

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

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ICC INNOVATIVE CONCEPTS CORPORATION,	:
LEH CHU ENTERPRISE CO., LTD.,	:
	:
Plaintiffs,	:
	:
v.	:
	:
ATHENA INTERNATIONAL, INC.	:
	:
Defendant.	:
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Civil Action No.

COMPLAINT
AND
DEMAND FOR
JURY TRIAL

ICC Innovative Concepts Corporation and Leh Chu Enterprise Co., Ltd., by and through their attorneys, state the following as their complaint against Athena International, Inc.

The Parties

1. Plaintiff ICC Innovative Concepts Corporation (hereinafter, "ICC") is a corporation duly organized and existing under the laws of Delaware having a principal place of business and offices at 83 Putter Lane, Torrington, Connecticut, 06790. Plaintiff ICC is in the business of distributing and selling tools and related products, including rechargeable flashlights that may be recharged by an electrical generator, which is contained within the body of the flashlight and which generator may be cranked by a crank handle mounted on the housing of the flashlight.

2. Plaintiff Leh Chu Enterprise Co., Ltd., (hereinafter, "Leh Chu") is a corporation created under the laws of Taiwan having its principal place of business

at 8F-2, No. 60-2 Taichung Industrial Park 1st Rd., Shitun Dist. 407 Taichung, Taiwan. Plaintiff Leh Chu is in the business of manufacturing and selling tools and related products, including rechargeable flashlights that may be recharged by an electrical generator, which is contained within the body of the flashlight and which generator may be cranked by a crank handle mounted on the housing of the flashlight.

3. Upon information and belief, Defendant Athena International, Inc. (hereinafter, "Athena") is a corporation organized and existing under the laws of Nevada and having a principal place of business at 110 Mark Circle, Gardenville, Nevada 89410.

4. Defendant manufactures and/or exports from and/or imports into the United States and/or distributes and/or sells rechargeable flashlights that may be recharged by an electrical generator, which is contained within the body of the flashlight and which generator may be cranked by a crank handle mounted on the housing of the flashlight.

Jurisdiction

5. Jurisdiction is founded on the existence of a federal question arising under the Copyright Act of 1976. The Court has exclusive jurisdiction under the Judicial Code, 28 U.S.C. §§ 1331, and 1338(a) in that this case arises under the

Copyright laws of the United States, 17 U.S.C. § 101 et seq., as hereinafter more fully appears.

6. Jurisdiction is also based on diversity of citizenship, 28 U.S.C. §§ 1332 and 1338(a), as the defendant is a New Jersey based corporation with principal place of business in New Jersey, and Plaintiff ICC is a Delaware corporation with principal place of business in Connecticut and Plaintiff Leh Chu is a Taiwanese corporation with its principal place of business in Taiwan.

7. This is also an action for patent infringement arising under the Acts of Congress relating to patents, 35 U.S.C. §§ 271; 281-285. This court has jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

8. This is also an action for trade dress infringement. The Court has jurisdiction of the federal trade dress claims under Sections 43(a) of the Trademark Act of 1946, 15 U.S.C. §§ 1121 and 1125(a), and the Judicial Code, 28 U.S.C. § 1331(a), any of the Lanham Act §§ 1332 and 1338 (a) in that this case arises under the trademark laws of the United States, 15 U.S.C. § 1051 et seq., as hereinafter more fully appears.

9. Jurisdiction exists over related common law claims of unfair competition herein under the provisions of 28 U.S.C. § 1338(b) in that said claims are joined with a substantial and related claim under the copyright laws, 17 U.S.C. § 101

et seq., and/or trademark laws of the United States, 15 U.S.C. § 1051 et seq. and/or the patent laws of the United States 35 U.S.C. § 101 et seq.

10. The Court has jurisdiction over related claims arising under the law of the State of Connecticut under the provisions of 28 U.S.C. § 1338(b) in that said claims are joined with a substantial and related claim under the copyright laws, 17 U.S.C. § 101 et seq., and/or trademark laws of the United States, 15 U.S.C. § 1051 et seq. and/or the patent laws of the United States 35 U.S.C. § 101 et seq.

11. Venue is based on 28 U.S.C. §§ 1391(c) and 1400(a).

COUNT ONE

Copyright Infringement

12. As a cause of action and ground for relief, Plaintiffs allege and incorporate by reference Paragraphs 1 through 11 of this Complaint as a part of this Count.

13. Plaintiff Leh Chu created an original sculptural work of art, which includes, without limitation, non-functional sculptural and graphic surface features as part of the sculptural and graphic design of a flashlight housing (hereinafter the "Work"). Images of the Work are annexed as Exhibit "A".

14. The Work comprises creative material which originated with Plaintiff Leh Chu and is copyrightable subject matter under 17 U.S.C. §101 et seq. of the Copyright Act of 1976.

15. Plaintiff Leh Chu is the owner of the exclusive rights to the aforementioned copyrightable material and all rights and privileges in and to the Work (the "Copyright").

16. Plaintiff Leh Chu filed an application for a copyright registration pertaining to the Work on August 25, 2006. This application is expected to mature into copyright registration, effective as of the filing date of August 25, 2006.

17. Defendant has infringed and is infringing, and, if not preliminarily and permanently enjoined by this Court, will continue to infringe the Copyright by manufacturing and distributing flashlights embodying the Work, publishing the Work, displaying images of the Work, and/or causing the Work to be displayed and distributed without the permission of Plaintiff Leh Chu. Copies of images of Defendant's flashlights are annexed as Exhibit "B."

18. Defendant's actions constitute willful, wanton, malicious and intentional infringement of the rights of Plaintiffs, including, without limitation, infringement of the Copyright. The circumstances of such infringement warrant finding the above-complained of infringement to be an exceptional one.

19. The aforementioned activities of Defendant violate the rights of Plaintiffs, including, without limitation, Plaintiff Leh Chu's rights under 17 U.S.C. § 101 et seq., and cause them damage.

20. Such damage includes, without limitation, lost profits, and/or royalty income, and/or conveyed sales. Furthermore, Defendant has been unjustly enriched by such infringement, on account of profits and or conveyed sales.

21. As a direct and proximate result of these acts of copyright infringement by Defendant, Plaintiffs have sustained and will continue to sustain irreparable damage and injury to their business, goodwill, reputation and profits, in an amount not presently known, but, upon information and belief, are in excess of \$1,000,000.

22. By reason of the acts of Defendant herein alleged, Plaintiffs have been damaged and, unless restrained, Defendant has and will continue to do damage to Plaintiffs and deceive the public, impair the value of Plaintiff Leh Chu's products and Plaintiff ICC's services and otherwise will cause Plaintiffs immediate and irreparable harm.

COUNT TWO

Patent Infringement

23. As a cause of action and ground for relief, Plaintiffs allege and incorporate by reference paragraphs 1 through 22 of this complaint as a part of this Count.

24. Plaintiff Leh Chu is also the owner, as assignee of Wen Sung Lee, of all rights under the United States Patent No. 6,808,290 entitled "LED Flashlight Assembly" (hereinafter the '290 Patent).

25. On October 26, 2004, the '290 Patent was duly and legally issued to Plaintiff Leh Chu, as assignee of Wen Sung Lee. A copy of the '290 Patent is attached as Exhibit "C." Plaintiff Leh Chu is the owner by assignment of rights under the '290 Patent, including the right to bring action against Defendant as an infringer of the '290 Patent.

26. Defendant has manufactured, used, sold, and/or offered for sale in the United States products that infringe the '290 Patent (hereafter, referred to as the "Patent"). See, Exhibit "B" (images of Defendant's products that infringe the Patent).

27. Plaintiff Leh Chu has never authorized Defendant at any time to make, use or sell any products covered by the Patent.

28. Plaintiffs have been damaged by Defendant's infringement of the Patent, including, without limitation, lost profits, and/or royalty income, and/or damages on account of convoyed sales. Furthermore, Defendant has been unjustly enriched by such infringement, on account of profits and/or convoyed sales. Plaintiffs have also suffered irreparable harm on account of Defendant's infringement of the Patent and will continue to suffer irreparable harm in the future

unless Defendant is preliminarily and permanently enjoined from infringing the Patent.

29. Defendant has had actual and/or constructive knowledge of the Patent, and its infringement of the Patent has been, and continues to be, willful, wanton, malicious and deliberate. The circumstances of such infringement warrant finding the above-complained of infringement to be an exceptional one.

COUNT THREE

Design Patent Infringement

30. As a cause of action and ground for relief, Plaintiffs allege and incorporate by reference paragraphs 1 through 29 of this complaint as a part of this Count.

31. Plaintiff Leh Chu is the owner of all rights under the United States Design Patent No. D 520,160 S, entitled "Flashlight Device" (hereinafter, the "Design Patent") drawn to an ornamental design for a flashlight.

32. On May 2, 2006, the Design Patent was duly and legally issued to Plaintiff Leh Chu, as assignee of Wen Sung Lee. A copy of the Design Patent is attached as Exhibit "D". Plaintiff Leh Chu is the owner by assignment of rights under the Design Patent, including the right to bring action against Defendant as an infringer of the Design Patent.

33. Defendant has manufactured, used, sold, and/or offered for sale in the United States products that (a) embody the sculptural and graphic design of the flashlight illustrated in the Design Patent, and (b) infringe the Design Patent.

34. Plaintiff Leh Chu has never authorized Defendant at any time to make, use or sell any products covered by the Design Patent.

35. Plaintiffs have been damaged by Defendant's infringement of the Design Patent. Such damage includes, without limitation, lost profits, and/or royalty income, and/or damages on account of convoyed sales, and the Defendant has been unjustly enriched by such infringement, on account of profits and/or convoyed sales. Plaintiffs have also suffered irreparable harm by Defendant's infringement of the Design Patent and will continue to suffer irreparable harm in the future unless Defendant is preliminarily and permanently enjoined from infringing the Design Patent.

36. Defendant has had actual and/or constructive knowledge of the Design Patent, and its infringement of the Design Patent has been, and continues to be, willful, wanton, malicious and deliberate. The circumstances of such infringement warrant finding the above-complained of infringement to be an exceptional one.

COUNT FOUR

Federal Unfair Competition

37. As a cause of action and ground for relief, Plaintiffs allege and incorporate by reference paragraphs 1 through 36 of this complaint as a part of this Count.

38. Plaintiffs, long prior to the acts complained of herein, have been and are now engaged in interstate commerce and/or the foreign commerce of the United States by virtue of the ongoing sales of a wide and diverse line of tools, and other related products, including the above crank-rechargeable flashlights having the design of the flashlight illustrated in Exhibit "A", and variations thereof (hereinafter "Infringed Products"), and which are the subject of this litigation.

39. Defendant's copying of features of Plaintiff's product is calculated to confuse and deceive the public into believing mistakenly that Defendant's product is made by the same makers of Plaintiff's product of Exhibit A. The infringing product illustrated in Exhibit B makes use of Plaintiffs original sculpture work of art, including non-functional and graphic surface features as part of the sculptural and graphic design of a flashlight housing.

40. The Infringed Products have been sold in great numbers for many months and continue to be extensively sold.

41. The sculptural and graphic design of the Infringed Products (hereinafter, the "Trade Dress"), namely their sculptural configuration and/or graphic tone design features, is a protectable trade dress under §43(a) of the Lanham

Act, which has been infringed by Defendant (See, Exhibit "B", (images of Defendant's Infringing Products) and continues to be infringed on account of Defendant's sale in commerce of piratical copies of Plaintiff Leh Chu's crank-rechargeable flashlight products. Plaintiffs derive substantial benefits from selling products bearing the Trade Dress.

42. Plaintiff Leh Chu's crank-rechargeable flashlights include one or more of the following elements: (i) an overall curved non-cylindrical body shape, (ii) a pearlescent silver painted tool body, (iii) an actuator button on top, (iv) a band disposed around the actuator button, (v) a pair of side grip-like members with an ornamentally configured shape, (vi) a bottom crank, (vii) a recessed crank handle, (viii) a pair of side lens portions, and (ix) a flattish appearing top curved surface.

43. The Defendant's products also have the following elements: (i) an overall curved non-cylindrical body shape, (ii) a pearlescent silver painted tool body, (iii) an actuator button on top, (iv) a band disposed around the actuator button, (v) a pair of side grip-like members with an ornamentally configured shape, (vi) a bottom crank, (vii) a recessed crank handle, (viii) a pair of side lens portions, and (ix) a flattish appearing top curved surface.

44. Plaintiff has used and continues to use its distinctive Trade Dress and, by virtue of widespread sales, the Trade Dress has come to indicate origin with Plaintiff Leh Chu and distribution with Plaintiff ICC. Plaintiffs, by virtue of said use

on the goods, and through Plaintiffs' business and quality standards, has obtained a reputation of the highest quality. Such reputation has given Plaintiffs and the Infringed Products and other products of plaintiffs a pre-eminent position in the marketplace.

45. The design of the Infringed Products itself, namely their configuration, is a protectable trade dress under §43(a) of the Lanham Act, which has been infringed by Defendant and continues to be infringed on account of Defendant's sale in commerce of Defendant's product.

46. Plaintiffs have incurred great expense and have devoted substantial resources to make the Infringed Products famous and readily recognizable to consumers. Plaintiffs' investments and efforts have been successful as the Trade Dress has become highly distinctive in the marketplace and denotes to purchasers a line of goods which originate with Plaintiff Lehigh Chu and/or are distributed by Plaintiff ICC.

47. Upon information and belief, long after Plaintiff Lehigh Chu's creation, adoption and use and Plaintiff ICC's distribution of the Infringed Products, Defendant, with actual and/or constructive knowledge of Plaintiff Lehigh Chu's Trade Dress of said Infringed Product, without any authorization from Plaintiff Lehigh Chu, and in contravention of Plaintiff Lehigh Chu's trade dress rights, adopted and used a product configuration for its crank-rechargeable flashlights calculated to capitalize

on the goodwill and reputation of Plaintiff Leh Chu's Trade Dress. Defendant had as its objective to mimic the distinctive elements of the Trade Dress as a means for unfairly taking advantage of and profiting from the Infringed Products' image and Plaintiffs' reputation in the marketplace and unfairly increasing the sale of Defendant's copycat flashlights. Defendant has distributed and continues to distribute in interstate commerce to the public, copycat flashlights bearing an infringing derivative version of the distinctive features and layout of the Infringed Products' Trade Dress for Defendant's own commercial advantage.

48. Defendant has used and continues to use derivatives, and/or colorable imitations of Plaintiff Leh Chu's Trade Dress in direct competition with Plaintiffs. Defendant has used and continues to use these infringing derivatives and/or colorable imitations of Plaintiff Leh Chu's Trade Dress in connection with sales, offering for sale or distribution, advertising and promotion of goods in a manner that is likely to cause confusion or mistake or to deceive purchasers as to the source of origin of such goods.

49. Defendant has deliberately misled and will continue to mislead purchasers, and prospective purchasers, as well as the public at large, to believe, contrary to fact, that Defendant's goods are manufactured, marketed, sponsored or endorsed by, or affiliated with Plaintiffs. Defendant is unfairly competing with Plaintiffs by trading on and disparaging Plaintiffs' goodwill symbolized by its Trade

Dress. Defendant is unfairly competing with Plaintiff ICC by disparaging ICC rights to sell Plaintiff Leh Chu's products.

50. Defendant's acts are a false description and representation that said goods are made by, sponsored by and/or affiliated with Plaintiff Leh Chu or Plaintiff ICC. Said acts are in violation of 15 U.S.C. § 1125(a) in that Defendant has used, in connection with goods, a false designation of origin and a false description and representation, including words, reproductions and other symbols tending to falsely describe or represent the same and have caused such goods to enter into interstate commerce, and/or are in violation of §43 of the Lanham Act as constituting dilution of the Trade Dress and rights and profits relating to it.

51. As a direct and proximate result of these acts of unfair competition, trade dress infringement and false designation of origin, Plaintiffs have sustained and will continue to sustain monetary damages and irreparable injury to their business, goodwill, reputation and profits, in an amount not presently known but believed to be in excess of \$1,000,000. Plaintiffs are entitled to judgment for Defendant's profits and any damages sustained by Plaintiffs in consequence of the deliberate nature of the infringement by Defendant in an amount equaling three times said damages.

52. By reason of the acts of Defendant herein alleged, Plaintiffs have been damaged, and, unless restrained and enjoined preliminarily and permanently,

Defendant has and will continue to deceive the public, and otherwise will cause Plaintiffs immediate and irreparable harm.

COUNT III

STATE LAW-UNFAIR COMPETITION

53. As a cause of action and ground for relief, Plaintiffs allege and incorporate by reference paragraphs 1 through 52 of this complaint as a part of this Count.

54. Defendant's acts, complained of above, constitute violation of Plaintiffs' rights under the common law and statutory law of the several states.

Prayer for Relief

WHEREFORE, Plaintiffs pray for the following relief:

a. A judgment that the Patent and the Design Patent are valid and that Defendant has infringed the Patent and the Design Patent, and that Plaintiff Leh Chu's copyrights are valid and infringed by the Defendant;

b. A preliminary injunction enjoining and restraining Defendant, its officers, directors, agents, servants, employees, attorneys and all others acting under or through them, directly or indirectly, from infringing rights of Plaintiffs;

c. A permanent injunction enjoining and restraining Defendant, its officers, directors, agents, servants, employees, attorneys, and all others acting under or through it, directly or indirectly, from infringing rights of Plaintiffs;

d. A judgment and order requiring Defendant to pay damages under 35 U.S.C. § 284, with prejudgment interest;

e. A judgment and order trebling the damages payable by Defendant, pursuant to 35 U.S.C. § 285.

f. For a preliminary and final injunction restraining Defendant, its agents, servants, employees, successors, assigns and those in privity and/or concert with it from using Plaintiff Leh Chu's product designs, trademarks, or any other designations closely similar thereto, and from infringing copyrights, patents and design patents of Plaintiff Leh Chu;

g. For an order requiring Defendant to recall from its distributors, wholesalers, retailers and customers any product bearing any reproduction, counterfeit, copy or colorable imitation of the trade dress, or infringing the copyright rights of Plaintiff Leh Chu, or infringing the Patent, or infringing the Design Patent.

h. For an order requiring Defendant to be required to account to Plaintiffs for any and all profits derived by Defendant from the sale of its goods and for all damages sustained by Plaintiffs by reason of said acts of trade dress infringement and unfair competition complained herein.

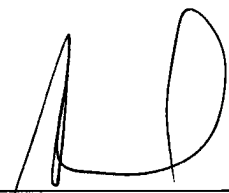
i. For a judgment according to the circumstances of the case, for such sum above the amount found in actual damages, but not to exceed three times such amount as the Court may deem just.

j. For an order requiring that all products, documents, materials, labels, signs, products, packages, wrappings, receptacles and advertisements in Defendant's possession or control bearing the designs or any reproduction, counterfeit, copy or colorable imitation thereof, and all plates, molds, matrices, and other means of making the same shall be delivered up and destroyed.

k. This Court grant and enter a judgment that the above referenced patents owned by Plaintiff Leh Chu is valid at law and infringed by Defendant and that Defendant and all persons acting in concert with it be enjoined from making, using and selling and otherwise infringing upon the patents of Plaintiff Leh Chu.

55. A judgment and order directing Defendant to pay the costs of this action (including all disbursements) and attorneys' fees; and such other and further relief as this Court may deem just and equitable.


Dated: May 10, 2007

By: 
Anthony H. Handal (CT03837)
Brown Rudnick Berlack Israels, LLP
Seven Times Square
New York, New York 10036
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury of all issues so triable.

Dated: May 10, 2007

By:  _____
Anthony H. Handal (CT03837)
Brown Rudnick Berlack Israels, LLP
Seven Times Square
New York, New York 10036
Attorneys for Plaintiffs

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