

**IN THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT
OF TEXAS DALLAS DIVISION**

RAZ Imports, Inc.,
M&B Products, LLC
Plaintiffs,

v.

Luminara Worldwide, LLC
Defendants.

Case No. 3:15-CV-02223 (BML)

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiffs RAZ Imports, Inc. and M&B Products, LLC file this First Amended Complaint for Declaratory Judgment seeking a judgment that United States Patent No. 7,837,355, also entitled “Kinetic Flame Device” (the ‘355 patent), and United States Patent No. 8,070,319, also entitled “Kinetic Flame Device” (the ‘319 patent), and United States Patent No. 8,534,869, also entitled “Kinetic Flame Device” (the ‘869 patent), and United States Patent No. 8,696,166, also entitled “Kinetic Flame Device” (the ‘166 patent) (collectively the “Patents”), which are (upon information and belief) exclusively licensed by Defendant Luminara Worldwide, LLC, are not infringed by Plaintiffs RAZ and M&B.

PARTIES

1. Plaintiff RAZ Imports, Inc. (“RAZ”) is a Texas corporation with its principal place of business located at 1020 Eden Road, Arlington, Texas 76001, within this judicial district.

2. Plaintiff M&B Products, LLC (“M&B”) is a Texas limited liability corporation

with its principal place of business located at 1020 Eden Road, Arlington, Texas 76001, within this judicial district.

3. Upon information and belief, Defendant Luminara Worldwide, LLC (hereinafter “Luminara”) is a Minnesota limited liability company having its principal place of business in Eden Prairie, Minnesota.

JURISDICTION AND VENUE

4. This is a complaint for declaratory relief of non-infringement of the Patents. This complaint arises under the Patent Laws of the United States, Title 35, United States Code and subject-matter jurisdiction is proper in this Court under 28 U.S.C. §§ 1331, 1338, 1367, 2201 and 2202.

5. Defendant Luminara is subject to personal jurisdiction in this district pursuant to § 17.042 of the Texas Civil Practice & Remedies Code. Defendant Luminara conducts substantial business in the State of Texas and this judicial district through its sale of battery-powered candles through retail outlets such as Bed Bath & Beyond, Inc., Brookstone Stores, Inc., Costco Wholesale Co., Kohl’s Corp., Lowe’s Companies, Inc. and others. Moreover, upon information and belief, Luminara sells battery-powered candles in this judicial district through authorized sales representatives based in this judicial district.

6. Additionally, Defendant Luminara directed to Plaintiffs RAZ and M&B, residents of Texas and this judicial district, a letter dated July 2, 2015 threatening legal action for patent infringement unless certain demands of Defendant Luminara were met by RAZ. A copy of this letter is attached hereto as Exhibit A.

7. Accordingly, Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and/or 1400.

BACKGROUND FACTS

8. Plaintiff RAZ is a wholesale importer of seasonal holiday decorations and home accents. RAZ sells Christmas, Easter, Spring, Halloween, Thanksgiving and Fall décor as well as floral items.

9. Plaintiff M&B, doing business as “M&B Products, a division of RAZ, Imports, Inc.”, sells certain moving flame candles manufactured by Liown Electronics Co., Ltd. (the “Accused Products”).

10. Upon information and belief, on or about July 2, 2015, Luminara’s representative sent a letter to Plaintiff RAZ asserting that Luminara is the exclusive licensee of the Patents and accusing Plaintiffs of “engag[ing] in an act of patent infringement” based on the aforementioned Patents through the sales of the Accused Products. As set forth in Defendant’s July 2, 2015 letter, Luminara asserts that “RAZ Imports, Inc. is offering for sale moving-flame candles that infringe one or more claims of the aforementioned patents. In particular, a posting dated June 24, 2015 on the website of Shenzhen Liown Electronics Co. Ltd. (‘Liown’) states that ‘M&B Products, a division of RAZ Imports, will distribute Liown’s Moving Flame™ candles.’” Exhibit A.

11. Luminara therefore has accused Plaintiffs RAZ and M&B of patent infringement and directly threatened RAZ with legal action: “Please be advised, if RAZ Imports offers infringing Liown moving flame candles for sale at the Atlanta International Gift & Home Furnishings Market, July 7-14, 2015, Luminara will sue RAZ Imports for infringement.” Exhibit A, p. 2.

12. Accordingly, a case or controversy exists between Plaintiffs and Defendant

Luminara as to whether the Accused Products infringe the Patents.

COUNT I
Declaratory Judgment of Non-Infringement of the
`355 Patent

13. Plaintiffs RAZ and M&B repeat and re-allege the allegations of paragraphs 1 through 12 of this Complaint as if set forth herein in full.

14. This claim arises under the Patent Laws of the United States, 35 U.S.C. § 1 et seq. and the Declaratory Judgment Act, 28 U.S.C. §2201 and 2202.

15. There is a real, immediate, substantial and justiciable controversy between Plaintiffs and Defendant Luminara concerning whether sale of the Accused Products infringe the `355 patent through Luminara's direct threats of patent infringement litigation as set forth in Exhibit A. A copy of the `355 patent is attached hereto as Exhibit B.

16. Upon information and belief, no Accused Product of Plaintiffs infringe any claim of the `355 Patent under any section of 35 U.S.C. § 271 and Plaintiffs are entitled to a judicial declaration to that end.

COUNT II
Declaratory Judgment of Non-Infringement of the
`319 Patent

17. Plaintiffs RAZ and M&B repeat and re-allege the allegations of paragraphs 1 through 16 of this Complaint as if set forth herein in full.

18. This claim arises under the Patent Laws of the United States, 35 U.S.C. § 1 et seq. and the Declaratory Judgment Act, 28 U.S.C. §2201 and 2202.

19. There is a real, immediate, substantial and justiciable controversy between Plaintiffs and Defendant Luminara concerning whether sale of the Accused Products infringe

the `319 patent through Luminara's direct threats of patent infringement litigation as set forth in Exhibit A. A copy of the `319 patent is attached hereto as Exhibit C.

20. Upon information and belief, no Accused Product of Plaintiffs infringe any claim of the `319 Patent under any section of 35 U.S.C. § 271 and Plaintiffs are entitled to a judicial declaration to that end.

COUNT III
Declaratory Judgment of Non-Infringement of the
`869 Patent

21. Plaintiffs RAZ and M&B repeat and re-allege the allegations of paragraphs 1 through 19 of this Complaint as if set forth herein in full.

22. This claim arises under the Patent Laws of the United States, 35 U.S.C. § 1 et seq. and the Declaratory Judgment Act, 28 U.S.C. §2201 and 2202.

23. There is a real, immediate, substantial and justiciable controversy between Plaintiffs and Defendant Luminara concerning whether sale of the Accused Products infringe the `869 patent through Luminara's direct threats of patent infringement litigation as set forth in Exhibit A. A copy of the `869 patent is attached hereto as Exhibit D.

24. Upon information and belief, no Accused Product of Plaintiffs infringe any claim of the `869 Patent under any section of 35 U.S.C. § 271 and Plaintiffs are entitled to a judicial declaration to that end.

COUNT IV
Declaratory Judgment of Non-Infringement of the
`166 Patent

25. Plaintiffs RAZ and M&B repeat and re-allege the allegations of paragraphs 1 through 24 of this Complaint as if set forth herein in full.

26. This claim arises under the Patent Laws of the United States, 35 U.S.C. § 1 et

seq. and the Declaratory Judgment Act, 28 U.S.C. §2201 and 2202.

27. There is a real, immediate, substantial and justiciable controversy between Plaintiffs and Defendant Luminara concerning whether sale of the Accused Products infringe the `166 patent through Luminara's direct threats of patent infringement litigation as set forth in Exhibit A. A copy of the `166 patent is attached hereto as Exhibit E.

28. Upon information and belief, no Accused Product of Plaintiffs infringe any claim of the `166 Patent under any section of 35 U.S.C. § 271 and Plaintiffs are entitled to a judicial declaration to that end.

PRAYER FOR RELIEF

WHEREFORE, in view of the foregoing, Plaintiffs RAZ and M&B pray that this Court enter judgment as follows:

- 1) Declaring that RAZ does not infringe any claim of the Patents;
 - 2) Declaring that M&B does not infringe any claim of the Patents; and,
 - 3) Granting Plaintiffs RAZ and M&B further relief, either at law or in equity,
- which this Court deems just or proper.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all issues presented in this Complaint and so triable.

DATED: July 16, 2015

Respectfully submitted,

/s/ James A. Glenn

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