



3. Upon information and belief, Defendant Ace Evert, Inc. is the U.S. subsidiary of Evertrust Group of China.

4. Upon information and belief, Defendant Ace Evert International, Inc. is a privately held company with its principal place of business located at 358 Rosewell Street SE #2140, Marietta, Georgia 30060. Defense counsel has agreed to accept service on its behalf.

5. Upon information and belief, Defendant Ningbo Everluck Outdoor Products Manufacturing Co., Ltd. is a Chinese company headquartered at No. 118 Donghui Road, Zone B, Zhenhai Economic Development Zone, Ningbo, China, Zhejiang Province 315200. Defense counsel has agreed to accept service on its behalf.

6. Upon information and belief, Defendant Ningbo Everluck Import and Export Co., Ltd. is a Chinese company headquartered at No. 118 Donghui Road, Zone B, Zhenhai Economic Development Zone, Ningbo, China, Zhejiang Province 315200. Defense counsel has agreed to accept service on its behalf.

7. Defendants Ace Evert, Inc. and Ace Evert International, Inc. are, unless otherwise specified, hereinafter collectively referred to as the “Ace Evert entities.”

8. Defendants Ningbo Everluck Outdoor Products Manufacturing Co., Ltd. and Ningbo Everluck Import and Export Co., Ltd. are, unless otherwise specified, hereinafter collectively referred to as “Ningbo Everluck.”

9. Unless otherwise specified, the Ace Evert entities and Ningbo Everluck are hereinafter collectively referred to as “Ace Evert.”

10. Upon information and belief, Defendant Wal-Mart Stores, Inc. (“Wal-Mart Stores”) is a Delaware corporation with its principal place of business at 702 SW 8th Street, Bentonville, Arkansas 72716. Wal-Mart Stores is registered to do business in Texas, and it may

be served via its registered agent, CT Corporation System, at 350 N. Paul Street, Suite 2900, Dallas, Texas 75201-4234.

11. Upon information and belief, Defendant Wal-Mart Stores Texas, LLC (“Wal-Mart Stores Texas”) is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business at 702 SW 8th Street, Bentonville, Arkansas 72716. Wal-Mart Stores Texas is registered to do business in Texas and may be served via its registered agent, CT Corporation System, at 350 N. Paul Street, Suite 2900, Dallas, Texas 75201-4234.

12. Defendants Wal-Mart Stores and Wal-Mart Stores Texas are, unless otherwise specified, hereinafter collectively referred to as “Wal-Mart.”

13. Ace Evert and Wal-Mart are, unless otherwise specified, hereinafter collectively referred to as the “Defendants.”

#### **Jurisdiction and Venue**

14. This action arises under the patent laws of the United States, 35 U.S.C. § 101, *et seq.*

15. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

16. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400(b).

17. This Court has personal jurisdiction over Ace Evert.

18. Upon information and belief, Ace Evert has and continues to conduct business within the State of Texas and within the Northern District of Texas.

19. Upon information and belief, Ace Evert ships, distributes, offers for sale, sells, and advertises (whether directly or through intermediaries such as retailers), its products in the State of Texas and the Northern District of Texas.

20. Upon information and belief, Ace Evert has purposefully and voluntarily placed one or more of its infringing products into the stream of commerce with the expectation that the infringing products will be purchased and used by consumers in the Northern District of Texas. These infringing products have been and continue to be purchased and used by consumers in the Northern District of Texas.

21. Upon information and belief, Ace Evert has infringed LakeSouth's patent within the State of Texas and within the Northern District of Texas.

22. This Court has personal jurisdiction over Wal-Mart.

23. Upon information and belief, Wal-Mart has and continues to conduct business within the State of Texas and within the Northern District of Texas.

24. Upon information and belief, Wal-Mart offers for sale and sells infringing products in the State of Texas and the Northern District of Texas.

25. Upon information, Wal-Mart has infringed LakeSouth's patent within the State of Texas and within the Northern District of Texas.

### **The '713 Patent**

26. Mr. Gregory G. Kuelbs is a Texas resident and a prolific inventor. Mr. Kuelbs is a named inventor on over 40 U.S. patents.

27. Mr. Kuelbs is the sole inventor of U.S. Patent No. 6,612,713 ("the '713 Patent") entitled "Umbrella Apparatus."

28. On September 2, 2003, the U.S. Patent and Trademark Office ("USPTO") duly and legally issued the '713 Patent.

29. The '713 Patent was originally assigned to World Factory, Inc. ("World Factory").

30. On June 13, 2005, World Factory sued Southern Sales & Marketing Group, Inc. (“Southern Sales”) for infringing the ’713 Patent in the United States District Court for the Northern District of Texas in a case styled *World Factory, Inc. v. Southern Sales & Marketing Group, Inc.*, Civil Action No. 4:05-cv-00373.

31. In response, Southern Sales challenged the validity of claims 1–5 of the ’713 Patent by filing a request for *inter partes* reexamination with the USPTO on August 12, 2005.

32. The USPTO then instituted *inter partes* reexamination no. 95/000,104 to reexamine the ’713 Patent.

33. In its request for *inter partes* reexamination, Southern Sales identified five different prior art references in an attempt to invalidate claims 1–5.

34. Complying with its duty of disclosure, World Factory also disclosed all of the potentially relevant prior art references that World Factory was aware of to the USPTO to ensure that the patent examiner had all of the necessary information to fully reexamine the ’713 Patent.

35. On January 12, 2011, the examiner found that many of the pending claims were indeed patentable.

36. Southern Sales then appealed the examiner’s decision to the Patent Trial and Appeal Board (“PTAB”).

37. In a decision dated January 10, 2013, the PTAB affirmed the examiner, holding that none of Southern Sales’s arguments had merit.

38. After an extensive and thorough *inter partes* reexamination proceeding, the USPTO issued a reexamination certificate on September 23, 2013.

39. A copy of the ’713 Patent is attached as Exhibit A, and a copy of the reexamination certificate is attached as Exhibit B.

40. LakeSouth holds all substantial rights to the '713 Patent.

**Ace Evert's Accused Umbrellas**

41. Ace Evert is in the business of designing, manufacturing, distributing, selling, marketing, and/or importing patio and outdoor umbrellas.

42. Ace Evert makes, uses, offers to sell, sells, and/or imports various patio and outdoor umbrellas.

43. Ace Evert's umbrellas are sold online through at least Amazon and at Wal-Mart stores, including Wal-Mart stores in the Northern District of Texas.

44. Ace Evert makes, uses, offers to sell, sells, and/or imports solar powered umbrellas that include lights and a solar panel and infringe one or more claims of the '713 Patent ("the Accused Umbrellas"). For example, Wal-Mart offers for sale and sells one of Ace Evert's Accused Umbrellas described as "9 Foot Solar Umbrella" under the Better Homes and Gardens label and identified as Art# BH-13-092-599-02.

45. Ace Evert's Accused Umbrellas are offered for sale and sold within the Northern District of Texas. For example, Ace Evert's Accused Umbrellas are offered for sale and sold at Wal-Mart stores within the Northern District of Texas.

46. Upon information and belief, Ningbo Everluck imports Accused Umbrellas into the United States, where they are used, sold, and/or offered for sale.

47. Ace Evert has infringed and is still infringing the '713 Patent by making, using, offering to sell, selling, and/or importing the Accused Umbrellas.

48. Ace Evert's customers have infringed and are still infringing the '713 Patent by using, offering to sell, selling, and/or importing the Accused Umbrellas from Ace Evert.

49. Ace Evert's infringement has harmed and will continue to harm LakeSouth.

50. Ace Evert will continue to infringe the '713 Patent unless enjoined by this Court.

**Wal-Mart's Accused Umbrellas**

51. Upon information and belief, Wal-Mart makes, uses, offers to sell, sells, and/or imports various patio and outdoor umbrellas.

52. Wal-Mart's umbrellas are sold online through www.walmart.com and at Wal-Mart stores, including Wal-Mart stores in the Northern District of Texas.

53. Wal-Mart uses, offers to sell, sells, and/or imports solar powered umbrellas that include lights and a solar panel and infringe one or more claims of the '713 Patent ("the Accused Umbrellas"). For example, Wal-Mart offers for sale and sells Accused Umbrellas described as "9 Foot Solar Umbrella" under the Better Homes and Gardens label and identified as Art# BH-13-092-599-02.

54. Further discovery may reveal additional infringing products and/or models.

55. Upon information and belief, Wal-Mart's Accused Umbrellas are offered for sale and sold within the Northern District of Texas.

56. Wal-Mart has infringed and is still infringing the '713 Patent by using, offering to sell, selling, and/or importing the Accused Umbrellas.

57. Wal-Mart's customers have infringed and are still infringing the '713 Patent by using the Accused Umbrellas purchased from Wal-Mart.

58. For example, Wal-Mart's customers infringe the '713 Patent by using the Accused Umbrellas in combination with another component, such as a base and/or table, to support the Accused Umbrellas in an upright position. The Accused Umbrellas constitute a material part of the combination, and Wal-Mart has known and still knows its Accused

Umbrellas are especially designed, made, and/or adapted for use in a way that infringes one or more claims of the '713 Patent.

59. Further, Wal-Mart's Accused Umbrellas are not a staple article or commodity of commerce suitable for substantial noninfringing uses. For example, the Accused Umbrellas are umbrellas, designed to be used as umbrellas, and have no substantial noninfringing uses as something other than an umbrella. Wal-Mart has not advertised the Accused Umbrellas as having any use other than as umbrellas.

60. Wal-Mart was aware that its actions would cause infringement of the '713 Patent and acted with intent to encourage direct infringement of the '713 Patent.

61. Wal-Mart's infringement of the '713 Patent has been willful. Upon information and belief, Wal-Mart has known of the '713 Patent since at least 2006. Despite its knowledge of the '713 Patent, Wal-Mart has used, sold, offered for sale, and/or imported into the United States products covered by one or more claims of the '713 Patent, including the Accused Umbrellas. Wal-Mart's infringement of the '713 Patent has been willful and intentional because it has continued its acts of infringement with knowledge of the '713 Patent and despite an objectively high likelihood its actions constituted infringement of a valid patent.

62. Wal-Mart's infringement has harmed and will continue to harm LakeSouth.

63. Wal-Mart will continue to infringe the '713 Patent unless enjoined by this Court.

**Ace Evert's Willful Disregard for LakeSouth's Patent Rights**

64. Ace Evert has been making, using, offering to sell, selling, and/or importing solar powered umbrellas that include lights and a solar panel similar to the Accused Umbrellas since at least 2010.



65. In 2010, Ace Evert offered to sell patio umbrellas that included solar powered lights to The Home Depot.

66. In 2010, representatives from The Home Depot told Ace Evert to contact World Factory (the original assignee of the '713 Patent) because World Factory owned patents covering such solar powered umbrellas.

67. In March of 2010, representatives from World Factory traveled to China to meet with representatives of Ace Evert. World Factory received a tour of Ace Evert's manufacturing facility, a demonstration of their products, including the solar powered umbrellas that Ace Evert offered to The Home Depot, and discussed the fact that World Factory owned patents covering such solar powered umbrellas.

68. During the visit in 2010, Ace Evert told World Factory that they would like to avoid patent infringement issues and offered to become World Factory's vendor.

69. Upon information and belief, Ace Evert's lawyers reviewed and analyzed World Factory's various umbrella patents in 2010, including the '713 Patent.

70. From 2010 through at least 2012, World Factory was involved in discussions with Ace Evert's representatives, including Mr. Hang Zhao, to conduct business together, including selling solar powered umbrellas without infringing World Factory's patents.

71. Despite various discussions between Ace Evert and World Factory, Ace Evert never received a license to any of World Factory's patents, including the '713 Patent.

72. In a letter dated February 21, 2014, World Factory informed Ace Evert about several patents, including the '713 Patent.

73. Ace Evert did not respond to World Factory's February 21, 2014 letter.

74. On April 14, 2014, LakeSouth, the present owner of the '713 Patent, filed this lawsuit over Ace Evert's continued infringement of the '713 Patent.

75. Ace Evert was aware of the lawsuit and their infringement of the '713 Patent at least as early as April 21, 2014.

76. In May of 2014, Ace Evert attended the National Hardware show in Las Vegas, Nevada, where Ace Evert displayed, promoted, and offered to sell the Accused Umbrellas.

77. Despite several years of discussions between Ace Evert and World Factory, despite the February 2014 letter regarding patents including the '713 Patent, and despite being aware of this lawsuit, Ace Evert continued and is still making, using, offering for sale, selling, and/or importing into the United States products that are covered by one or more claims of the '713 Patent including, but not limited to, the Accused Umbrellas.

78. Ace Evert directly infringes the '713 Patent by making, using, offering for sale, selling, and/or importing into the United States the Accused Umbrellas.

79. Ace Evert's customers also directly infringe the '713 Patent by using, offering for sale, selling, and/or importing into the United States the Accused Umbrellas.

80. Ace Evert induces its customers to directly infringe the '713 Patent. For example, Ace Evert sells the Accused Umbrellas to its customers for the express purpose of having its customers use, offer for sale, and/or sell the Accused Umbrellas.

81. Upon information and belief, Ace Evert negotiates prices with its customers to ensure its customers can profit by reselling the Accused Umbrellas.

82. In addition to or alternatively, end-users who purchase the Accused Umbrellas, whether from Ace Evert or from one of Ace Evert's customers infringe the '713 Patent by using the Accused Umbrellas. For example, end users infringe the '713 Patent by using the Accused

Umbrellas in combination with another component, such as a base and/or a table to support the Accused Umbrellas in an upright position.

83. Here, the Accused Umbrellas constitute a material part of the combination, and Ace Evert has known and still knows that its Accused Umbrellas are especially made and/or especially adapted for use in a way that infringes one or more claims of the '713 Patent. For example, Ace Evert designs the Accused Umbrellas to be used with a support, such as a base and/or a table.

84. Further, Ace Evert's Accused Umbrellas are not a staple article or commodity of commerce suitable for substantial noninfringing uses. For example, the Accused Umbrellas are umbrellas, designed to be used as umbrellas, and have no substantial noninfringing use as something other than an umbrella. Ace Evert has not advertised the Accused Umbrellas as having any use other than as umbrellas.

**Count I – Ace Evert's Infringement of the '713 Patent**

85. LakeSouth repeats and realleges the allegations in paragraphs 1–88 as though fully set forth herein.

86. Ace Evert has infringed and is now directly infringing the '713 Patent in violation of 35 U.S.C. § 271(a) by making, using, offering for sale, selling, and/or importing into the United States products that are covered by one or more claims of the '713 Patent including, but not limited to, the Accused Umbrellas.

87. In addition and/or in the alternative, Ace Evert has been and is now indirectly infringing the '713 Patent in violation of 35 U.S.C. § 271(b) by inducing its customers to directly infringe the '713 Patent. For example, Ace Evert sells the Accused Umbrellas to its customers

for the express purpose of having its customers use, offer for sale, and/or sell the Accused Umbrellas in violation of 35 U.S.C. § 271(a).

88. In addition and/or in the alternative, Ace Evert has been and is now contributorily infringing the '713 Patent in violation of 35 U.S.C. § 271(c) by offering to sell, selling, and/or importing into the United States the Accused Umbrellas, which are a component of a patented machine, manufacture, combination or composition, the Accused Umbrellas constituting a material part of the invention, and Ace Evert knows the same to be especially made or especially adapted for use in an a manner that infringes one or more claims of the '713 Patent. Further, the Accused Umbrellas are not a staple article or commodity of commerce suitable for substantial noninfringing use.

89. Further discovery may reveal additional infringing products and/or models.

90. Upon information and belief, Ace Evert has known about the '713 Patent at least since March 2010, and certainly since it received World Factory's February 21, 2014 letter.

91. Ace Evert's infringement of the '713 Patent has been willful. For example, despite several years of discussions between Ace Evert and World Factory regarding patents including the '713 Patent, despite the February 2014 letter regarding patents including the '713 Patent, and despite being aware of this lawsuit, Ace Evert continued and is still making, using, offering for sale, selling, and/or importing into the United States products that are covered by one or more claims of the '713 Patent including, but not limited to, the Accused Umbrellas.

92. Ace Evert was aware that its actions would cause infringement of the '713 Patent and acted with intent to encourage direct infringement of the '713 Patent.

93. Ace Evert's infringement of the '713 Patent has damaged and will continue to damage LakeSouth.

**Count II – Wal-Mart’s Infringement of the ’713 Patent**

94. LakeSouth repeats and realleges the allegations in paragraphs 1–98 as though fully set forth herein.

95. Wal-Mart has infringed and is now directly infringing the ’713 Patent in violation of 35 U.S.C. § 271(a) by using, offering for sale, selling, and/or importing into the United States products that are covered by one or more claims of the ’713 Patent including, but not limited to, the Accused Umbrellas.

96. In addition and/or in the alternative, Wal-Mart has been and is now indirectly infringing the ’713 Patent in violation of 35 U.S.C. § 271(b) by inducing its customers to directly infringe the ’713 Patent. For example, Wal-Mart sells the Accused Umbrellas to its customers for the express purpose of having its customers use the Accused Umbrellas in violation of 35 U.S.C. § 271(a).

97. In addition and/or in the alternative, Wal-Mart has been and is now contributorily infringing the ’713 Patent in violation of 35 U.S.C. § 271(c) by offering to sell, selling, and/or importing into the United States the Accused Umbrellas, which are a component of a patented machine, manufacture, combination or composition, the Accused Umbrellas constituting a material part of the invention, and Wal-Mart knows the same to be especially made or especially adapted for use in an a manner that infringes one or more claims of the ’713 Patent. Further, the Accused Umbrellas are not a staple article or commodity of commerce suitable for substantial noninfringing use.

98. Further discovery may reveal additional infringing products and/or models.

99. Upon information and belief, Wal-Mart has known about the ’713 Patent since at least 2006. Wal-Mart acted despite an objectively high likelihood its actions constituted

infringement of a valid patent. Wal-Mart was aware that its actions would cause infringement of the '713 Patent and acted with intent to encourage direct infringement of the '713 Patent.

100. Wal-Mart's infringement of the '713 Patent has damaged and will continue to damage LakeSouth.

**Demand for a Jury Trial**

101. LakeSouth hereby demands a jury for all issues so triable.

**Prayer for Relief**

102. LakeSouth respectfully requests that this Court enter judgment in its favor and grant the following relief:

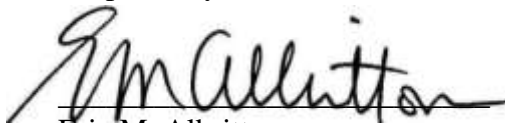
- A. Adjudge that Ace Evert infringes the '713 Patent;
- B. Adjudge that Ace Evert's infringement of the '713 Patent was willful, and that Ace Evert's continued infringement of the '713 Patent is willful;
- C. Award LakeSouth damages in an amount adequate to compensate LakeSouth for Ace Evert's infringement of the '713 Patent, but in no event less than a reasonable royalty under 35 U.S.C. § 284;
- D. Award enhanced damages by reason of Ace Evert's willful infringement of the '713 Patent, pursuant to 35 U.S.C. § 284;
- E. Award LakeSouth pre-judgment and post-judgment interest to the full extent allowed under the law, as well as its costs;
- F. Enter an order finding that this is an exceptional case and awarding LakeSouth its reasonable attorneys' fees pursuant to 35 U.S.C. § 285;
- G. Enjoin Ace Evert and all others in active concert with Ace Evert from further infringement of the '713 Patent; and

H. Award such other relief as the Court may deem appropriate and just under the circumstances.

103. LakeSouth further respectfully requests that this Court enter judgment in its favor and grant the following relief:

- A. Adjudge that Wal-Mart infringes the '713 Patent;
- B. Adjudge that Wal-Mart's infringement of the '713 Patent was willful, and that Wal-Mart's continued infringement of the '713 Patent is willful;
- C. Award LakeSouth damages in an amount adequate to compensate LakeSouth for Wal-Mart's infringement of the '713 Patent, but in no event less than a reasonable royalty under 35 U.S.C. § 284;
- D. Award enhanced damages by reason of Wal-Mart's willful infringement of the '713 Patent, pursuant to 35 U.S.C. § 284;
- E. Award LakeSouth pre-judgment and post-judgment interest to the full extent allowed under the law, as well as its costs;
- F. Enter an order finding that this is an exceptional case and awarding LakeSouth its reasonable attorneys' fees pursuant to 35 U.S.C. § 285;
- G. Enjoin Wal-Mart and all others in active concert with Ace Evert from further infringement of the '713 Patent; and
- H. Award such other relief as the Court may deem appropriate and just under the circumstances.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

Pursuant to Federal Rule of Civil Procedure 5(d), the undersigned certifies that the foregoing document is being filed electronically in compliance with Local Rule 5.1(e). As such, the document is being served on all counsel on this 4th day of June 2015. L.R. 5.1(d).

  
Eric M. Albritton