

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

INNOVATIVE LIGHTING, INC.  Plaintiff,  v.  BOOGEY, INC.  Defendant.	Complaint No. 4:05-cv-00278  COMPLAINT JURY TRIAL DEMANDED
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**COMPLAINT**

Plaintiff, Innovative Lighting, Inc. (“Innovative Lighting” or “Plaintiff”), files this Complaint against the above-named defendant, Boogey, Inc. (“Boogey” or “Defendant”), and, demanding a trial by jury, 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, for trade dress infringement and unfair competition under 15 U.S.C. § 1125(a) and under the common laws of the State of Iowa.
2. Subject matter jurisdiction is vested in this Court by 28 U.S.C. §§ 1331, 1338, and 1367, and 15 U.S.C. § 1121.
3. Venue is proper under one or more of 28 U.S.C. § 1391(b), (c) and 1400(b).

**THE PARTIES AND FACTUAL ALLEGATIONS**

4. Plaintiff Innovative Lighting is an Iowa corporation, having its principal place of business at 109 Progressive Avenue, Roland, Iowa 50236.

5. Upon information and belief, Defendant Boogey is a Tennessee corporation, with a principal place of business at P.O. Box 769, Spring City, Tennessee 37381.

6. Plaintiff is engaged in the business of designing, manufacturing, distribution, offering for sale and/or selling in the United States lighting products for the truck, trailer, marine, motorcycle and RV industries.

7. Defendant is engaged in the business of distributing, using, offering for sale and/or selling in the United States lighting products for motorcycles.

8. Upon information and belief, Defendant is doing business in and has purposeful contacts with the Southern District of Iowa.

9. Upon information and belief, Defendant has committed acts of infringement, including acts in the Southern District of Iowa, and is causing economic injury to Plaintiff in this district.

## **COUNT I**

### **Infringement of U.S. Patent No. Des. 440,673**

10. Plaintiff Innovative Lighting repeats, realleges, and incorporated by reference, as though fully set forth herein, the allegations contained in paragraphs 1-9 above.

11. On April 17, 2001, U.S. Patent No. Des. 440,673 entitled "LIGHT FIXTURE" ("the '673 Patent") was duly and legally issued naming Jerold L. Handsaker as inventor. (See Exhibit A attached hereto).

12. By virtue of proper assignment, Innovative Lighting acquired and duly owns all right, title, and interest in this patent, including the right to sue and recover for

infringement thereof.

13. Upon information and belief, Defendant has manufactured and had manufactured, used, offered for sale, sold and/or distributed devices within the United States, that infringe the '673 Patent, either directly, contributorily, or by inducement, or otherwise, in violation of 35 U.S.C. §§ 271 and 289. Innovative Lighting has notified Defendant of their unlawful infringing acts and, on information and belief, Defendant's unlawful infringing acts are continuing and will continue unless enjoined by this Court.

14. By reason of Defendant's acts of infringement, Innovative Lighting has suffered and is suffering damages, including impairment of the value of the '673 Patent, in an amount yet to be determined.

15. Defendant's acts of infringement are causing irreparable harm to Innovative Lighting and will continue to cause irreparable harm to Innovative Lighting and will continue to cause irreparable harm unless enjoined by this Court.

16. Defendant's infringing acts have been committed willfully and with knowledge of Innovative Lighting's patent rights.

## **COUNT II**

### **Infringement of U.S. Patent No. Des. D443,377**

17. Innovative Lighting repeats, realleges, and incorporates by reference, as thought fully set herein, the allegations contained in paragraphs 1-16 above.

18. On June 5, 2001, U.S. Patent No. Des. D443,377 entitled "LIGHT FIXTURE" ("the '377 Patent") was duly and legally issued naming Jerold L. Handsaker as inventor. (See Exhibit B attached hereto).

19. By virtue of proper assignment, Innovative Lighting has acquired and duly owns all right, title, and interest in this patent including the right to sue and recover for infringement thereof.

20. Upon information and belief, Defendant has manufactured or had manufactured, used, offered for sale, sold and/or distributed devices within the United States, that infringe the '377 Patent, either directly, contributorily, or by inducement, or otherwise, in violation of 35 U.S.C. §§ 271 and 289. Innovative Lighting has notified Defendant of their unlawful infringing acts and, on information and belief, Defendant's unlawful infringing acts are continuing and will continue unless enjoined by this Court.

21. By reason of Defendant's acts of infringement, Innovative Lighting has suffered and is suffering damages, including impairment of the value of the '337 Patent, in an amount yet to be determined.

22. Defendant's acts of infringement are causing irreparable harm to Innovative Lighting and will continue to cause irreparable harm unless enjoined by this Court.

23. Defendant's infringing acts have been committed willfully and with knowledge of Innovative Lighting's patent rights.

### **COUNT III**

#### **Trade Dress Infringement**

24. Innovative Lighting repeats, realleges, and incorporates by reference, as though fully set forth herein, the allegations contained in paragraphs 1-23 above.

25. Innovative Lighting developed and has manufactured and sold a 3-LED light fixture having a distinctive design and overall product appearance that is non-

functional and has acquired secondary meaning associated with Innovative Lighting for its source and origin.

26. Defendant Boogey has copied Innovative Lighting's distinctive light fixtures, and is making and/or using and selling in commerce light fixtures having Innovative Lighting's distinctive design and product appearance.

27. Defendant's use of Innovative Lighting's distinctive design and product appearance in commerce is likely to deceive, mislead, cause confusion or mistake, or to otherwise cause the public to believe that Defendant's products are sponsored by, approved by, or affiliated or connected with Innovative Lighting.

28. By reason of the foregoing acts, Defendant has engaged in unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

29. Innovative Lighting has suffered and will continue to suffer irreparable injury to its product appearance rights, its business, and its accumulated goodwill and reputation unless and until Defendant is restrained from continuing its wrongful acts.

30. Defendant has made profits from its acts of unfair competition and Innovative Lighting has been damaged in amounts not presently ascertained.

#### **COUNT IV**

##### **Trade Dress Infringement**

31. Innovative Lighting repeats, realleges, and incorporates by reference, as thought fully set forth herein, the allegations contained in paragraphs 1-30 above.

32. Innovative Lighting developed and has manufactured and sold a 4-LED light fixture having a distinctive design and overall product appearance that is non-functional and has acquired secondary meaning associated with Innovative Lighting for

its source and origin.

33. Defendant Boogey has copied Innovative Lighting's distinctive design and product appearance, and is making and/or using and selling in commerce light fixtures having Innovative Lighting's distinctive design and product appearance.

34. Defendant's use of Innovative Lighting's distinctive design and product appearance in commerce is likely to deceive, mislead, cause confusion or mistake, or to otherwise cause the public to believe that Defendant's products are sponsored by, approved by, or affiliated or connected with Innovative Lighting.

35. By reason of the foregoing acts, Defendant has engaged in unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

36. Innovative Lighting has suffered and will continue to suffer irreparable injury to its products appearance rights, its business, and its accumulated goodwill and reputation unless and until Defendant is restrained from continuing its wrongful acts.

37. Defendant has made profits from its acts of unfair competition and Innovative Lighting has been damaged in amounts not presently ascertained.

## **COUNT V**

### **Common Law Unfair Competition**

38. Innovative Lighting repeats, reallges, and incorporates by reference, as though fully set forth herein, allegations contained in paragraphs 1-37 above.

39. By reason of the foregoing, Defendant's acts are in violation of Innovative Lighting's common law rights and constitute unfair competition.

40. Defendant has been unjustly enriched at Innovative Lighting's expense and/or Innovative Lighting has suffered and will suffer substantial loss of goodwill and

reputation unless and until Defendant is restrained from continuing its wrongful acts.

41. As a result of the above actions, Defendant has made profits from its acts of unfair competition and Innovative Lighting has been damaged in an amount not presently ascertained.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Innovative Lighting respectfully requests judgment by this Court:

- a) That finds Defendant has infringed United States Patent Nos. Des. 440,673 and 443,377;
- b) That enjoins Defendant, its officers, directors, employees, agents, servants, assigns, representatives, successors, subsidiaries, divisions, affiliates, and/or any other entity or person in active concert or participation with Defendant:
  - i) from making, using, selling, offering for sale, or importing infringing products, and from otherwise infringing, contributing to the infringement of, or inducing infringement of United States Patent Nos. Des 440,673 and/or 443,477;
  - ii) from continuing its unfair competition and unlawful and unfair business practices; and
  - iii) for all further and proper injunctive relief pursuant to 35 U.S.C. § 283 and/or 15 U.S.C. § 1117;
- c) That awards Innovative Lighting monetary damages from Defendant for all damages allowable by law for infringement, together with pre-and post-judgment interest and costs, under 35 U.S.C. § 284, and/or the Defendant's total profits under 35 U.S.C. § 289;
- d) That finds Defendant's infringement to be willful and awards treble

damages under 35 U.S.C. § 284;

e) That requires destruction and/or impounding pursuant to 15 U.S.C. § 1118 of all products found to be in violation of 15 U.S.C. § 1125 and all plates, molds, and other means of making such products;

f) That awards to Innovative Lighting the profits Defendant unjustly obtained and all damages sustained by Innovative Lighting resulting from Defendant's unfair competition, and the costs of this action;

g) That finds Innovative Lighting is entitled to enhanced damages under 15 U.S.C. § 1117(a) and awards Innovative Lighting treble damages;

h) That requires Defendant to provide restitution to Innovative Lighting for all improperly acquired benefits acquired by Defendant through its unlawful and unfair business practices;

i) That finds the present case to be exceptional and awards attorney fees to Innovative Lighting under 35 U.S.C. § 285 and/or 15 U.S.C. § 1117; and

j) That awards Innovative Lighting its costs and such other and further relief as the Court may deem equitable.

**DEMAND FOR JURY TRIAL**

Pursuant to Fed. R. Civ. P. 38(b), and Local Rule 38.1, Plaintiff Innovative Lighting hereby demands a trial by jury on all issues triable of right by a jury in this action.

Respectfully submitted,

/s/Daniel A. Rosenberg

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