

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

WINVIC SALES, INC.)	
)	
Plaintiff,)	
)	Civil Action No.:
v.)	
)	
VALUEVISION MEDIA, INC. d/b/a)	TRIAL BY JURY DEMANDED
SHOPNBC)	
)	
Defendant.)	
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COMPLAINT

Plaintiff Winvic Sales, Inc. (hereinafter "Plaintiff"), for its complaint against Defendant, ValueVision Media, Inc, d/b/a ShopNBC; (hereinafter "Defendant"), alleges as follows:

INTRODUCTION

1. This is an action brought by Plaintiff arising under the patent laws of the United States and/or the state of Illinois. Plaintiff seeks an injunction and damages against Defendant for infringement of Plaintiff's patent rights.

THE PARTIES

2. Plaintiff Winvic Sales, Inc. (hereinafter “Winvic”) is a Canadian corporation having its principal place of business at 401 Bentley St., Unit #1, Markham, Ontario, Canada L3R 9T2.

3. On information and belief, Defendant ValueVision Media, Inc. d/b/a ShopNBC (hereinafter “ShopNBC”) is a Minnesota corporation having an address at 6740 Shady Oak Rd., Eden Prairie, MN 55344; and conducting business throughout the state of Illinois.

JURISDICTION AND VENUE

4. Subject matter jurisdiction is conferred on the Court by 28 U.S.C. §§ 1331 and 1338 and 35 U.S.C. § 281 for claims arising under 35 U.S.C. §§ 1 *et seq.*, the Patent Laws of the United States. The Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. §§ 1338 and 1367.

5. Venue in this court is based upon 28 U.S.C. §§ 1391 and 1400.

6. Upon information and belief, Defendant, has entered into and conducted business in the Northern District of Illinois in matters relating to the subject in dispute. Upon information and belief, Defendant, has made, used, sold, offered for sale, and/or imported flameless candles which infringe the Plaintiff’s patent rights. Upon information and belief, Defendant, places the flameless candles at issue herein in the stream of commerce with knowledge that they will be sold and/or offered for sale in Illinois, and the flameless candles have been sold in Illinois.

FACTUAL BACKGROUND

7. United States Patent No. 6,719,443 (“the 443 patent”; attached at Exhibit A), entitled “Electrically Illuminated Flame Simulator”, was duly and legally issued on April 13, 2004, listing Robert A. Gutstein and Monita Liu as inventors.

8. All right, title, and interest in and to the 443 patent has been assigned to Winvic. Plaintiff Winvic owns all right, title, and interest in and to the 443 patent.

9. Upon information and belief, Defendant offers electric and/or flameless candles with multiple LEDs for sale, and sells such electric and/or flameless candles, for example, through its website <http://www.shopnbc.com/> (hereinafter “flameless candles”).

10. An example of such a flameless candle (see Exhibit B) was purchased from ShopNBC.

11. ShopNBC advertises, for example, Enchantment brand flameless candles with statements such as: “Glowing with realistic, flickering LED ‘flames’” and “Flameless candles are so beautifully realistic you’ll have to look twice to notice there’s really no flame.” For example, selected flameless candle advertisements are attached at Exhibits C-I.

COUNT I **PATENT INFRINGEMENT**

12. Plaintiff hereby re-alleges the allegations of Paragraphs 1-11 of this complaint as if fully set forth herein.

13. Upon information and belief, Defendant has for a time past and continues to infringe, either literally or under the doctrine of equivalents, the 443 patent by making, using, selling, offering for sale, and/or importing flameless candles, embodying the patented invention to customers in the United States, either directly or through

intermediaries, where they have been made available for sale in Illinois, and/or contributing to and/or inducing the infringement by others. Examples of such infringing flameless candles are shown in Exhibits B-I.

14. By the foregoing acts and otherwise, Defendant will continue to infringe Plaintiff's rights in the 443 patent unless restrained by this Court.

15. As a result of Defendant's patent infringement, Plaintiff has suffered and continues to suffer irreparable injury, for which it has no adequate remedy at law.

WHEREFORE, Plaintiffs pray for the following relief:

1. A finding that the 443 patent is valid, and that the Defendant has infringed the 443 patent.

2. An injunction permanently enjoining the Defendant, its directors, officers, agents, servants, employees and all other persons in active concert or privity or in participation with it, from:

- a. directly or indirectly infringing the 443 patent;
- b. continuing to make, use, sell, or offer to sell any products which infringe the 443 patent; and
- c. assisting, inducing, or aiding or abetting any other person or entity in engaging in any of the activities prohibited in subparagraphs (a) through (b) above.

3. An order requiring the impounding and destruction of all products in the possession of the Defendant infringing the 443 patent.

4. An order requiring the Defendant to file with the Court and serve on the Plaintiff, within 30 days after service of the Court's order as herein prayed, a report (or other form of proof) in writing under oath setting forth in detail the manner and form in which Defendant has complied with the Court's injunction.

5. A judgment entered for Plaintiff and against Defendant for all damages sustained by Plaintiff and/or any applicable statutory damages for Defendant's acts of patent infringement, including Defendant's profits, any damages sustained by Plaintiff, costs and attorneys' fees of this action, treble damages, and prejudgment interest.

6. An accounting from Defendant for all gains, profits, and advantages derived from acts of patent infringement and/or other violations of the law as alleged herein.

7. An order requiring that all gains, profits, and advantages derived by Defendant from acts of patent infringement and/or other violations of the law as alleged herein, be deemed to be in constructive trust for the benefit of Plaintiff.

8. An order for such other, further, and different relief as the Court deems proper under the circumstances, including punitive damages if appropriate pursuant to the evidence of record.

JURY DEMAND

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

Respectfully submitted,

Dated: December 16, 2009

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