”).

THE PARTIES

5. Until December 31, 2014, Candella, LLC was a California limited liability company having its principal place of business in Orange County, California. Candella was, before December 31, 2014, 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 did business in the State of Minnesota and in this District. Candella entered into an exclusive distribution agreement in this District with Luminara.

6. Luminara is a Delaware 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, and the right to join Candella in any action for infringement. Luminara flameless candles utilize Candella's flameless candle intellectual property. Luminara does business in the State of Minnesota and in this District.

7. Candella and Luminara merged effective December 31, 2014. As a result of the merger, Candella was merged with and into Luminara, leaving Luminara as the surviving entity and existing under the laws of the State of Delaware. Effective December 31, 2014, Luminara is the exclusive licensee possessing all substantial right, title and interest to those patents to which Candella previously held exclusive rights.

8. 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."

9. Upon information and belief, Liown, either alone or in concert with others, manufactures the infringing flameless candle product at issue herein for sale throughout the United States, including in this District. Upon information and belief, Liown places infringing flameless candles, including the products sold under the names "Illuminaires Flameless Moving Wick Candles," "Moving Flame Flat Top Flameless 5" Pillar Candle," "Flameless LED Candle with Linalool Mosquito Repellent, 2-Pk," "Flameless Pillar," "Moving Flame Pillar," "Smart Flame," "Forever Flame," "Mystique," "Reallite," "Torchier," and "Avalon," 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. Liown's United States operations are located in Bloomington, Minnesota.

10. Upon information and belief, Defendant Boston Warehouse Trading Corp. ("Boston Warehouse") is a Massachusetts corporation with a place of business in Norwood, Massachusetts. Upon information and belief, Boston Warehouse imports into the United States and 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 names "Illuminaires Flameless Moving Wick Candles," "Moving Flame Flat Top Flameless 5" Pillar Candle," "Forever Flame," and "Mystique." 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, Abbott of England (1981), Ltd. ("Abbott") is a company formed under the laws of Canada, with a place of business in Toronto, Canada. Upon information and belief, Abbott imports into the United States and offers for sale flameless candles manufactured by Liown at issue herein throughout the United States, including in this District, including the product sold under the name "Reallite." Upon information and belief, Abbott 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, Abbott 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 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.

13. 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.

14. 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.

15. 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.

16. Upon information and belief, Defendant Tuesday Morning Corp. (“Tuesday Morning”) is a Delaware corporation with a place of business in Dallas, Texas. Upon information and belief, Tuesday Morning 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 “Illuminaires Flameless Moving Wick Candles.” Upon information and belief, Tuesday Morning 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, including store locations within the State of Minnesota.

17. Upon information and belief, Defendant Ambient Lighting, Inc. (“Ambient”) is a Delaware corporation with a place of business in Brooklyn, New York. Upon information and belief, Ambient 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 names “Moving Flame Flat Top Flameless 5” Pillar Candle” and “Mystique.” Upon information and belief, Ambient 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, including through its interactive website www.lights.com.

18. Upon information and belief, Defendant Central Garden & Pet Company, doing business through its Bethlehem Lights division GKI/Bethlehem Lighting (hereafter referred to as “GKI/Bethlehem”), is a Delaware corporation with a place of business in Walnut Creek, California. GKI/Bethlehem was a customer of Luminara for the purchase for resale of flameless candles using the licensed Artificial Flame Technology. Upon information and belief, GKI/Bethlehem has purchased and offered for sale, and sold, flameless candles manufactured by Liown at issue herein, including candles offered for sale under the name “Torchier,” throughout the United States, in breach of the Distribution Agreement it entered into with Luminara. This Court has personal jurisdiction over GKI/Bethlehem because GKI/Bethlehem consented to the jurisdiction of this Court in the Amended and Restated Distribution Agreement with Luminara.

19. Upon information and belief, Defendant Light Garden, Inc. (“Light Garden”), is a California corporation with a place of business in Vista, California. Light Garden was a customer of Luminara for the purchase for resale of flameless candles using the licensed Artificial Flame Technology. Light Garden and Luminara entered into a Distribution Agreement. Upon information and belief, Light Garden has purchased and offered for sale, and sold, flameless candles manufactured by Liown at issue herein, including candles offered for sale under the name “Avalon,” throughout the United States, in breach of the Distribution Agreement with Luminara. This Court has personal

jurisdiction over Light Garden because Light Garden consented to the jurisdiction of this Court in the Distribution Agreement with Luminara.

THE PATENTS-IN-SUIT

20. Plaintiff is the exclusive licensee from third party Disney Enterprises, Inc. (“Disney”) of certain technology related to creating a unique artificial flickering flame effect, which may be used in certain lighting fixtures and artificial candles to simulate the appearance of a flickering flame (the “Artificial Flame Technology”). The licensed Artificial Flame Technology includes United States Patent Nos. 7,837,355; 8,070,319; 8,534,869; and 8,696,166. Before their merger, Luminara was Candella’s exclusive sourcing agent and exclusive distributor. Candella expressly granted Luminara the exclusive right to the patents-in-suit including the exclusive right to manufacture, have manufactured, sell, promote, and otherwise distribute products incorporating the patented technology. Additionally, Candella expressly granted Luminara both the right to exclude others and the right to sue for infringement.

21. Plaintiff is 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, Plaintiff has standing to sue for infringement of the ’355 patent.

22. Plaintiff is the exclusive licensees possessing all substantial right, title and interest in United States Patent No. 8,070,319 (“’319 patent”), entitled “Kinetic Flame Device,” which issued December 6, 2011. Accordingly, Plaintiff has standing to sue for infringement of the ’319 patent.

23. Plaintiff is the exclusive licensee possessing all substantial right, title and interest in United States Patent No. 8,534,869 (“’869 patent”), entitled “Kinetic Flame Device,” which issued September 17, 2013. Accordingly, Plaintiff has standing to sue for infringement of the ’869 patent.

24. Plaintiff is the exclusive licensee possessing all substantial right, title and interest in United States Patent No. 8,696,166 (“’166 patent”), entitled “Kinetic Flame Device,” which issued April 15, 2014. Accordingly, Plaintiff has standing to sue for infringement of the ’166 patent.

COUNT I – PATENT INFRINGEMENT
(All Defendants)

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

26. 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, ’319, ’869 and ’166 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: “Illuminaires Flameless Moving Wick Candles,” “Moving Flame Flat Top Flameless 5” Pillar Candle,” “Flameless LED Candle with Linalool Mosquito Repellent, 2-Pk”; “Flameless Pillar”; “Moving Flame Pillar”; “Smart Flame”; “Forever Flame”; “Mystique”; “Reallite,” “Torchier,” and “Avalon.”

27. 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, '319, '869 and '166 patents by inducing one another, other third parties, and end-users to infringe claims of the '355, '319, '869 and '166 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: "Illuminaires Flameless Moving Wick Candles," "Moving Flame Flat Top Flameless 5" Pillar Candle," "Flameless LED Candle with Linalool Mosquito Repellent, 2-Pk"; "Flameless Pillar"; "Moving Flame Pillar"; "Smart Flame"; "Forever Flame"; "Mystique"; and "Reallite." Defendants specifically intended that their customers, to whom they sold infringing flameless candles, would resell or use the infringing candles for their intended purpose. The candles have no other use than their intended purpose which infringes the '355, '319, '869 and '166 patents. Use or resale of infringing flameless candles by Defendants' customers constitutes direct infringement. Defendants had notice of the patents-in-suit and knew that the customers' acts constituted infringement.

28. Upon information and belief, Defendants' infringement of the '355, '319, '869 and '166 patents has been willful and deliberate, rendering this case "exceptional" within the meaning of 35 U.S.C. § 285.

29. Plaintiff has been damaged by Defendants' infringement of the '355, '319, '869 and '166 patents. Unless restrained and enjoined by this Court, Defendants will

continue to infringe the '355, '319, '869 and '166 patents resulting in substantial, continuing, and irreparable damage to Plaintiffs.

30. Plaintiff has complied with the notice requirements of 35 U.S.C. § 287(a) with respect to the '355, '319, '869 and '166 patents. Plaintiff's counsel wrote to Smart Candle LLC, Liown's U.S. affiliate, on November 2, 2011, and gave actual notice of infringement of the '355 patent and published application 2011/0019422 which issued as the '319 patents. After the '319 patent issued on December 6, 2011, Luminara candles were marked with the number of the '319 patent, thereby, providing constructive notice of infringement to Defendants. On February 21, 2012, counsel for Plaintiff wrote to Abbott and gave actual notice that sale of Reallite candles infringed the '319 patent. On March 27, 2012, Plaintiff's counsel wrote to Larry Russell, a representative of Liown, and provided Liown with actual notice that sale of flameless candles incorporating Luminara's licensed technology infringed the '319 patent. On July 6, 2012, Luminara employees gave representatives of Boston Warehouse actual notice of infringement of the '355 and '319 patents at the Atlanta gift show. On November 2, 2012, Candella initiated suit against Liown and Boston Warehouse for infringement of the '355 and '319 patents, thereby, providing them with additional notice of infringement. On February 23, 2013, Candella added Von Maur, Inc., and Zulily, Inc. to the infringement suit against Liown, thereby, providing them with additional notice of infringement of the '355 and '319 patents. On May 1, 2013, Candella moved for leave to file an amended complaint against Smart Candle for infringement of the '355 and '319 patents, and on July 10, 2013 filed an amended complaint alleging Smart Candle's infringement, thereby, providing Smart

Candle with notice of infringement. On August 13, 2014, Plaintiff's counsel provided Ambient, GKI/Bethlehem, and Light Garden with notice that Liown's moving flameless candles infringed the '355, '319 and '869 patents. On August 28, 2014, Plaintiff's counsel provided Tuesday Morning with notice of notice of infringement of the '355 and '319 patents. On October 8, 2014, Plaintiff's counsel provided Tuesday Morning with notice of notice of infringement of the '869 and '166 patents. By the filing and service of this action, Plaintiff gave Defendants further notice of infringement of the '355, '319, '869 and '166 patents.

COUNT II – DECLARATORY JUDGMENT OF NON-INFRINGEMENT
(Defendant Liown)

31. Plaintiff realleges the allegations in the preceding paragraphs as if fully restated in Count II of this Complaint.

32. Upon information and belief, Liown is the assignee of U.S. Pat. No. 8,789,986 (“’986 patent”), entitled “Electronic Lighting Device and Method of Manufacturing Same,” which issued on July 29, 2014 and lists Xiaofeng Li as the sole inventor. Upon information and belief, Mr. Li is the owner of Liown.

33. In August 2012, counsel for Liown wrote to a customer of Luminara, enclosing a copy of the Canadian counterpart patent application to the application which issued as the ’986 patent. In the letter, counsel for Liown asserted that Luminara's flameless candle products may infringe one or more claims of the Canadian counterpart application, if issued, and threatened enforcement of future patent rights.

34. More recently, Mr. Li and John Yang, CEO of Liown, in an August 2014 meeting with Michael O'Shaughnessy, a Managing Member of Luminara, threatened to enforce the '986 patent against Luminara.

35. On August 6, 2014, Liown sued Luminara in a separate, subsequently filed action in this Court (the "Second-Filed Action"), for infringement of the '986 patent.

36. Since August 6, 2014, Liown has sent numerous letters to customers of Luminara threatening legal action against them for alleged infringement of the '986 patent based on their sale of Luminara flameless candles.

37. On September 5, 2014, Liown amended its complaint in the Second-Filed Action to include Luminara customers QVC, Inc. and Darice, Inc., as defendants based on their alleged infringement of the '986 patent.

38. On November 9, 2014, Liown filed a separate lawsuit in this District against Luminara customers Bed Bath & Beyond, Inc., Williams-Sonoma Stores, Inc., Kohl's Department Stores, Inc., Costco Wholesale Corporation, and PC Treasures, Inc. alleging infringement of the '986 patent.

39. Luminara flameless candles do not infringe any valid claim of the '986 patent.

40. There is an actual, substantial and immediate controversy between the adverse interests Luminara, on the one hand, and Liown, on the other, as to whether Luminara's use, making, sale or offering for sale of its flameless candles infringes the claims of the '986 patent.

41. Liown has made antagonistic claims. The claims are immediate given the recent issuance of the '986 patent and indicate imminent and inevitable litigation.

42. The interests of the parties will be best served if this Court enters a Declaratory Judgment setting forth the rights of the parties with respect to this dispute.

43. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, this Court may declare the rights and other legal relations of any interested party.

44. Luminara is entitled to a Judicial Declaration and Order that Luminara has not infringed and does not infringe, either directly or indirectly, literally or under the doctrine of equivalents, any valid claim of the '986 patent.

45. The relief sought by Luminara will resolve the controversy relative to the respective interests of Luminara and Liown.

COUNT III – DECLARATORY JUDGMENT OF INVALIDITY
(Defendant Liown)

46. Plaintiff realleges the allegations in the preceding paragraphs as if fully restated in Count III of this Complaint.

47. Upon information and belief, the '986 patent is assigned to Liown.

48. The '986 patent is invalid for failure to satisfy one or more of the conditions of patentability set forth in Title 35 of the United States Code, including, but not limited to, 35 U.S.C. §§ 101, 102, 103, and 112.

49. An actual, substantial and immediate controversy exists between Luminara, on the one hand, and Liown, on the other, as to whether the claims of the '986 patent are valid.

50. Luminara is entitled to a Judicial Declaration and Order that the '986 patent is invalid.

COUNT IV – BREACH OF CONTRACT
(Defendant GKI/Bethlehem)

51. Plaintiff realleges the allegations in the preceding paragraphs as if fully restated in Count IV of this Complaint.

52. GKI/Bethlehem and Luminara entered into an original Distribution Agreement on August 26, 2011, and then an Amended and Restated Distribution Agreement dated October 8, 2013.

53. The Distribution Agreement between Luminara and GKI/Bethlehem is exclusive. Paragraph 2.04 contains a restrictive covenant prohibiting GKI/Bethlehem from purchasing for resale moving flame candles from any party other than Luminara unless with written authorization from Luminara:

“During the term of this Agreement and for a period of 12 months after any termination or expiration of this Agreement, [GKI/Bethlehem] will not manufacture or purchase from third parties for resale or other distribution, or act as a representative, distributor or agent for third parties, in connection with any products incorporating the Artificial Flame Technology, or that are confusingly similar with those products that incorporate or are used in conjunction with the Artificial Flame Technology, unless approved in advance in writing by Luminara.”

(§ 2.04(emphasis added).)

54. The term of the Distribution Agreement does not expire until at least December 31, 2015. (§ 10.1.) “Artificial Flame Technology” is unambiguously defined in the Distribution Agreement to include all of the Artificial Flame Technology licensed from Disney. (§1.2)

55. The Distribution Agreement, including the restrictive covenant in paragraph 2.04, is a valid and enforceable contract, accepted by both parties, and adequately supported by consideration.

56. In November 2014, Luminara learned GKI/Bethlehem purchased infringing candles from Liown. On November 12, 2014, GKI/Bethlehem confirmed that it had purchased at least \$2 million of infringing Liown candles, and may purchase additional infringing candles in the future. On January 6, 2015, Liown issued a press release announcing that GKI/Bethlehem would offer for sale Liown's infringing flameless candles under the name "Torchier."

57. GKI/Bethlehem breached the restrictive covenant provision of paragraph 2.04 of the Distribution Agreement by purchasing moving flameless candles from Liown, or one of the other defendants, that infringe at least one claim of the '355, '319, '869 or '166 patents. GKI/Bethlehem breached the unambiguous agreement because by purchasing infringing products from Liown it purchased products incorporating the Artificial Flame Technology from a source other than Luminara without Luminara's written authorization.

58. As a direct and proximate cause of GKI/Bethlehem's breach of the restrictive covenant, Luminara suffered monetary damages in excess of \$75,000, the exact amount to be determined at trial.

59. GKI/Bethlehem's continuing breach of the restrictive covenant provision of the Distribution Agreement will cause irreparable harm to Luminara unless GKI/Bethlehem is enjoined and restrained from continuing to purchase infringing

flameless candles from Liown or the other defendants in breach of the Distribution Agreement. Irreparable harm to Luminara includes, but is not limited to, the loss of actual and prospective customers, loss of business opportunities and the loss of goodwill.

COUNT V – TORTIOUS INTERFERENCE WITH CONTRACT
(Defendants Liown and Boston Warehouse)

60. Plaintiff realleges the allegations in the preceding paragraphs as if fully restated in Count V of this Complaint.

61. Luminara has valid and protected contractual relationships with its customers, including the Distribution Agreements with customers such as GKI/Bethlehem and Light Garden.

62. Defendants Liown and Boston Warehouse had knowledge of Luminara's customer relationships, and that GKI/Bethlehem and Light Garden were Luminara distributors.

63. Defendants Liown and Boston Warehouse intentionally and wrongfully interfered with and continue to interfere with Luminara's relationships and contracts by offering Luminara customers infringing flameless candles.

64. Defendants Liown and Boston Warehouse have intentionally and wrongfully interfered with the restrictive covenant in Luminara's Distribution Agreements with GKI/Bethlehem and Light Garden by causing them to purchase flameless candles that incorporate the licensed Artificial Flame Technology from Liown, or are confusingly similar to Luminara's candles.

65. Defendants were not and are not justified in interfering with Luminara's contracts.

66. As a direct and proximate cause of Liown and Boston Warehouse's interference with contracts, Luminara has suffered monetary damages in excess of \$75,000, the exact amount to be determined at trial.

67. Liown and Boston Warehouse's ongoing interference with the restrictive covenant provision of the Distribution Agreements will cause irreparable harm to Luminara unless Defendants are enjoined and restrained from continuing to purchase infringing flameless candles from Liown or the other defendants in breach of the Distribution Agreements. Irreparable harm to Luminara includes, but is not limited to, the loss of actual and prospective customers, loss of business opportunities and the loss of goodwill.

COUNT VI – BREACH OF NON-DISCLOSURE CONTRACTS
(Defendant Liown)

68. Plaintiff realleges the allegations in the preceding paragraphs as if fully restated in Count VI of this Complaint.

69. After licensing the Artificial Flame Technology from Disney on May 1, 2008, Candella developed various candle designs in 2008 and 2009 using the licensed technology that could be manufactured on a large, commercial scale.

70. Candella developed a prototype wax pillar flameless candle utilizing Disney's Artificial Flame Technology that was successfully displayed at the Consumer Electronics Show in Las Vegas in January 2010.

71. Candella also developed and kept confidential detailed designs and other technical information related to the Artificial Flame Technology sufficient to enable manufacture of the candles.

72. In February 2010, Candella sought a factory capable of manufacturing its flameless candles. At the time, Liown had been manufacturing flameless candles that used inferior flashing-light technology.

73. On February 16, 2010 Candella entered into a non-disclosure agreement (“NDA”) with Liown Technologies/Beauty Electronics, LLC to “permit the parties to consider the feasibility of a commercial relationship” for Liown to manufacture Candella’s flameless candle. In the NDA, Liown agreed that Confidential Information shared under the agreement “shall not be used for any purpose except as set forth in this Agreement.” (¶ 1.) Liown agreed “no patent, copy write [sic], or trade mark application will be filed which is based on, is directed to or claims [Candella’s] Confidential Information, in whole or in part, without prior written consent of Discloser.” (*Id.*)

74. Candella showed Liown its prototype candle under the NDA in a meeting and discussed the candle’s design. Candella shared detailed design drawings with Liown under the NDA sufficient to enable Liown to manufacture the candles for Candella.

75. On April 4, 2010, Candella entered into a second NDA, titled “Confidentiality and Non-Disclosure Agreement,” with Liown Technologies/Beauty Electronics, LLC, signed by Liown founder and Chairman Xiaofeng “Mike” Li. The purpose of the April 2010 NDA was to continue efforts to pursue an agreement for Liown’s manufacture of Candella’s flameless candle incorporating the licensed Artificial

Flame Technology. The April 2010 NDA required that Liown “shall not ... use, make, sell, import, distribute, display, modify, adapt, change, create improvement to, derivative works of, or in any way practice any Confidential Information and/or other intellectual property owned by or licensed to the disclosing party [i.e., Candella], including without limitation patents or trademarks.” (¶ 6.)

76. Candella continued to share detailed confidential information with Liown after execution of the April 2010 NDA regarding Candella’s flameless candle design incorporating the licensed Artificial Flame Technology, sufficient to enable Liown to manufacture the candles for Candella.

77. Both the February 2010 and April 2010 NDAs are valid and enforceable contracts. Candella shared information with Liown in reliance upon the NDAs to protect the confidentiality of the information disclosed and to prevent Liown from filing patent applications claiming ownership of the licensed Artificial Flame Technology.

78. Candella shared with Liown under the NDAs valuable confidential information it developed in connection with the Artificial Flame Technology, including the following: (i) the manner in which the artificial flame moves, (ii) the configuration of the lens, the light emitting diode and the positioning of magnets, (iii) the configuration of the software and circuit board producing random movement of the artificial flame, (iv) the technique to enable light to radiate through the opaque surface of the candle, (v) the use and size of a coil, the frequency of the light emitting diode, and the characteristics of the artificial flame, and (vi) prototype candles incorporating some or all of the above.

79. In June 2010, negotiations for Liown to serve as Candella's manufacturer broke down. Liown surreptitiously filed Chinese Patent Application No. 201010211402.8, on June 28, 2010 ("the Li Application"). The Li Application names Liown founder and Chairman Mr. Li as the inventor, claiming that he invented the Artificial Flame Technology Candella disclosed to Liown under the NDAs.

80. Liown also used Candella's confidential information to develop flameless candles which realistically simulate the flame of a burning candle that infringe one or more claims of the '355, '319, '869 and '166 patents.

81. Liown breached the NDAs by using Candella's confidential information for purposes other than negotiating a business transaction with Candella.

82. Luminara is Candella's successor with all right, title and interest in the NDAs. As a direct and proximate cause of Liown's breach of contracts, Candella has suffered monetary damages in excess of \$75,000, the exact amount to be determined at trial.

83. Liown's ongoing manufacture, use and sale of flameless candles developed from use of Candella's confidential information in breach of the NDAs will cause irreparable harm to Candella unless Liown is enjoined and restrained from continuing to use Candella's confidential information. Irreparable harm to Candella includes, but is not limited to, the loss of actual and prospective business relations, loss of business opportunities and the loss of goodwill.

COUNT VII – MISAPPROPRIATION OF TRADE SECRETS
(Defendant Liown)

84. Plaintiff realleges the allegations in the preceding paragraphs as if fully restated in Count VII of this Complaint.

85. Confidential information that Candella shared with Liown regarding the Artificial Flame Technology was not generally known or readily ascertainable, and derived independent economic value from its secrecy. Candella took reasonable efforts to maintain the secrecy of its confidential information.

86. Candella's confidential information shared with Liown under the NDAs constitutes legally protectable trade secrets.

87. Liown misappropriated Candella's trade secrets related to the Artificial Flame Technology.

88. Liown misappropriated Candella trade secrets in order to file the Li Application.

89. Liown also used Candella's trade secrets to develop flameless candles which realistically simulate the flame of a burning candle that infringe one or more claims of the '355, '319, '869 and '166 patents.

90. As a direct and proximate cause of Liown's misappropriation of trade secrets, Candella has suffered monetary damages in excess of \$75,000, the exact amount to be determined at trial. Luminara is Candella's successor with all right, title and interest in a cause of action against Liown for misappropriation of trade secrets.

91. Liown's ongoing manufacture, use and sale of flameless candles developed from use of Candella trade secrets will cause irreparable harm to Candella unless Liown is enjoined and restrained from continuing to use Candella's confidential information. Irreparable harm to Candella includes, but is not limited to, the loss of actual and prospective business relations, loss of business opportunities and the loss of goodwill.

92. Liown's misappropriation of trade secrets was willful and malicious.

**COUNT VIII – DECLARATORY JUDGMENT OF UNENFORCEABILITY OF
THE '986 PATENT FOR INEQUITABLE CONDUCT**
(Defendant Liown)

93. Plaintiff realleges the allegations in the preceding paragraphs as if fully restated in Count VIII of this Complaint.

94. Liown employees involved in the prosecution of the '986 patent, including the inventor Mike Li, and Liown's counsel of record responsible for prosecution of the '986 patent, Winthrop & Weinstine, had a duty to disclose to the United States Patent Office information material to patentability of any of the claims in the application that eventually issued as the '986 patent.

95. Liown employees involved in prosecution of the '986 patent and its counsel of record, Winthrop & Weinstine, received information from Candella regarding Disney's Artificial Flame Technology, Candella's development of a commercially viable moving flameless candle, and Candella's public use, disclosure, and prior invention of a moving flameless candle that contained all of the limitation of one or more claims in the '986 patent. This information was provided to Liown employees and its counsel of

record both before Liown filed the Li Application in June 2010, which eventually issued in the United States as the '986 patent, and during prosecution of the '986 patent.

96. In particular, Candella conceived and shared with employees of Liown, including named inventor Mike Li, before the June 2010 filing date of the Li Application, designs for a moving flameless candle with an internal plastic enclosure consisting of symmetrical shaped left and right end caps.

97. Candella shared with Liown employees, before the filing of Liown's Li Application in June 2010, a moving flameless candle design that used a light source embedded in the sidewall of the candle housing. The plastic enclosure in Candella's moving flameless candle design included a semicircular notch, so that when the left and right caps were engaged with each other, the notch was concaved inwardly and inclined upwardly at an angle in a way that created an installation location for an LED light source. Light was projected from the sidewall of the Candella moving flameless candle onto the flame sheet, which was supported by V-shaped rod configured in a way that the rod cast a shadow on the surface of the sheet simulating a candlewick.

98. During prosecution of the '986 patent, the Patent Office initially rejected the claims in the application as lacking novelty in view of Disney's U.S. Pat. No. 7,261,455 to Schnuckle. The Patent Office, however, indicated to Liown that the subject matter of several dependent claims in the application would be allowed, if rewritten in independent form so as to include several additional limiting features distinguishing the invention as claimed from the prior art of record before the examiner. Those areas of Liown's patent application that the Patent Office identified as patentable over the prior

art consisted of the same features contained in the moving flameless candle that Candella had shared with Liown in 2010: (1) an internal plastic enclosure consisting of symmetrical shaped left and right end caps; and (2) in which light is projected from the sidewall of the candle onto the flame sheet and a support rod configured to cast a shadow on the surface of the sheet simulating a candlewick.

99. Following the initial rejection of the application for the '986 patent, Liown and its counsel of record, Winthrop & Weinstine, withheld information from the Patent Office including information regarding Candella's prior development of a moving flameless candle with right and left symmetrical end caps and a support rod configured to cast a shadow on the surface of the flame sheet simulating a candlewick.

100. Instead of disclosing information about Candella's prior development of a moving flameless candle to the Patent Office, Liown's counsel amended the claims in the application in a way so that the claims would cover the moving flameless candle that Candella had previously developed and shared with Liown. As a result of Liown's and its counsel of record's omission, the Patent Office did not have the benefit of the complete prior art record known by Liown and Liown's counsel of record. As a result of Liown's and its counsel of record's omission of material information, the Patent Office allowed the application for the '986 patent to issue.

101. Had Liown or its counsel of record, Winthrop & Weinstine, informed the Patent Office about Candella's development of a moving flameless candle, before Liown's filing of the Li Application, with right and left symmetrical end caps and a support rod configured to cast a shadow on the surface of the flame sheet simulating a

candlewick, the Patent Office would now have allowed the '986 patent to issue. But for Liown's and its counsel of record's failure to disclose information material to the patentability of the claimed invention, the '986 patent would not have issued.

102. Such knowing omission of material information, highly relevant to patentability of the claims of the '986 patent, amounts to a violation of the duty of candor with an intent to deceive the Patent Office, thereby rendering the '986 patent unenforceable for inequitable conduct.

103. An actual, substantial and immediate controversy exists Luminara, on the one hand, and Liown, on the other, as to whether the claims of the '986 patent are enforceable.

104. Luminara is entitled to a Judicial Declaration and Order that the '986 patent is unenforceable due to Liown's and its counsel of record's inequitable conduct during prosecution of the '986 patent.

COUNT IX – TRADEMARK INFRINGEMENT/UNFAIR COMPETITION
(Defendants Liown, Boston Warehouse, and Tuesday Morning)

105. Plaintiff realleges the allegations in the preceding paragraphs as if fully restated in Count IX of this Complaint.

106. Luminara is the owner of U.S. Trademark Registration No. 4,574,673 for the mark LUMINARA in connection with the sale of flameless candles.

107. Since at least January 2010, Candella and Luminara have used the mark LUMINARA to identify its flameless candles and to distinguish its products from those of others.

108. In particular, Luminara uses the mark LUMINARA in connection with the sale of flameless candles incorporating the Artificial Flame Technology licensed from Disney.

109. The mark LUMINARA is inherently distinctive, strong, famous, and deserving of a broad scope of protection.

110. Luminara's registration of the mark LUMINARA is valid, subsisting, and conclusive evidence of the validity of the mark, Luminara's ownership of the mark, and Luminara's exclusive right to use the mark LUMINARA in commerce on or in connection with the goods and services specified therein.

111. The mark LUMINARA has become increasingly well known in the United States because of Luminara's advertising and promoting of its flameless candles in connection with the mark in this country, and due to the good will created by consumers' adoption of the innovative Artificial Flame Technology exclusively licensed to Luminara. Candella and Luminara have spent considerable amounts over the nearly five years they have used the mark, to market, advertise, and promote the LUMINARA brand in the United States. As a result, consumers associate the mark LUMINARA, when used in the field of flameless candles, with Luminara.

112. Upon information and belief, on or about September 2014, Defendants Liown, Boston Warehouse, and Tuesday Morning, began offering for sale flameless candles incorporating the Artificial Flame Technology under the name "Illuminaires." The packaging describes the Illuminaire candle as a "lifelike flickering flame" that "replicates the random flicker and ambient glow of a traditional burning candle."

113. Defendants Liown, Boston Warehouse, and Tuesday Morning use the name Illuminaires in connection with the sale of flameless candles, which is likely to confuse or create a false affiliation with LUMINARA because of the striking similarity between the words “Illuminaires” and “Luminara,” in both the spelling and phonetics of the two words.

114. As a direct result of Defendants Liown, Boston Warehouse, and Tuesday Morning’s use of Illuminaires in connection with the sale of infringing flameless candles there has been actual confusion and a likelihood of confusion in the marketplace by relevant potential consumers.

115. Defendants Liown, Boston Warehouse, and Tuesday Morning have and continue to infringe Luminara’s LUMINARA mark by the selling, offering for sale, distributing, and advertising flameless candles under the name “Illuminaires,” which is confusingly similar to Luminara’s LUMINARA mark.

116. Defendants Liown, Boston Warehouse, and Tuesday Morning’s use of “Illuminaires” in connection with the sale of flameless candles, without Luminara’s explicit or implicit consent, is intended to and is likely to cause confusion, to cause mistake, and to deceive, and has, upon information and belief, in fact, caused confusion and mistake and deceived consumers and potential consumers of such products.

117. Defendants Liown, Boston Warehouse, and Tuesday Morning will continue to infringe Luminara’s LUMINARA mark and cause irreparable harm unless enjoined by this Court.

118. Defendants Liown, Boston Warehouse, and Tuesday Morning's flameless candle products are offered in the same channels of trade as Luminara's flameless candle products.

119. Defendants Liown, Boston Warehouse, and Tuesday Morning's flameless candle products and Luminara's flameless candle products are encountered by the same purchasers under circumstances that could give rise to the mistaken belief that the products emanate from a common source.

120. There is no affiliation, connection, or association between Luminara and Defendants Liown, Boston Warehouse, and Tuesday Morning that would permit them to use Luminara's LUMINARA mark. Luminara does not sponsor or approve Defendants Liown, Boston Warehouse, or Tuesday Morning's products, nor is Luminara the origin of Defendants Liown, Boston Warehouse, or Tuesday Morning's products.

121. Defendants Liown, Boston Warehouse, and Tuesday Morning's activities result in a violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114. Upon information and belief, Defendants Liown, Boston Warehouse, and Tuesday Morning's violation is and has been willful, intentional, and in conscious disregard of Luminara's rights.

122. Defendants Liown, Boston Warehouse, and Tuesday Morning's activities also constitute a violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Upon information and belief, Defendants Liown, Boston Warehouse, and Tuesday Morning's violation of Section 43(a) of the Lanham Act is and has been willful, intentional, and in conscious disregard of Luminara's rights.

123. Upon information and belief, Defendants Liown, Boston Warehouse, and Tuesday Morning's activities also constitute a violation of state and common law trademark rights and unfair competition. Defendants Liown, Boston Warehouse, and Tuesday Morning's unfair competition and activities in violation of state and common law trademark rights to the mark LUMINARA have been willful, intentional, and in conscious disregard of Luminara's rights.

124. As a direct result of Defendants Liown, Boston Warehouse, and Tuesday Morning's unlawful conduct, Luminara has been and will continue to be irreparably and substantially harmed and injured. If Defendants Liown, Boston Warehouse, and Tuesday Morning's infringement is permitted to continue, Luminara will sustain further loss, damage, and irreparable injury. Luminara is further entitled to all other remedies set forth in Sections 35 and 36 of the Lanham Act, 15 U.S.C. §§ 1117 and 1118.

125. As a result of Defendants Liown, Boston Warehouse, and Tuesday Morning's violation of Sections 32 and 43(a) of the Lanham Act, Luminara is entitled to recover damages of at least \$75,000, the precise amount to be determined at trial. Luminara is also entitled to recover Defendants Liown, Boston Warehouse, and Tuesday Morning's profits earned as a result of its violation of Sections 32 and 43(a) of the Lanham Act. Luminara is further entitled to preliminary and permanent injunctive relief enjoining Defendants Liown, Boston Warehouse, and Tuesday Morning from further and continuing violation of Sections 32 and 43(a) of the Lanham Act.

DEMAND FOR JUDGMENT

WHEREFORE, Plaintiffs demands judgment as follows:

- A. That Defendants be adjudged to have infringed the '355, '319, '869 and '166 patents;
- B. That the '355, '319, '869 and '166 patents be adjudged valid and enforceable;
- C. That Defendants be adjudged to have willfully and deliberately infringed the '355, '319, '869 and '166 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, '319, '869 and '166 patents;
- E. An accounting and an award of damages by virtue of Defendants' infringement of the '355, '319, '869 and '166 patents;
- F. An award of treble damages because of Defendants' willful infringement of the '355, '319, '869 and '166 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;
- I. Declaring that the '986 patent is not infringed by Luminara or any of its customers selling Luminara flameless candles;
- J. Declaring that the '986 patent is invalid;

K. Declaring that the '986 patent is unenforceable for inequitable conduct;

L. Awarding damages against Defendant GKI/Bethlehem in favor of Luminara for breach of contract, including reasonable attorneys' fees;

M. Awarding damages against Defendant Liown in favor of Luminara for tortious interference with contract;

N. Awarding damages against Defendant Liown in favor of Luminara for breach of contract and misappropriation of trade secrets, including reasonable attorneys' fees and exemplary damages as a result of willful and malicious misappropriation;

O. Preliminarily and permanently enjoining Defendants Liown, Boston Warehouse, and Tuesday Morning, their agents, servants, licensees, partners, affiliates, independent sales organizations, employees and assigns, and all those acting under the authority of or in privity with them from infringing Luminara's LUMINARA mark, using the mark LUMINARA in connection with selling, offering for sale, distributing, and advertising flameless candles, engaging in unfair competition, violating the Lanham Act, and violating state common law trademark rights;

P. Ordering Defendants Liown, Boston Warehouse, and Tuesday Morning to cease and desist from use of the name "Illuminaires" in connection with the sale of flameless candles;

Q. Awarding Luminara the profits of Defendants Liown, Boston Warehouse, and Tuesday Morning resulting from sales under or in connection with the LUMINARA mark;

R. Awarding Luminara its reasonable attorneys' fees under 15 U.S.C. § 1117 and any other applicable statute(s); and

S. 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: March 2, 2015

ANTHONY OSTLUND
BAER & LOUWAGIE P.A.

By: s/Courtland C. Merrill

Joseph W. Anthony (#2872)
Courtland C. Merrill (#311984)
Dan Hall (#392757)

3600 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402
Tel: (612) 349-6969
Fax: (612) 349-6996
Email: janthony@anthonyostlund.com
cmerrill@anthonyostlund.com
dhall@aonhonyostlund.com

*Attorneys for Plaintiff
Luminara Worldwide, LLC*