

**UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO
DENVER DIVISION**

CASE NO.: 1:21-cv-02700-KLM

JP WEALTH MANAGEMENT
CORPORATION D/B/A FLICWIC,

Plaintiff,

v.

ECO MEDICAL RESEARCH, LLC D/B/A
HEMPLIGHT,

Defendant.

**FIRST AMENDED COMPLAINT FOR FALSE ADVERTISING AND
PATENT INFRINGEMENT
(INJUNCTIVE RELIEF DEMANDED)**

Plaintiff JP WEALTH MANAGEMENT CORPORATION D/B/A FLICWIC (“Flicwic”) by and through its undersigned counsel, hereby amends its initial complaint filed October 6, 2021 (ECF No. 1) and brings forth this First Amended Complaint against Defendant ECO MEDICAL RESEARCH, LLC D/B/A/ HEMPLIGHT (“Hemplight”), for False Advertising, Unfair Competition, and Patent Infringement, and in support, alleges as follows:

NATURE OF THE LAWSUIT

1. This is an action for: (1) false advertising arising under United States Title 15, United States Code § 1125 (Section 43(a) of the Lanham Act); (2) unfair competition under the laws of Colorado; and (3) patent infringement of United States Patent Number 9,187,237 arising under the patent laws of the United States Title 35, United States Code § 271 et seq.

SRIPLAW

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JURISDICTION AND VENUE

2. This Court has original Jurisdiction under the Lanham Act, and exclusive subject matter jurisdiction pursuant to 28 U.S.C. § 1331 which grants district courts original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States; 28 U.S.C § 1338 additionally grants district courts original jurisdiction of any civil action arising under any Act of Congress relating to patents and trademarks. This court has Supplemental Jurisdiction over the state law claims, as they arise out of the same conduct as the federal Lanham Act claims.

3. This Court has personal jurisdiction over Defendant pursuant to Colo. Rev. Stat. § 13-1-124 which grants courts located in the State of Colorado jurisdiction over persons who engaged in “the transaction of any business within this state” or “the commission of a tortious act within this state.” Hemplight advertises, markets and sells the accused products in this state, and targets the false advertising to consumers in this state.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2); which states that any civil action may be brought in a “judicial district in which a substantial part of the events or omissions giving rise to the claim occurred.” Hemplight has engaged in substantial sales in this judicial district, and has targeted its advertisements at customers in this judicial district, directly to the harm of FlicWic, a resident corporation of this Judicial District.

THE PARTIES

5. Plaintiff, JP Wealth Management Corporation, is a Colorado Corporation with a principal place of business located at 1625 Larimer Street, Suite #708, Denver, CO 80202.

6. The Defendant in this case, Eco Medical Research, LLC d/b/a Hemplight, is an Illinois corporation with its principal place of business at 650 W. Grand Ave., Ste 312, Elmhurst,

IL 60126, and can be served by serving its Registered Agent, Paruyr Khachatryan, 21200 S. La Grange Rd. POB 247, Frankfort, IL 60423.

7. Hemplight owns and operates a commercial sales website located at the web URL: <https://hemplights.com> (the “Website”).

THE PLAINTIFF’S PATENT

8. In 2010, Plaintiff’s owner and inventor Jack Pedotto (Pedotto) discovered that using a strand of hemp to light smoking products allows for a smoother smoking experience when he used a piece of hemp given to him by a friend to light his pipe. Wanting to emulate this experience and allow others to enjoy a better method of lighting smoking products, Pedotto began developing a lighter case that utilized a traditional butane lighter to ignite a strand of hemp that can be stored within the lighter case, which would then be used to light smoking products. Through this lighter case, Pedotto sought to make lighting smoking products with a hemp wick as convenient and easy as with a traditional lighter.

9. Pedotto’s idea was revolutionary since it offered a convenient method of lighting smoking products that reduces a smoker’s exposure to butane through use of a hemp wick instead of through direct contact with a flame produced by liquid butane. Pedotto knew that lighting smoking products with a hemp wick would utilize less butane, reduce the butane fumes inhaled by the user, and reduce the waste that results from butane lighters.

10. On July 2, 2010, Pedotto filed a provisional patent application for his hemp lighter idea with the USPTO on July 2, 2010 under U.S. patent application serial number 61/631,153 (“Pedotto PPA”). Pedotto later filed a corresponding non-provisional on July 5, 2011, after the July 4th federal holiday, under U.S. patent application serial number 13/176,162 (“Pedotto NPPA”) claiming priority to the Pedotto PPA. Finally on November 17, 2015,

Plaintiff's Pedotto NPPA matured into a utility patent and was issued by the USPTO as patent number 9,187,237 (the "'237 patent").

11. Jack Pedotto assigned all rights in the '237 patent to JP Wealth Management Corporation ("FlicWic"). FlicWic owns all right, title, and interests in, and has standing to sue for infringement, past present and future, of United States Patent Number 9,187,237, entitled "BUTANE LIGHTER AND WICK," issued November 17, 2015. A copy of the '237 patent is attached hereto as Exhibit 1.

12. Plaintiff worked with foreign manufacturers and designers to create and refine a device over the course of 5 years. Plaintiff spent substantial time and resources developing his idea into a marketable product. The finalized device brought Plaintiff's idea to life, was marketed as "FlicWic," ("Patented Device"), and also marked with United States Patent Number 9,187,237. The Patent Device is shown below.



THE DEFENDANT'S CONDUCT

13. As early as 2018, Hemplight has been adverting its products as Made in the USA.

14. Attached as Exhibit 2 is a true and correct screenshot of the Website from Wayback Machine web archive, taken on May 2, 2018, and available publicly at the URL: [Hemp Lighter | Hemp Wick | The Original Hemp Lighter | Pure • Organic • Natural - Hemplights.com \(archive.org\)](https://www.archive.org/web/20180502000000/http://hemplights.com). The Website, as of May 2, 2018, stated “[w]e are proud to state that our products are made with the highest quality and utmost care in the United States of America.”

15. Attached as Exhibit 3 is true and correct screenshot of the Website taken on July 22, 2021. The Website, as of July 22, 2021, stated “HEMPLIGHTS USA. PROUDLY MADE IN THE USA! ...We only use natural hemp wick, dipped in beeswax, providing a suitable alternative to old school butane lighters, matches and other unhealthy lighting methods. Hemplights is the most natural way in the world to light anything you can think of. Our products burn cleaner, brighter and enhance the flavor of your fine herbs. We are proud to state that our hemp wick lighters are made and individually packaged in the USA.”

16. Hemplights’ primary products are its hemp wick lighters sold under the Hemplights® trademark.

17. Hemplights’ hemp wick lighters include a reel of “hemp wick.”

18. The hemp wick component of Hemplights’ hemp wick lighter is a substantial, necessary, and key component of Hemplights’ hemp wick lighter.

19. The hemp wick component of the Hemplights’ hemp wick lighter is also sold separately by Hemplights.

20. Hemplights’ hemp wick requires the manufacturing of hemp twine.

21. FlicWic distributes its own hemp wick products and is personally familiar with the hemp wick and hemp twine manufacturing processes and their availability in the United States.

22. FlicWic has personal knowledge that, at all relevant times, there was no large scale hemp twine manufacturing source in the United States.

23. FlicWic has obtained public records showing that Hemplights has imported at least some of its hemp twine from China.

24. Hemplights imported one or more shipments from China, including from Laizhou Rusheng Economic and Trade, LLC, a Chinese manufacturing company that owns the United States Registered Trademark for BOLOK in International Class 022, United States Trademark Registration No. 5,280,640.

25. BOLOK is a manufacturer of a variety of textile products, including hemp twine and hemp wick.

26. Upon information and belief, Hemplights' hemp twine and hemp wick products are not made in the USA.

27. Hemplights' Made in the USA claims are substantially false, are specifically made to attract customers and distinguish Hemplights' products from its competitors, including FlicWic, and obtain a market advantage over its competitors, including FlicWic.

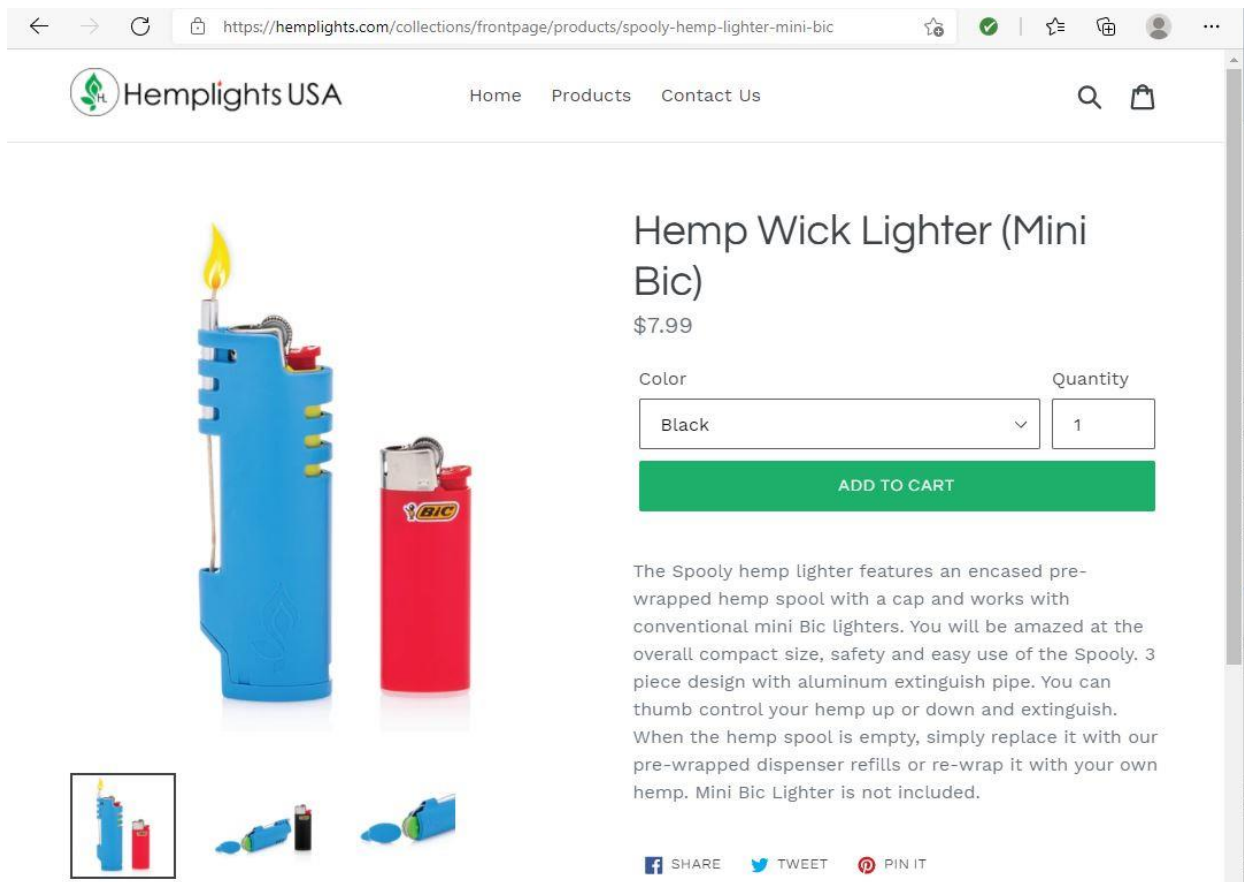
28. Hemplights' Made in the USA claims contain no disclaimer or other statement that clarifies that its hemp wick products are not made in the USA.

29. A consumer or potential distributor viewing the Hemplights' Made in the USA claims would believe that all of Hemplights' products are made in the USA, including its hemp wick.

30. FlicWic is a direct competitor of Hemplights. FlicWic markets a hemp wick lighter under its FlicWic® trademark, and markets hemp wick sold separately.

31. Hemplights sells its products direct to consumers in Colorado, in direct competition with FlicWic. Hemplights also distributes its products wholesale to numerous retailers in Colorado, in direct competition with FlicWic.

32. Hemplights markets and sells one of its hemp wick lighters under the “Spooly” name (hereinafter the “Accused Device” or “Spooly”). The Spooly is sold at \$7.99 per lighter, and is shown below:



33. Plaintiff sells the Patented Device for \$14.95 per lighter, as shown below.



FlicWic Hemp Wick Lighter
Dispenser Case w/ 12 ft Spool
of Natural, Raw Hemp Wick
(Green/Gold) for Mini-Bic
\$14.95

34. Plaintiff's higher price for the Patented Device reflects the costs associated with patenting, creating, and perfecting Plaintiff's idea over a 5-year period.

35. Defendant can sell the Accused Device at a lower price than Plaintiff since Defendant has not had to bear such costs.

36. Defendant's ability to undercut Plaintiff's price has resulted in price erosion, which occurs when there is a difference between the actual price and the potential price of a good; the potential price is the price that would have been realized in case of no competition from competitors. Such price erosion has hindered Plaintiff's ability to effectively market the Patented Device.

COUNT I – FALSE ADVERTISING UNDER THE LANHAM ACT 41 U.S.C. § 1125(a)(1)

37. FlicWic realleges paragraphs 1-36 of this First Amended Complaint as fully and completely as if set forth verbatim herein.

38. Hemplights' claim that its products are Made in the USA is a false or misleading statement of fact.

39. Hemplights' hemp wick is not made in the USA.

40. Hemplights' claim that its products are Made in the USA is used in its commercial advertising and promotion of its hemp wick lighter products in interstate commerce.

41. Made in the USA claims are made to attract consumers. Hemplights' claim that its products are Made in the USA is likely to deceive consumers in a material way.

42. Hemplights' claim that its products are Made in the USA is likely to cause competitive or commercial injury to FlicWic, a direct competitor of Hemplight.

43. Hemplights' claim that its products are Made in the USA is made knowingly with the intent to deceive, knowing that its hemp wick is not made in the USA.

COUNT II – UNFAIR COMPTITION UNDER COLORADO STATE LAW

44. FlicWic realleges paragraphs 1-36 of this First Amended Complaint as fully and completely as if set forth verbatim herein.

45. Hemplights knows that its hemp wick is not made in the USA.

46. Hemplights' claim that its products are Made in the USA is a deceptive representation of geographic origin of its hemp wick products, and is made knowingly.

47. Hemplights' Made in the USA claims contain no disclaimer or other statement that clarifies that its hemp wick products are not made in the USA.

48. Hemplights sells its products direct to consumers in Colorado, in direct competition with FlicWic.

49. Hemplights distributes its products wholesale to numerous retailers in Colorado, in direct competition with FlicWic.

50. A consumer or potential distributor viewing the Hemplights Made in the USA claims would believe that all of Hemplights' products are made in the USA, including its hemp wick.

51. Hemplights' claim that its products are Made in the USA is likely to cause competitive or commercial injury to FlicWic, a direct competitor of Hemplight.

COUNT III - INFRINGEMENT OF U.S. PATENT NO. 9,187,237

52. FlicWic realleges paragraphs 1-36 of this First Amended Complaint as fully and completely as if set forth verbatim herein.

53. Without limiting the foregoing, Defendant has infringed at least claim 1 of the '237 Patent as described in the Claim Chart attached hereto as Exhibit 4.

54. Within the six years preceding the filing of this Complaint, Hemplight has directly infringed at least one claim of U.S. Patent No. 9,187,237 by the activities referred to in this Complaint in violation of 35 U.S.C. § 271(a), which states that whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefor, infringes the patent.

55. The alleged activities of Hemplight in this Count have been without license, permission, or authorization from FlicWic.

56. The activities of Hemplight as set forth in this Count have been to the injury and detriment of FlicWic, and have caused irreparable harm.

57. The alleged activities of Hemplight in this Count constitute willful direct patent infringement, as Hemplight had knowledge of the '237 Patent when it marketed the Accused Device.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff JP Wealth Management Corporation demands judgment and relief against Defendant Eco Medical Research, LLC dba Hemplight Co. and respectfully requests that the Court:

- A. Enter a finding of willful false advertising and unfair competition against Defendant under the Lanham Act and Colorado State Unfair Competition Laws.
- B. Enter a finding of willful patent infringement against Defendant under the ‘237 Patent asserted in this Complaint;
- C. Award in favor of Plaintiff and against Defendant such damages as Plaintiff may have suffered but in no event less than Defendant’s profits related to its false advertising and a reasonable royalty pursuant to 35 U.S.C. § 284;
- D. Award in favor of Plaintiff and against Defendant an enhancement of damages;
- E. Find that this is an exceptional case;
- F. Enter an injunction preliminarily and permanently enjoining the false advertising and infringement;
- G. Award Plaintiff its attorneys’ fees against Defendant under Section 1117(a) of the Lanham Act and 35 U.S.C. § 285;
- H. Award Plaintiff its costs; against Defendant, and
- I. Award in favor of Plaintiff and against Defendant such other and further relief as to the Court appears just and proper.

JURY DEMAND

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

DATED: December 3, 2021

Respectfully submitted,

/s/ Jonah A. Grossbardt

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*Attorneys for Plaintiff JP Wealth Management
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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on December 3, 2021, a true and correct copy of the foregoing document was served by electronic mail by the Court's CM/ECF System to all parties listed below on the Service List.

/s/ Jonah A. Grossbardt

JONAH A. GROSSBARDT

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