

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION**

Case Number: 0:16-cv-60805

GLOW BOWL, LLC,

Plaintiff,

v.

ONTEL PRODUCTS CORPORATION,

Defendant.

**AMENDED COMPLAINT FOR UNFAIR COMPETITION
INJUNCTIVE RELIEF DEMANDED
DEMAND FOR JURY TRIAL**

Plaintiff, GLOW BOWL, LLC, a Florida limited liability company, by and through undersigned counsel, brings this Amended Complaint against Defendant, ONTEL PRODUCTS CORPORATION, for injunctive relief and damages and states the following in support thereof:

1. This is an action arising under the Lanham Trademark Act, 15 U.S.C. § 1125(a), the Florida Statutes and Florida common law.
2. This Court has original jurisdiction of this civil action pursuant to 28 U.S.C. §§ 1331 and 1338.
3. This Court has supplemental jurisdiction of the remaining counts based on Florida law pursuant to 28 U.S.C. § 1367(a).
4. Defendant is subject to personal jurisdiction in Florida.
5. Venue is proper under 28 U.S.C. § 1391(b) and (c) because the events giving rise to the claims occurred in this district, and Defendant engaged in the acts alleged in this district.

6. Plaintiff, GLOW BOWL, LLC (“Glow Bowl”) is a Florida limited liability company with offices in Sunrise, Florida that does business on the internet on its website at www.glowbowl.com and on Amazon.com.

7. Prior to August 10, 2011, Brian R. Andy and Jeff S. Barbieri invented a motion activated toilet bowl lighting device.

8. Andy’s and Barbieri’s idea combines a motion detector, a light sensor, a timer and an LED light in a device for attaching to a toilet that illuminates the toilet bowl automatically when you enter the bathroom and deactivates when you leave making late night trips to the bathroom easier, cleaner, and safer for the entire family.

9. Andy and Barbieri applied for and obtained United States Patent No. 9,041,298 entitled “Motion Activated Toilet Bowl Lighting Device,” referred to herein as the ‘298 Patent, a copy of which is attached as Exhibit 1.

10. Glow Bowl is the owner of all substantial rights in and to the ‘298 Patent by assignment from Andy and Barbieri including the right to bring actions for past infringement.

11. The ‘298 Patent was issued on May 26, 2015.

12. Glow Bowl has never licensed the ‘298 Patent.

13. Glow Bowl makes “THE ORIGINAL GLOWBOWL” that transforms any toilet into a nightlight.

14. THE ORIGINAL GLOWBOWL is sold in packaging prominently marked with the ‘298 Patent number.

15. THE ORIGINAL GLOWBOWL sells for the regular price of \$24.99 on Glow Bowl’s website at www.glowbowl.com shown in Exhibit 2.

16. THE ORIGINAL GLOWBOWL is a high quality product.

THE INFRINGING BOWL LIGHT

17. Defendant, ONTEL PRODUCTS CORPORATION (“Ontel”) is a New Jersey corporation with offices at 21 Law Drive, Fairfield, NJ 07004.

18. Ontel is the marketer of a toilet light product called BOWL LIGHT.

19. Ontel advertised and marketed BOWL LIGHT on the internet at www.buybowlight.com shown in Exhibit 3 and on television throughout the country.

20. In the advertising and marketing of BOWL LIGHT on the internet and on television, Ontel used images of THE ORIGINAL GLOWBOWL without Glow Bowl’s permission.

21. Ontel’s advertising and marketing falsely suggests that it is selling THE ORIGINAL GLOWBOWL.

22. In truth, Ontel has no permission or authority to sell THE ORIGINAL GLOWBOWL.

23. Ontel has never been licensed to copy, distribute or display images of THE ORIGINAL GLOWBOWL for any purpose.

24. Glow Bowl has been irreparably harmed by Ontel’s infringement of its valuable intellectual property rights.

25. Glow Bowl has suffered lost profits from Defendants’ unfair competition.

26. Unless and until Defendants’ continued acts are enjoined, Glow Bowl will suffer further irreparable harm for which there is no adequate remedy at law.

27. Glow Bowl has engaged the undersigned attorneys and agreed to pay them a reasonable fee.

COUNT I – FEDERAL UNFAIR COMPETITION

28. Glow Bowl repeats and re-alleges the allegations of paragraphs 1 through 27 as though fully set forth herein.

29. Defendant's activities complained of herein constitute unfair methods of competition in violation of 15 U.S.C. § 1125(a) to the injury and detriment of consumers and Glow Bowl.

30. As a direct and proximate result of Defendant's unfair and deceptive trade practices, Glow Bowl has suffered and will continue to suffer loss of reputation among its purchasers and potential purchasers on Amazon.com, and Defendant will continue to unfairly acquire income, profits, and goodwill.

31. Glow Bowl has been damaged.

32. The damage to Glow Bowl is irreparable.

33. Unless enjoined, Defendant's unfair competition will continue to deceive the public and injure competition.

COUNT II
PALMING OFF

34. Glow Bowl repeats and re-alleges the allegations of paragraphs 1 through 27 as though fully set forth herein.

35. Defendant's activities complained of herein constitute palming off in violation of 15 U.S.C. § 1125(a) to the injury and detriment of Plaintiff.

36. Glow Bowl owns common law trademarks in THE ORIGINAL GLOWBOWL and GLOWBOWL Marks.

37. Defendant made unauthorized use of THE ORIGINAL GLOWBOWL and GLOWBOWL marks as described above such that consumers were likely to confuse the Defendant's use with Glow Bowl's valid use of the marks.

38. Defendant's unauthorized use of the THE ORIGINAL GLOWBOWL and GLOWBOWL marks in interstate commerce as described above is likely to cause confusion, mistake, or deception.

39. As a direct and proximate result of Defendant's palming off, Glow Bowl has suffered and will continue to suffer loss of income, profits and good will and Defendant will continue to unfairly acquire income, profits, and good will.

COUNT III -- UNFAIR COMPETITION - FLORIDA COMMON LAW

40. Glow Bowl repeats and re-alleges the allegations of paragraphs 1 through 27 as though fully set forth herein.

41. Defendant's activities complained of herein constitute unfair methods of competition in violation of the common law of the State of Florida.

42. As a direct and proximate result of Defendant's unfair competition, Glow Bowl has suffered and will continue to suffer loss of reputation among its purchasers and potential purchasers, and Defendant will continue to unfairly acquire income, profits, and goodwill.

43. Glow Bowl has been damaged.

44. The damage to Glow Bowl is irreparable.

45. Unless enjoined, Defendant's unfair competition will continue to deceive the public and injure competition.

COUNT IV -- VIOLATION OF THE FLORIDA UNFAIR AND DECEPTIVE TRADE PRACTICES ACT

46. Glow Bowl repeats and re-alleges the allegations of paragraphs 1 through 27 as though fully set forth herein.

47. The Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”) broadly declares in §501.204(1) that “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce” are unlawful.

48. Defendant’s use of images of THE ORIGINAL GLOWBOWL in connection with its sale of BOWL LIGHT is an unfair or deceptive act or practice that violates FDUTPA.

49. As a direct and proximate result of Defendant’s unfair or deceptive trade practices, Glow Bowl has suffered and will continue to suffer loss of reputation among its purchasers and potential purchasers, and Defendant will continue to unfairly acquire income, profits, and goodwill.

50. Glow Bowl has been damaged.

51. The damage to Glow Bowl is irreparable.

52. Unless enjoined, Defendant’s unfair and deceptive practices will continue to deceive the public and injure competition.

COUNT V -- VIOLATION OF THE SECTION 817.41, FLORIDA STATUTES (FALSE AND FRAUDULENT ADVERTISING)

53. Glow Bowl repeats and re-alleges the allegations of paragraphs 1 through 27 as though fully set forth herein.

54. Section 817.41, Florida Statutes, prohibits the making or dissemination of misleading advertisements, and declares such misleading advertisements to be fraudulent and unlawful, designed and intended for obtaining money or property under false pretenses.

55. Defendant's use of images of THE ORIGINAL GLOWBOWL in connection with its sale of BOWL LIGHT is false advertising that violates Section 817.41, Florida Statutes.

56. As a direct and proximate result of Defendant's false advertising, Glow Bowl has suffered and will continue to suffer loss of goodwill and reputation among its purchasers and potential purchasers, and Defendant will continue to unfairly acquire income, profits, and goodwill.

57. Glow Bowl has been damaged.

58. The damage to Glow Bowl is irreparable.

59. Unless enjoined, Defendant's false advertising will continue to deceive the public and injure competition.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Glow Bowl demands judgment and relief against Ontel and respectfully requests that this Court:

- A. Find that Defendant has engaged in unfair competition in violation of the Lanham Act and Florida common law;
- B. Find that Defendant has engaged in unfair and deceptive acts and practices in violation of the Florida Statutes;
- C. Find that Defendant has engaged in false advertising in violation of the Florida Statutes;
- D. Enter judgment for Plaintiff on all Counts of the Complaint;
- E. Temporarily, preliminarily, and permanently enjoin, restrain, and forbid Defendant, and all of Defendant's principals, servants, officers, directors, partners, agents, representatives, shareholders, employees, affiliates, successors, assignees, and all

- others acting in privity, concert, or participation with Defendant, from infringing Plaintiff's patent, and from engaging in the unfair methods of competition, unfair and deceptive trade practices, and false advertising described herein and that will be shown at a hearing or trial to be held in this matter;
- F. Award Plaintiff actual damages in an amount to be proved at trial and/or as otherwise provided by law;
- G. Award Plaintiff prejudgment interest;
- H. Award Plaintiff its reasonable attorney fees and costs of suit incurred herein; and
- I. Award such other and further relief as is just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: June 13, 2016

Respectfully submitted,

By: /s/ Joel B. Rothman

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on June 13, 2016, a true and correct copy of the foregoing document was served by the Court's CM/ECF system, by electronic mail, on all parties listed below on the service list.

SERVICE LIST

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