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AT 8:30 M
WILLIAM T. WALSH
CLERK

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

STREET GLOW, INC.,

Plaintiff,

-v.-

THEORY3, INC.,

Defendant.

Civil Action No. ~~03cv4381~~

03cv4381

COMPLAINT
AND JURY DEMAND

(DMC)

Street Glow, Inc. ("Street Glow"), by way of Complaint against Defendant, alleges and says:

THE PARTIES

1. Plaintiff Street Glow is a New Jersey corporation with its principal place of business at 25 Mansard Court, Wayne, New Jersey 07470.
2. Defendant Theory3, Inc. ("Theory3"), on information and belief, is Florida corporation having a principal place of business at P.O. Box 22023, Lake Buena Vista, Florida 32830. Theory3 has transacted and/or is transacting business in this District and has accused Street Glow of committing acts of infringement in this District.

JURISDICTION AND VENUE

3. This action arises under the United States patent laws, 35 U.S.C. §101 *et seq.*, and under common law.

4. Subject matter jurisdiction exists pursuant to 28 U.S.C. §§ 1331, 1332, 1338(a), 1367 and 2201.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§1391(b) and (c).

BACKGROUND

6. Street Glow manufactures and sells automotive and other accessories, including a wide variety of lighting products. Among the products sold by Street Glow are a motion-activated wheel light product ("the Wheel Light Product") and a motion activated key chain ("the Keychain Product").

7. Theory3 is a manufacturer and seller of lighting accessories.

8. Theory3 is, on information and belief, the owner of United States Patent Number 6,467,939, titled "Light for Vehicle Wheels" ("the '939 Patent"), and United States Patent Application Publication No. US 2003/0142506 A1 ("the Publication").

9. In or about July 2002, Street Glow entered into a license agreement with Theory3 under the '939 Patent under which it agreed to pay royalties to Theory3 on Street Glow's sales of the Wheel Light Product ("the License").

10. Theory3 has recently asserted, by letter dated September 11, 2003 from its attorneys, that sales by Street Glow of the Keychain Product are subject to the License, and to the extent they are not subject to the License, such sales constitute an infringement of the '939 patent, the Publication, and/or an infringement of Theory3's trade dress rights.

11. Street Glow's Keychain Product does not infringe any claim of the '939 Patent or the Publication, or any of Theory3's alleged trade dress rights, and are not subject to the License.

12. On information and belief, the claims of the '939 Patent are invalid for failing to meet one or more of the provisions specified in Title 35, United States Code. In addition, the claims of the Publication would, if issued, be invalid for failing to meet one or more of the provisions specified in Title 35, United States Code.

CLAIMS FOR RELIEF

FIRST COUNT

(Declaration of Noninfringement of the '939 Patent)

13. Street Glow repeats and realleges each and every allegation of each of the preceding paragraphs as if fully set forth herein.

14. Street Glow is entitled to a declaratory judgment under 28 U.S.C. § 2201 holding that the Keychain Product does not infringe the '939 Patent.

SECOND COUNT

(Declaration that the '939 Patent is Invalid)

15. Street Glow repeats and realleges each and every allegation of each of the preceding paragraphs as if fully set forth herein.

16. Street Glow is entitled to a declaratory judgment under 28 U.S.C. § 2201 holding that the claims of the '939 patent are invalid.

THIRD COUNT
(Declaratory Judgment as to Trade Dress)

17. Street Glow repeats and realleges each and every allegation of each of the preceding paragraphs as if fully set forth herein.

18. Street Glow is entitled to a declaratory judgment under 28 U.S.C. § 2201 holding that the Keychain Product does not infringe any trade dress rights of Theory3.

FOURTH COUNT
(Declaratory Judgment as to the Publication)

19 Street Glow repeats and realleges each and every allegation of each of the preceding paragraphs as if fully set forth herein.

20. Street Glow is entitled to a declaratory judgment under 28 U.S.C. § 2201 holding that the Keychain Product does not infringe the Publication.

FIFTH COUNT
(Declaratory Judgment as to the Publication)

21 Street Glow repeats and realleges each and every allegation of each of the preceding paragraphs as if fully set forth herein.

22. Street Glow is entitled to a declaratory judgment under 28 U.S.C. § 2201 holding that the claims of the Publication would, if issued, be invalid.

SIXTH COUNT
(Declaratory Judgment as to the License)

23 Street Glow repeats and realleges each and every allegation of each of the preceding paragraphs as if fully set forth herein.

24. Street Glow is entitled to a declaratory judgment under 28 U.S.C. § 2201 holding that the Keychain Product is not covered by, nor subject to the payment of royalties under the License.

PRAYER FOR RELIEF

WHEREFORE, Street Glow prays that judgment be entered:

- a. entering judgment on the First Count of this Complaint declaring that the Keychain Product sold by Street Glow does not infringe any claim of the '939 Patent;
- b. entering judgment on the Second Count of this Complaint declaring that the '939 patent is invalid;
- c. entering judgment on the Third Count of this Complaint declaring that the Keychain Product does not infringe any trade dress rights of Theory3;
- d. entering judgment on the Fourth Count of this Complaint declaring that the Keychain Product does not infringe the Publication;
- e. entering judgment on the Fifth Count of this Complaint declaring that claims of the Publication would, if issued, be invalid;
- f. entering judgment on the Sixth Count of this Complaint declaring that the Keychain Product is not covered by, nor subject to the payment of royalties under the License;
- g. awarding Street Glow the costs of this action, and reasonable attorney fees pursuant to 35 U.S.C. § 285; and
- h. awarding Street Glow such further relief as the Court deems just and equitable.


JURY DEMAND

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

Date: September 15, 2003

Respectfully submitted,

LOWENSTEIN SANDLER, P.C.



Stephen R. Buckingham (SRB-6067)

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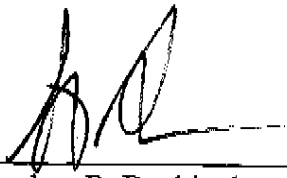
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**ATTORNEYS FOR PLAINTIFF STREET GLOW,
INC.**

LOCAL CIVIL RULE 11.2 CERTIFICATION

I hereby certify that to the best of my knowledge, information and belief, the matter in controversy is not the subject of any other action or proceeding pending in any court or arbitration.

By: 

Stephen R. Buckingham