

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

CRICKET PRODUCTIONS, INC. and
DTR ADVERTISING FAR EAST, LTD.,

Plaintiffs,

v.

MEIJER, INC. and
BLUE CIRCLE PRODUCTS, INC.,

Defendants.

CIVIL ACTION NO.:

COMPLAINT AND DEMAND FOR JURY TRIAL

INTRODUCTORY STATEMENT

This is a civil action for patent infringement and declaratory relief resulting from the Defendants Meijer, Inc. (“Meijer”) and Blue Circle Products, Inc.’s (“Blue Circle”) (collectively, the “Defendants”) direct patent infringement of U.S. Patent Nos. 6,729,744 and 6,808,288 owned by Plaintiff DTR Advertising Far East, Ltd. (“DTR”) and licensed to Plaintiff Cricket Productions, Inc. (“Cricket”) (collectively referred to herein as the “Plaintiffs”).

PARTIES

1. The Plaintiff DTR is a company qualified to do business under the laws of Hong Kong with its registered office located at 7/F., Allied Kajima Building, 138 Gloucester Road, Wanchai, Hong Kong.

2. The Plaintiff Cricket is a Massachusetts corporation having its principal place of business located at 225 Cedar Hill Street, Third Floor, Marlborough, Middlesex County, Commonwealth of Massachusetts. Cricket is an affiliate of DTR.

3. Based on information and belief, the Defendant Meijer, Inc. is a Michigan corporation having a principal place of business located at 2929 Walker, N.W., Grand Rapids, Michigan, 49544.

4. Based on information and belief, the Defendant Blue Circle Products, Inc. is a Michigan corporation having a principal place of business located at 1010 Parmelee, N.W., Grand Rapids, Michigan, 49504.

JURISDICTION AND VENUE

5. The Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1338 as this case arises under the patent laws of the United States, Title 35, United States Code.

6. This exercise of *in personam* jurisdiction over the Defendants comports with the laws of the Commonwealth of Massachusetts and the constitutional requirements of due process because the tortious acts of the Defendants and/or its agents have caused harm within the Commonwealth of Massachusetts. Further, upon information and belief, Defendants and/or their agents transact business and/or offer to transact business within the Commonwealth of Massachusetts.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(c).

FACTUAL BACKGROUND

8. On May 4, 2004, the Commissioner for Patents with the United States Patent and Trademark Office issued U.S. Patent No. 6,729,744 (“the ‘744 Patent”) to Pat Y. Mah for

a “Faraday Flashlight”. A true and correct copy of the ‘744 Patent is attached hereto as *Exhibit A*.

9. On October 26, 2004, the Commissioner for Patents with the United States Patent and Trademark Office issued U.S. Patent No. 6,808,288 (“the ‘288 Patent”) to Pat Y. Mah for a “Faraday Flashlight”. The ‘744 and ‘288 Patents are collectively referred to herein as the “Faraday Flashlight Patents” or the “Patents-in-Suit”. A true and correct copy of the ‘288 Patent is attached hereto as *Exhibit B*.

10. Daka Research, Inc. (“Daka Research”), a previous owner of the Patents-in-Suit, and DTR entered into an Agreement Regarding Joint Ownership of Patents, and Sales, Marketing and Distribution of Products (the “Joint Agreement”), on or about October 24, 2005.

11. The Joint Agreement “assign[ed] DTR an equal, undivided interest in the [patents-in-suit]” and stated that “Daka Research and [DTR] are joint owners of the [patents-in-suit]”.

12. Subsequently, on February 14, 2006, Daka Research, Inc. assigned all its rights in the patents-in-suit, including “all of its proprietary rights, titles, interests and benefits over the [patents-in-suit]” to DTR, including “the right to sue and recover for, and the right to profits or damages due or accrued arising out of or in connection with, any and all, past and future infringements of the [patents-in-suit].”

13. The Assignment of all Daka Research's rights in the Patents-In-Suit was recorded with the United States Patent and Trademark Office on or about April 11, 2006, at Reel 017448, Frame 0465. A true copy of that Assignment is attached hereto as *Exhibit C*.

14. Cricket, an affiliate of DTR Far East, possesses the right to sell, market and distribute the products under the Faraday Flashlight Patents.

15. The Patents-in-Suit are directed to: a light generating device utilizing “a large centrally located magnet which is mounted to slide past a magnet pickup or current induction wire.”

16. Upon information and belief, at all material times, Meijer has been engaged in the business of marketing, distributing and selling various retail products.

17. Specifically, Meijer manufactures, sells, offers to sell, imports and/or markets certain renewable energy flashlights, including, but not limited to the Super Power “Forever Flashlight”.

18. Upon information and belief, at all material times, Blue Circle has been engaged in the business of marketing, distributing and selling various retail products.

19. Specifically, Blue Circle manufactures, sells, offers to sell, imports and/or markets certain renewable energy flashlights, including, but not limited to the Super Power “Forever Flashlight”.

20. The Defendants sell, offer to sell, import and/or market certain renewable energy flashlights, including, but not limited to the Super Power “Forever Flashlight”, throughout the United States, including within the Commonwealth of Massachusetts.

21. Inspection of the Super Power “Forever Flashlight” indicates that it infringes upon one or more claims of the Faraday Flashlight Patents either literally or under the doctrine of equivalents.

22. The Defendants have manufactured, sold, offered for sale, imported and/or marketed the Super Power “Forever Flashlight” with full knowledge of the claims of the ‘744 and ‘288 Patents, and with full knowledge of the Plaintiffs’ rights therein.

23. In or around March 2007, Cricket became aware that the Defendants were manufacturing, distributing and selling infringing renewable energy flashlights via direct to retail marketing and through various retail locations.

24. By way of letter, dated March 23, 2007 (the “Meijer Cease and Desist Letter”), Cricket requested that the Defendant Meijer refrain from selling, offering to sell, importing and/or marketing renewable energy flashlights that infringe upon the ‘744 and/or ‘288 Patents. A true and correct copy of the Meijer Cease and Desist Letter is attached hereto as *Exhibit D*.

25. By way of letter, dated March 23, 2007 (the “Blue Circle Cease and Desist Letter”), Cricket requested that the Defendant Blue Circle refrain from selling, offering to sell, importing and/or marketing renewable energy flashlights that infringe upon the ‘744 and/or ‘288 Patents. A true and correct copy of the Blue Circle Cease and Desist Letter is attached hereto as *Exhibit E*.

26. The Defendant Meijer responded by letter, dated May 17, 2007 (the “Denial Letter”), to the Cease and Desist Letter. Therein, Meijer denied that the Super Power “Forever Flashlight” infringed upon the ‘744 and ‘288 Patents.

27. Notwithstanding Cricket’s letters, the Defendants continue to sell, offer to sell, import and/or market certain renewable energy flashlights, including but not limited to the Super Power “Forever Flashlight”, thereby knowingly and willfully infringing upon the ‘288 and ‘744 Patents.

COUNT I
(Patent Infringement-35 U.S.C. § 271(a))

28. The Plaintiffs incorporate by reference herein the allegations contained within Paragraphs 1-29, as though fully set forth herein.

29. The Defendants Meijer and Blue Circle have manufactured, sold, offered for sale, imported and/or marketed, and continue to manufacture, sell, offer for sale, import and/or market certain renewable energy flashlights, including but not limited to the Super Power “Forever Flashlight”.

30. The Super Power “Forever Flashlight” infringes one or more claims of the ‘744 and ‘288 Patents.

31. The Defendants’ infringement of the ‘744 and ‘288 Patents has been knowing and wilful.

32. As a result of the Defendants’ direct infringement of the Plaintiffs’ rights in the ‘744 and ‘288 Patents, the Plaintiffs have suffered and will continue to suffer damages in an amount to be shown at trial.

33. The Defendants’ willful infringement of the Plaintiffs’ rights warrants an award of treble damages under 35 U.S.C. § 284.

34. The Defendants’ willful infringement of Plaintiffs’ rights in the ‘744 and ‘288 Patents makes this an exceptional case warranting an award of the Plaintiffs’ reasonable attorneys’ fees and costs under 35 U.S.C. § 285.

35. As a result of the Defendants’ continuing infringement of the Plaintiffs’ rights in the ‘744 and ‘288 Patents, the Plaintiffs are suffering irreparable harm. As a result, the Plaintiffs are entitled to preliminary and permanent injunctive relief pursuant to 35 U.S.C. § 283.

WHEREFORE, the Plaintiffs demand judgment as follows:

- a. Preliminary and Permanent injunction barring the Defendants, their officers, agents, servants, employees, attorneys, privies, representatives, successors and assigns and all other persons acting in concert or participation with or under authority of the Defendants, from manufacturing, producing, using, offering to sell, selling, exporting, and/or importing any products that infringe the Plaintiffs' rights in the '744 and '288 Patents;
- b. Monetary damages adequate to compensate for the infringement, including but not limited to Plaintiff's lost profits or a reasonable royalty;
- c. Damages resulting from Defendants' knowing and willful infringement;
- d. Reasonable attorneys' fees pursuant to 35 U.S.C. § 285;
- e. An assessment of interest and costs; and
- f. Such other and further relief as this Court deems just and proper.

THE PLAINTIFFS DEMAND A JURY TRIAL ON ALL CLAIMS SO TRIABLE.

Respectfully submitted,
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and DTR ADVERTISING FAR EAST, LTD.,
By their Attorneys,

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Dated: July ___, 2007