

CLERK, U.S. DISTRICT COURT

§ 87(2)(b)

**Case No.** \_\_\_\_\_

**8-01 CV 1537-R**

### Defendants.

## PARTIES

3. Plaintiffs are informed and believe, and thereon allege, that defendant Design Trends is a Limited Liability Company organized and existing under the laws of the State of

Delaware, doing business in Texas with its principal place of business in Dallas, Texas. Design Trends may be served with 2 summons and copy of this Complaint by serving its registered agent. Design Trends, Inc., c/o its registered agent, Arlee S. Willhite, 11281 Richmond, Suite J-106, Houston, Texas 77082.

4. Plaintiffs are informed and believe, and thereon allege, that defendant Patrick S. Dolan ("Dolan") is an individual residing in Portland, Oregon. Plaintiffs are further informed and believe that Dolan designed the infringing product for Design Trends and participated in marketing the accused product in the State of Texas and elsewhere in the United States. Mr. Dolan may be served with a summons and copy of this Complaint at his principal residence located at 1020 Southwest Westwood Court, Portland, Oregon 97201.

5. Plaintiffs are informed and believe, and thereon allege, that Defendant Craftmade is a corporation duly organized and existing under the laws of the State of Texas, doing business in Texas with its principal place of business in Coppell, Texas. Craftmade may be served with a summons and copy of this Complaint by serving its president and CEO, James Ridings at Craftmade's principal place of business, 650 South Royal Lane, Suite 100, Coppell, Texas 75019.

6. Plaintiffs are informed and believe, and thereon allege, that Defendant Lowe's Companies, Inc. ("Lowe's") is a corporation duly organized and existing under the laws of the State of North Carolina. Plaintiffs further allege that Lowe's owns and operates numerous retail outlets in the State of Texas, including Dallas, Texas. Lowe's may be served with a summons and copy of this Complaint by serving its registered agent, CT Corporation, 350 North St. Paul Street, Dallas, Texas 75201

7. Each Defendant is the agent, servant, employee, partner and joint venturer of each of the other Defendants such that each Defendant is fully liable for the acts and omissions of each of the other defendants.

### **JURISDICTION AND VENUE**

8. This Court has jurisdiction over this civil action pursuant to the provisions of 28 U.S.C. §§ 1338, 1331 and 1332. The amount in controversy, exclusive of interest and costs, exceeds \$75,000.00, and the controversy is between citizens of different states.

9. Venue in this district is appropriate pursuant to 28 U.S.C. § 1400(b) and pursuant to 28 U.S.C. § 1391(b) and (c) because Defendants have committed acts of infringement in this district, have sold the infringing products in this district, and conduct regular business in this district.

### **FACTS**

10. Lamps Plus is the owner by assignment of United States Patent No. 5,221,141 (the "'141 Patent'") issued June 22, 1993 describing a Stand-Alone Electric Lamp and is the owner by assignment of United States Patent No. Des. 353,904 (the "'904 Patent'") issued December 27, 1994 describing a Combined Torchiere Lamp and Adjustable Accent Lights. True and correct copies of the '141 Patent and the '904 Patent are attached hereto as Exhibits A and B, respectively, and are incorporated herein by reference.

### **COUNT ONE**

#### **PATENT INFRINGEMENT**

11. To the extent not inconsistent, Plaintiffs incorporate by reference paragraphs 1-10, the same as if set forth at length.

12. Defendants committed, actively induced, and contributed to, and continues to commit, actively induce, and contribute to, acts of patent infringement in the State of Texas and elsewhere in the United States.

13. Defendants have directly infringed the '141 Patent and the '904 Patent because they have made, used, sold, or offered for sale and is still making, using, selling or offering for sale infringing products, including lighting products ("Accused Devices"), which infringe the '141 Patent and '904 Patent.

14. Defendant Dolan has actively induced infringement and/or contributed to the infringement, and is still actively inducing and/or contributing to the infringement of the '141 Patent and the '904 Patent, and will continue to do so unless enjoined by the Court. Specifically, Dolan designed the Accused Devices for Design Trends, which are then sold or offered for sale by Lowe's, as well as participated in the marketing of the Accused Devices in Texas and elsewhere.

15. Defendants have made and are still making concerted efforts to market and sell their infringing products and methods in violation of Plaintiffs' rights.

16. Defendants are aware of the '141 Patent and the '904 Patent, and that their infringements are willful and in total disregard of Plaintiffs' exclusive rights under the '141 and '904 Patents.

### **DAMAGES**

17. By reason of Defendants' wrongful acts set forth in this Complaint, Plaintiffs have suffered and will continue to suffer actual damage to their business, reputation and goodwill but for Defendants' wrongful acts.

18. By reason of Defendants' acts, Plaintiffs are entitled to have their award of damages, including but not limited to an award of lost profits or a reasonable royalty, increased

to three (3) times its actual and consequential damages sustained. Plaintiffs are further entitled to an award of Defendants' profits resulting from Defendants' sale of products infringing Plaintiffs' patents, and because such award is inadequate to compensate Plaintiffs under the circumstances, Plaintiffs are also entitled to an award of an amount over and above such profits.

19. Plaintiffs are further entitled to an award of exemplary damages.

20. Plaintiffs are entitled to recover their costs and expenses in bringing this action and, because this is an exceptional case, to recover their reasonable and necessary attorneys fees incurred in the representation of Plaintiffs in this matter, including representation at trial and in any and all appeals.

21. Defendants' acts set forth in this Complaint have caused and will continue to cause great and irreparable injury to Plaintiffs. Unless these acts are restrained by this Court, these acts will be continued unchecked and Plaintiffs will continue to suffer great and irreparable injury. It would be difficult to ascertain the amount of compensation which could afford Plaintiffs adequate relief for Defendants' continuing acts and a multiplicity of judicial proceedings would be required. Plaintiffs have no adequate remedy at law to compensate them for the injuries threatened.

#### **REQUEST FOR INJUNCTIVE RELIEF**

22. Plaintiffs request that the Court, upon motion, notice and hearing, grant a preliminary injunction pursuant to Fed. R. Civ. P. 65, and, upon final hearing, enter a permanent injunction pursuant to same restraining and enjoining Defendants, their officers, directors, partners, employees, agents, successors, assigns, and all those in active concert or participation with any of them, from infringing the '141 Patent and/or the '904 Patent.

23. Plaintiffs are entitled to a preliminary injunction pursuant to Fed. R. Civ. P. 65 on the grounds that Plaintiffs have a substantial likelihood of success on the merits; that a

substantial threat of immediate and irreparable injury will result to Plaintiffs unless the activities described above are enjoined pending trial of this action; that the threatened injury to Plaintiffs outweighs any damages that the injunction may cause to Defendants, if any; and that granting the injunction will not disserve the public interest.

### **JURY DEMAND**

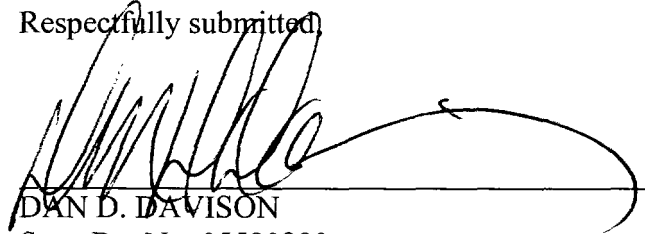
Plaintiffs request a jury trial on all issues to the extent permitted by the United States Constitution and the Federal Rules of Civil Procedure.

WHEREFORE, Plaintiffs request for judgment as follows:

1. For a declaration that the '141 and '904 patents are valid and infringed by Defendants.
2. For preliminary and permanent injunctive relief barring Defendants and anyone acting in concert with them from making, using, selling, or offering to sell in the United States any product or design infringing the '141 and '904 Patents, and specifically barring defendants and anyone acting in concert with them from making, using or selling the Accused Devices.
3. For damages in an amount to be proven at trial, including but not limited to reasonable royalties, lost profits to plaintiffs and all profits received by defendants arising from the infringement;
4. For enhanced trebled damages as a result of Defendants' willful infringement;
5. For a determination of "exceptional" case status, reasonable attorney's fee, and costs of suit incurred herein;

6. For such other and further relief, general and special, at law or in equity, to which this Court deems just and proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Dan D. Davison', is written over a horizontal line.

DAN D. DAVISON  
State Bar No. 05590900  
FULBRIGHT & JAWORSKI L.L.P.  
2200 Ross Avenue  
Suite 2800  
Dallas, Texas 75201  
Tel: 214-855-8000  
Fax: 214-855-8200

And

JOHN A. O'MALLEY  
California State Bar No. 101181  
TODD M. SORRELL  
California State Bar No. 175143

FULBRIGHT & JAWORSKI L.L.P.  
865 South Figueroa, 29<sup>th</sup> Floor  
Los Angeles, California 90017  
Tel: 213-892-9200  
Fax: 213-680-4518

COUNSEL FOR PLAINTIFFS.