

Kyri S. Tsircou (SBN 209905)
 Konrad L. Trope (SBN 133214)
 Tsircou Intellectual Property Law PC
 515 S. Flower St. Floor 36
 Los Angeles, California 90071
 Telephone: (323) 660-9916
 Facsimile: (323) 660-9917
 Email: kyri@tsircoulaw.com
 Email: ktrope@tsircoulaw.com

Counsel for Plaintiff Gold Crest, LLC,
 a California Limited Liability Company

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION

GOLD CREST, LLC, a California
 Limited Liability Company,

Plaintiff,

vs.

GLOBE ELECTRIC COMPANY
 (U.S.A.), INC., a Canadian
 Corporation; and DOES 1-10,
 inclusive;

Defendants.

CASE No. 2:19-cv-06986-DDP (RAOx)

First Amended

**COMPLAINT FOR DAMAGES,
 INJUNCTIVE RELIEF, ATTORNEYS'
 FEES AND COSTS FOR:**

1. **Design Patent Infringement Under 35 U.S.C. § 271 for Design Patent No. US D769,512; and**
2. **Design Patent Infringement Under 35 U.S.C. § 271 for Design Patent No. US D787,735**
3. **Unfair Competition Under 15 U.S.C. §1125**

[JURY TRIAL DEMANDED]

Plaintiff Gold Crest, LLC (“Plaintiff”, or “Gold Crest”) for its claims against
 Defendant GLOBE ELECTRIC COMPANY (U.S.A.), INC. a Canadian Corporation
 (“Defendant” or “Globe”) respectfully alleges as follows:

JURISDICTION AND VENUE

1. This is an action for patent infringement arising under the patent laws of
 the United States, 35 U.S.C. § 271 et seq.

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331
 and 1338.

1 employment.

2 8. Plaintiff is informed and believes and based thereon alleges, that at all
3 relevant times herein, Defendant and DOES 1 through 10, inclusive, knew or
4 reasonably should have known of the acts and behavior alleged herein and the damages
5 caused thereby, and by their inaction ratified and encouraged such acts and behavior.
6 Plaintiff further alleges that Defendant and DOES 1 through 10, inclusive, have a non-
7 delegable duty to prevent or cause such acts and the behavior described herein, which
8 duty Defendant and DOES 1 through 10, inclusive, failed and/or refused to perform.

9 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

10 **A. Background**

11 9. Gold Crest is a well-known and respected company in the lighting and
12 home goods field. Gold Crest is well known for its high quality products, and is
13 sought out as the supplier for a number of high-end hospitality chains and
14 corporations.

15 10. Gold Crest filed the D769,512 design patent on September 8, 2015, and
16 was legally registered by the USPTO on October 16, 2016. Additionally, Gold Crest
17 filed the D787,735 design patent on October 14, 2016, and was legally registered by
18 the USPTO on May 23, 2017. The patent has been in force since that time and
19 continues to be in force.

20 11. As a result of Gold Crest's substantial advertising and promotional
21 efforts, as well as the high quality of the products associated with the '512 Design
22 Patent '735 Design Patent, this distinctive design has earned valuable and residual
23 goodwill and reputation for Gold Crest being the sole source of said goods in the
24 United States.

25 **B. Defendant's Infringing Conduct**

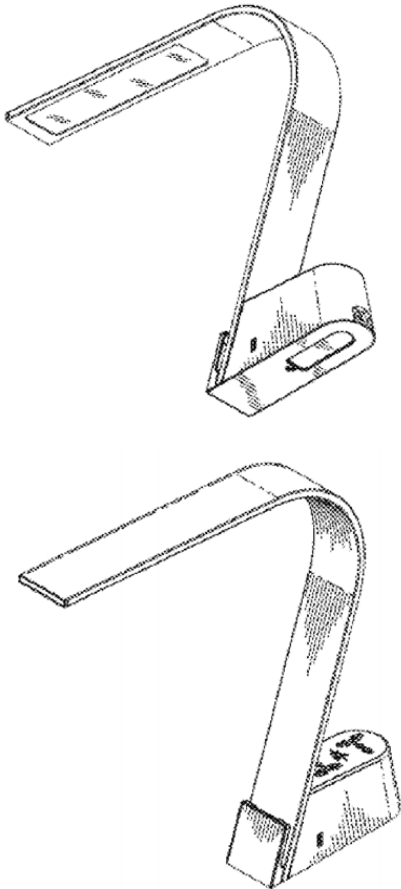

26 12. Defendant has infringed and continues to infringe on the '512 Design
27 Patent, and the '735 Design Patent, or a colorable imitation thereof by using, selling
28 and/or offering to sell in the United States, and/or importing into the United States,

1 infringing products as identified in this Complaint.

2 13. Plaintiff is informed and believes and based thereon alleges, that Plaintiff
3 was made aware that Defendant has been selling lamps under the name “Lumesty
4 Phoenix Black LED Integrated Desk Lamp” (“Infringing Product”).

5 14. Plaintiff is informed and believes that Defendant has been providing the
6 infringing product to a number of third party retailers, including but not limited to,
7 Home Depot, Walmart, Overstock and Wayfair.

8 15. Below is a comparison between the infringing product being offered by
9 Defendant, and Plaintiff’s ‘512 Design Patent

Design Pat. No. D769,512	Infringing Product
	

16. Below is a comparison between the infringing product being offered by Defendant, and Plaintiff's '735 Design Patent:

Design Pat. No. D787,735	Infringing Product
	

17. Defendant was made aware of their infringing activity in April 2019 with through a cease and desist letter sent to Defendant. The receipt of this letter was confirmed by defendant on April 23, 2019.

1 18. An ordinary observer familiar with the prior art would be deceived into
2 thinking that the design of the infringing products was the same as the '512 Design
3 Patent, and the '735 Design Patent.

4 19. Defendant's actions have been without license or authority of Gold Crest.

5 20. Defendant's actions have been taken knowingly and willingly.

6 21. Defendant has been made aware of their infringing conduct since April
7 22, 2019, and after having initially responded, have continued their infringing conduct
8 all the way up and until the present. As such this conduct was knowing and willful.

9 **FIRST CLAIM FOR RELIEF**

10 **[Infringement of '512 Design Patent Under 35 U.S.C. § 271**

11 **Against All Defendants]**

12 22. Plaintiff realleges, adopts and incorporates by reference, each and every
13 allegation contained in Paragraphs 1 through 21, inclusive, of this Complaint as though
14 fully set forth herein

15 23. Plaintiff is informed and believes and thereon alleges that Defendant has
16 infringed and continues to infringe the '512 Design Patent by manufacturing,
17 distributing, promoting, using, selling and/or offering to sell in the United States,
18 and/or importing into the United States infringing products as identified in this
19 Complaint, which embody the design covered by the '512 Design Patent. Defendant's
20 actions constitute infringement of the '512 Design Patent under 35 U.S.C. § 271 and
21 35 U.S.C. § 289.

22 24. Plaintiff is informed and believes and thereon alleges that Defendant's
23 acts of infringement were and are willful and deliberate.

24 25. Plaintiff is informed and believes and thereon alleges that Defendants,
25 through their agents, employees and servants, have, knowingly, intentionally and
26 willfully directly infringed, engaged in acts of contributory infringement, and/or
27 induced the infringement of the '512 Design Patent by directly and/or indirectly
28 making, using, selling, offering for sale and/or importing products into the United

1 States that were covered by the claims of the '512 Design Patent.

2 26. Defendants' acts of infringement of the '512 Design Patent were
3 undertaken without permission or license from Plaintiff Gold Crest. Defendants had
4 actual and/or constructive knowledge of the '512 Design Patent, and their actions
5 constitute willful and intentional infringement of the '512 Design Patent.

6 27. As a direct and proximate result of Defendants' infringement of the '512
7 Design Patent, Defendants have derived and received gains, profits, and advantages in
8 an amount not presently known to Plaintiff Gold Crest.

9 28. Accordingly, pursuant to 35 U.S.C. § 289, Plaintiff Gold Crest is entitled
10 to Defendants' total profits from Defendants' infringement of the '512 Design Patent.

11 29. In addition, pursuant to 35 U.S.C. § 284, Plaintiff Gold Crest is entitled to
12 damages for Defendant's infringing acts and treble damages together with interest and
13 costs as fixed by this Court.

14 30. Pursuant to 35 U.S.C. § 285, Plaintiff Gold Crest is entitled to reasonable
15 attorneys' fees and costs for the necessity of bring this action.

16 31. Defendants, and each of them, in performing the conduct complained of
17 herein, acted willfully and with intent to cause injury to Plaintiff Gold Crest.
18 Defendants, and each of them, are therefore guilty of malice and oppression in
19 conscious disregard of Plaintiff Gold Crest's rights thereby warranting an assessment
20 of punitive damages or exemplary damages or enhanced damages to the extent allowed
21 by law in an amount appropriate to punish Defendants and deter others from engaging
22 in such conduct.

23 32. Defendants have engaged in, continue to engage in, and unless restrained,
24 will continue to engage in the wrongful acts described herein. As a result, Plaintiff
25 will suffer great and irreparable injury, for which damages would not afford adequate
26 relief, in that said damages would not adequately compensate for the injury to Gold
27 Crest's business operations, reputation, good will, and customer base. Consequently,
28 Defendants' conduct, if allowed to continue, would inevitably result in the destruction

1 of Plaintiff Gold Crest. Accordingly, Plaintiff Gold Crest is entitled to preliminary and
 2 permanent injunctive relief against all Defendants for their misconduct.

3 **SECOND CLAIM FOR RELIEF**

4 **[Infringement of ‘735 Design Patent Under 35 U.S.C. § 271** 5 **Against All Defendants]**

6 33. Plaintiff realleges, adopts and incorporates by reference, each and every
 7 allegation contained in Paragraphs 1 through 32, inclusive, of this Complaint as though
 8 fully set forth herein

9 34. Plaintiff is informed and believes and thereon alleges that Defendant has
 10 infringed and continues to infringe the ‘735 Design Patent by manufacturing,
 11 distributing, promoting, using, selling and/or offering to sell in the United States,
 12 and/or importing into the United States infringing products as identified in this
 13 Complaint, which embody the design covered by the ‘735 Design Patent. Defendant’s
 14 actions constitute infringement of the ‘735 Design Patent under 35 U.S.C. § 271 and
 15 35 U.S.C. § 289.

16 35. Plaintiff is informed and believes and thereon alleges that Defendants,
 17 through their agents, employees and servants, have, knowingly, intentionally and
 18 willfully directly infringed, engaged in acts of contributory infringement, and/or
 19 induced the infringement of the ‘512 Design Patent by directly and/or indirectly
 20 making, using, selling, offering for sale and/or importing products into the United
 21 States that were covered by the claims of the ‘512 Design Patent.

22 36. Defendants’ acts of infringement of the ‘512 Design Patent were
 23 undertaken without permission or license from Plaintiff Gold Crest. Defendants had
 24 actual and/or constructive knowledge of the ‘512 Design Patent, and their actions
 25 constitute willful and intentional infringement of the ‘512 Design Patent.

26 37. As a direct and proximate result of Defendants’ infringement of the ‘512
 27 Design Patent, Defendants have derived and received gains, profits, and advantages in
 28 an amount not presently known to Plaintiff Gold Crest.

1 38. Accordingly, pursuant to 35 U.S.C. § 289, Plaintiff Gold Crest is entitled
2 to Defendants' total profits from Defendants' infringement of the '512 Design Patent.

3 39. In addition, pursuant to 35 U.S.C. § 284, Plaintiff Gold Crest is entitled to
4 damages for Defendant's infringing acts and treble damages together with interest and
5 costs as fixed by this Court.

6 40. Pursuant to 35 U.S.C. § 285, Plaintiff Gold Crest is entitled to reasonable
7 attorneys' fees and costs for the necessity of bring this action.

8 41. Defendants, and each of them, in performing the conduct complained of
9 herein, acted willfully and with intent to cause injury to Plaintiff Gold Crest.
10 Defendants, and each of them, are therefore guilty of malice and oppression in
11 conscious disregard of Plaintiff Gold Crest's rights thereby warranting an assessment
12 of punitive damages or exemplary damages or enhanced damages to the extent allowed
13 by law in an amount appropriate to punish Defendants and deter others from engaging
14 in such conduct.

15 42. Defendants have engaged in, continue to engage in, and unless restrained,
16 will continue to engage in the wrongful acts described herein. As a result, Plaintiff
17 will suffer great and irreparable injury, for which damages would not afford adequate
18 relief, in that said damages would not adequately compensate for the injury to Gold
19 Crest's business operations, reputation, good will, and customer base. Consequently,
20 Defendants' conduct, if allowed to continue, would inevitably result in the destruction
21 of Plaintiff Gold Crest. Accordingly, Plaintiff Gold Crest is entitled to preliminary and
22 permanent injunctive relief against all Defendants for their misconduct.

23 **THIRD CLAIM FOR RELIEF**

24 **[Unfair Competition Under 15 U.S.C. §1125**

25 **Against All Defendants]**

26 43. Plaintiff realleges, adopts and incorporates by reference, each and every
27 allegation contained in Paragraphs 1 through 42, inclusive, of this Complaint as though
28 fully set forth herein.

1 directors, agents, servants, employees, affiliates, attorneys, and all others acting in
2 privity or in concert with them, and their parents, subsidiaries, divisions, predecessors,
3 successors and assigns, from further acts of infringement of the asserted design patent;

4 3. A judgment awarding Plaintiff all damages adequate to compensate for
5 Defendant's infringement of the asserted patents, and particularly Defendant's total
6 profits pursuant to 35 U.S.C. § 289;

7 4. A judgment awarding Plaintiff all damages, costs, and interest, including
8 treble damages, based on any infringement found to be willful, pursuant to 35 U.S.C. §
9 284, together with prejudgment interest;

10 5. An accounting of Defendant's profits;

11 6. A judgment declaring this case to be exceptional and awarding Plaintiff
12 their reasonable attorneys' fees pursuant to 35 U.S.C. § 285; and

13 7. For injunctive relief until trial is completed.

14 **On the Second Claim for Relief:**

15 1. For general and special damages to be proven at the time of trial to the
16 extent allowed by law;

17 2. For attorneys' fees and costs to the extent allowed by law;

18 3. For punitive damages or exemplary damages or enhanced damages or
19 treble damages to the extent allowed by law; and

20 4. For injunctive relief until trial is completed.

21 Awarding Plaintiff such other and further relief as this Court deems just and
22 proper.

23 **On the Third Claim for Relief:**

24 1. For general and special damages to be proven at the time of trial to the
25 extent allowed by law;

26 2. For attorneys' fees and costs to the extent allowed by law;

27 3. For punitive damages or exemplary damages or enhanced damages or
28 treble damages to the extent allowed by law; and


1 4. For injunctive relief until trial is completed.

2 Awarding Plaintiff such other and further relief as this Court deems just and
3 proper.

4 **DEMAND FOR JURY TRIAL**

5 Pursuant to Rule 38(b) of the *Federal Rules of Civil Procedure*, Plaintiff hereby
6 demand a trial by jury as to all claims in this litigation.

7
8 Dated: October 22, 2019 Tsircou Intellectual Property Law

9
10 

11 Kyriacos S. Tsircou

12 Konrad L. Trope

13 Counsel for Plaintiff Gold Crest, LLC
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28