

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

No. 15-cv-03028 (SRN/FLN)

Luminara Worldwide, LLC,

Plaintiff,

JURY TRIAL DEMANDED

v.

Liown Electronics Ltd., Shenzhen Liown
Electronics Co. Ltd., Liown
Technologies/Beauty Electronics, LLC,
RAZ Imports, Inc., M&B Products, LLC,
Boston Warehouse Trading Corp., The
Light Garden, Inc., and Central Garden &
Pet Co.,

Defendants.

SECOND AMENDED COMPLAINT

Plaintiff Luminara Worldwide, LLC (“Luminara”), for its Second Amended Complaint against Liown Electronics Co. Ltd., Shenzhen Liown Electronics Co. Ltd., Liown Technologies/Beauty Electronics, LLC, RAZ Imports, Inc. (“RAZ Imports”), M&B Products, LLC (“M&B”), Boston Warehouse Trading Corp., The Light Garden, Inc., and Central Garden & Pet Co. (collectively “Defendants”), alleges as follows:

JURISDICTION, VENUE, RELATED CASE, 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.
2. This action is related to *Luminara Worldwide, LLC v. Liown Electronics Co. Ltd., et al.*, No. 14-cv-3103-SRN-FLN (filed 8/5/14) (the “Liown Action”) currently

pending before Judge Susan Richard Nelson. This action involves some of the same patents-in-suit, some of the same products accused of infringement, and some of the same parties as the Liown Action.

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 1338(a).

4. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

5. Joinder is proper under 35 U.S.C. § 299. 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. Furthermore, questions of fact common to all Defendants will arise in the action.

THE PARTIES

6. Luminara is a Delaware limited liability company having its principal place of business in Eden Prairie, Minnesota. Luminara 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”). Luminara sells flameless candle products utilizing the licensed Artificial Flame Technology. Luminara does business in the State of Minnesota and in this District.

7. 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 principal 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 principal place of business in China. Defendant Liown Technologies/Beauty Electronics, LLC, upon information and belief, is a Delaware limited liability company with a principal 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."

8. Upon information and belief, Liown, either alone or in concert with others, manufactures the infringing flameless candle products 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 "moving flame," "Axis," "HOK," "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 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.

9. Upon information and belief, RAZ Imports is a Texas corporation with a place of business in Arlington, Texas. Upon information and belief, RAZ Imports imports into the United States from Liown, and offers for sale, and sells, throughout the United States, including in this District, flameless candle products under the names "moving flame candles," "Axis" and "HOK" that use the Artificial Flame Technology. RAZ Imports does not have authorization to use the Artificial Flame Technology. Upon information and belief, RAZ Imports 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, RAZ Imports has also 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 operating and maintaining a showroom in Minnesota for RAZ Imports' products.

10. Upon information and belief, M&B is a Texas limited liability corporation with a place of business in Arlington, Texas, within the same location as RAZ Imports. Upon information and belief, M&B does business as a "division" of RAZ Imports. Upon information and belief, RAZ Imports controls the operations of M&B, and the two companies operate in concert as a single entity. Upon information and belief, M&B

offers for sale, and sells, throughout the United States, including in this District, flameless candle products under the names “moving flame candles,” “Axis” and “HOK” that use the Artificial Flame Technology. M&B does not have authorization to use the Artificial Flame Technology. Upon information and belief, M&B 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, M&B has also 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 operating and maintaining a showroom in Minnesota with RAZ Imports to display products.

11. Upon information and belief, Defendant Boston Warehouse Trading Corp. (“Boston Warehouse”) is a Massachusetts corporation with a principal place of business in Norwood, Massachusetts. Upon information and belief, Boston Warehouse imports into the United States and offers for sale, and sells, the 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.

12. Upon information and belief, Defendant Central Garden & Pet Company, doing business through its Bethlehem Lights division GKI/Bethlehem Lighting (hereafter, “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, the 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 it consented to the jurisdiction of this Court in the Amended and Restated Distribution Agreement with Luminara.

13. Upon information and belief, Defendant The 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, the 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 it consented to the jurisdiction of this Court in the Distribution Agreement with Luminara.

THE PATENTS-IN-SUIT

14. The licensed Artificial Flame Technology includes United States Patent Nos. 7,837,355, 8,070,319, 8,534,869, 8,696,166, 8,721,118 and 8,727,569.

15. Luminara is the exclusive licensee 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, Luminara has standing to sue for infringement of the ’355 Patent.

16. Luminara is the exclusive licensee 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, Luminara has standing to sue for infringement of the ’319 Patent.

17. Luminara 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, Luminara has standing to sue for infringement of the ’869 Patent.

18. Luminara 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, Luminara has standing to sue for infringement of the ’166 Patent.

19. Luminara is the exclusive licensee possessing all substantial right, title and interest in United States Patent No. 8,721,118 (“’118 Patent”), entitled “Kinetic Flame Device,” which issued May 13, 2014. Accordingly, Luminara has standing to sue for infringement of the ’118 Patent.

20. Luminara is the exclusive licensee possessing all substantial right, title and interest in United States Patent No. 8,727,569 (“’569 Patent”), entitled “Kinetic Flame Device,” which issued May 20, 2014. Accordingly, Luminara has standing to sue for infringement of the ’569 Patent.

COUNT I – PATENT INFRINGEMENT

21. Luminara realleges the allegations in the preceding Paragraphs as if fully restated in Count I of this Complaint.

22. 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, ’166, ’118 and ’569 Patents by importing, making, using, selling and/or offering to sell in the United States flameless candles made by Liown which realistically simulate the flame of a burning candle, including but not limited to the products sold under the names: “moving flame,” “Axis,” “HOK,” “Illuminaires Flameless Moving Wick Candles,” “Moving Flame Fat 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/or “Avalon.”

23. 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, '166, '118 and '569 Patents by inducing third parties and end-users to use, offer for resale and/or resell in the United States flameless candles made by Liown which realistically simulate the flame of a burning candle, including but not limited to products sold under the names identified in the above Paragraph.

24. 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 use other than their intended purpose, which infringes the '355, '319, '869, '166, '118 and '569 Patents. Use or resale of infringing flameless candles by Defendants' customers constitutes direct infringement. Defendants had notice of the '355, '319, '869, '166, '118 and '569 Patents and knew that the customers' acts constituted infringement.

25. Luminara has complied with the notice requirements of 35 U.S.C. § 287(a) with respect to the '355, '319, '869, '166, '118 and '569 Patents.

26. With regard to Liown, 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 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.

27. 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.

28. On August 13, 2014, Plaintiff's counsel provided GKI/Bethlehem and Light Garden notice that Liown's moving flameless candles infringed the '355, '319 and '869 Patents.

29. Luminara's counsel wrote to RAZ Imports on July 2, 2015 and provided it with actual notice of infringement of the '355, '319, '869 and '166 patents. The letter from Luminara's counsel specifically notified RAZ Imports "that sale of Liown moving flameless candles infringe" the '355, '319, '869 and '166 patents. The letter from Luminara's counsel specifically advised that "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" of the '355, '319, '869 and '166 patents. Despite notice, RAZ Imports proceeded to offer infringing Liown moving flame candles for sale at the Atlanta International Gift & Home Furnishings Market. Notice of infringement provided to RAZ Imports provided sufficient notice to M&B because the two companies act in concert and are substantially intertwined.

30. By filing and service of the Liown Action, Plaintiff gave Defendants further notice of infringement of the '355, '319, '869 and '166 Patents.

31. Luminara also provided Defendants with constructive notice of the '355, '319, '869, '166, '118 and '569 Patents by marking patented articles with the word

“patent” or the abbreviation “pat.,” together with the number of the ’355, ’319, ’869, ’166, ’118 and ’569 Patents, or by fixing thereon the word “patent” or the abbreviation “pat.,” together with an address of a posting on the Internet, accessible to the public without charge for accessing the address, that associates the patented article with the number of the ’355, ’319, ’869, ’166, ’118 and ’569 Patents.

32. Upon information and belief, Defendants’ infringement of the ’355, ’319, ’869, ’166, ’118 and ’569 Patents has been willful and deliberate, rendering this case “exceptional” within the meaning of 35 U.S.C. § 285.

33. Luminara has been damaged by Defendants’ infringement of the ’355, ’319, ’869, ’166, ’118 and ’569 Patents. Unless restrained and enjoined by this Court, Defendants will continue to infringe the ’355, ’319, ’869, ’166, ’118 and ’569 Patents, resulting in substantial, continuing, and irreparable damage to Luminara.

DEMAND FOR JUDGMENT

WHEREFORE, Luminara demands judgment as follows:

- A. That Defendants be adjudged to have infringed the ’355, ’319, ’869, ’166, ’118 and ’569 Patents;
- B. That the ’355, ’319, ’869, ’166, ’118 and ’569 Patents be adjudged valid and enforceable;
- C. That Defendants be adjudged to have willfully and deliberately infringed the ’355, ’319, ’869, ’166, ’118 and ’569 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, '166, '118 and '569 Patents;

E. An accounting and an award of damages by virtue of Defendants' infringement of the '355, '319, '869, '166, '118 and '569 Patents;

F. An award of treble damages because of Defendants' willful infringement of the '355, '319, '869, '166, '118 and '569 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; and

I. 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, Luminara hereby demands a trial by jury of all issues triable in the above action.

Dated: June 23, 2016

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