

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

-----X  
UNIQUE INDUSTRIES, INC.,  
a corporation of Pennsylvania  
4750 League Island Blvd.  
Philadelphia, Pennsylvania 19112-1222

Plaintiff,

-against-

Case: 1:08-cv-01095  
Assigned To : Urbina, Ricardo M.  
Assign. Date : 6/25/2008  
Description: General Civil

965207 ALBERTA LTD.,  
a corporation of Canada  
105-150 Crowfoot CR., NW  
Calgary, Alberta  
Canada T3G3T2

Defendant.  
-----X

**COMPLAINT**

Plaintiff for its Complaint against the Defendant respectfully alleges as follows:

**THE PARTIES**

1. Plaintiff, Unique Industries, Inc. (hereinafter "Unique") is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania and has a principal place of business at 4750 League Island Blvd., Philadelphia, Pennsylvania 19112-1222.

2. Upon information and belief, the Defendant 965207 Alberta Ltd. is a corporation formed under the laws of Canada and has its principal place of business at 105-150 Crowfoot Cr., NW, Calgary, Alberta, Canada T3G3T2.

**JURISDICTION AND VENUE**

3. This action is for a declaratory judgement brought under the Federal Declaratory Judgement Act, 28 U.S.C. § 2201-02, and seeks a declaratory judgement of non-

infringement of patent rights asserted against Unique by Defendant 965207 Alberta Ltd. This action arises under the Patent laws of the United States, specifically 35 U.S.C. § 271. This court has jurisdiction of this claim under 28 U.S.C. §§ 1331(a), 1338(a) and 2201(a) and 2202.

4. Personal jurisdiction and venue are further conferred by 35 U.S.C. § 293.

**DECLARATORY JUDGEMENT OF NON-INFRINGEMENT OF ANY PATENT RIGHTS ASSERTED BY DEFENDANT 965207 ALBERTA LTD.**

5. Unique markets throughout the United States supplies for use at parties and other social events. Unique markets such items as piñatas, balloons, paper goods, wrapping paper and other party and novelty products for use at parties and other celebrations. The party supplies of Unique include licensed designs or various designs created specifically for the products marketed by Unique. The designs created by or for Unique are typically distinctive to Unique. One such line of products marketed by Unique is a line of sparklers that simulate numerals, as well as a star. Attached hereto as Exhibit A are true and correct copies of illustrations if Unique's sparklers shaped as numerals and a star.

6. Representatives of Defendant 965207 Alberta Ltd. have written to Unique and charged that sparklers of Unique infringe upon the rights of Defendant 965207 Alberta Ltd. in its United States design patent nos. D447,207 and D 451,164. Attached hereto as Exhibit B is a true and correct copy of such a letter dated January 21, 2008 sent by representatives of Defendant 965207 Alberta Ltd. to Unique enclosing the noted patents and threatening to commence litigation.

7. Counsel for Unique has replied to the representatives of Defendant 965207 Alberta Ltd. noting the Unique sparklers could not possibly infringe the asserted patents. Attached as Exhibit C is a true and correct copy of a letter dated January 28, 2008 from

patent counsel for Unique to the representatives of Defendant 965207 Alberta Ltd. explaining why the Unique products could assuredly not infringe the asserted patents of Defendant 965207 Alberta Ltd.

8. The representatives of Defendant 965207 Alberta Ltd. have continued the charges of infringement and threats to commence litigation. Attached hereto as Exhibit D is a true and correct copy of such a letter dated February 4, 2008 sent by representatives of Defendant 965207 Alberta Ltd. to Unique. Attached as Exhibit E is a true and correct copy of a letter dated February 5, 2008 from patent counsel for Unique to the representatives of Defendant 965207 Alberta Ltd. In response to the letter of February 4<sup>th</sup>.

9. Representatives of Defendant 965207 Alberta Ltd. have continued the charges of infringement and threats to commence litigation; and attached hereto as Exhibit F is a true and correct copy of a letter of April 22, 2008 threatening litigation should Unique continue the marketing of its sparklers.

10. Unique is about to commence distributing its sparklers to many large customers throughout the United States, and is concerned that Unique or its customers may be sued by 965207 Alberta Ltd. for patent infringement.

11. A true and actual controversy, therefore, exists between Unique and 965207 Alberta Ltd. concerning the asserted infringement by Unique of the United States patent laws by the marketing of its products.

12. Plaintiff Unique, therefore, requests pursuant to 28 U.S.C. §§ 2201 and 2202, a declaratory judgment declaring that its line of sparkler products does not contain any products violating the patent or any related rights of 965207 Alberta Ltd.

WHEREFORE, Plaintiff prays:

A. That the Court declare that the distribution, marketing, promotion or sale of sparklers of Unique does not violate any patent or related rights of 965207 Alberta Ltd.

B. That the defendant 965207 Alberta Ltd. and its agents, servants, employees, attorneys and those persons in active concert or participation therewith be temporarily, preliminarily and permanently enjoined and restrained

(i) from directly or indirectly making or causing to be made any charges that any sparklers of Unique violate any patents, trademark or trade dress rights of 965207 Alberta Ltd., or violate any unfair and deceptive trade practices laws;

(ii) that 965207 Alberta Ltd. be required to identify to Unique and file with this Court within ten days after judgement a report in writing and under oath identifying each and every individual and business entity to which charges have been made by or on behalf 965207 Alberta Ltd. Or any of its agents or related companies that any sparkler product of Unique violates any rights including patents of 965207 Alberta Ltd's; and that each such individual or his/her associated business entity has been notified in writing that such charges are false and contrary to law;

(iii) and from making any further charges that any rights of 965207 Alberta Ltd. have or are being violated by Unique or its officers or employees or related companies to any customer of Unique until after such charges have been made directly to Unique or its counsel and a reasonable opportunity has been given to Unique to respond to such charges;

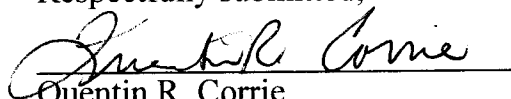
C. Awarding Unique its reasonable attorney fees for its declaratory judgements of non infringement as authorized by 35 U.S.C. § 285;

D. Awarding Unique its full costs and litigation expenses; and,

E. Further relief as the Court deems just and proper.

Dated: New York, New York  
June 24, 2008

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Quentin R. Corrie", is written over a horizontal line.

Quentin R. Corrie  
D.C. Bar No. 224469  
Attorney for Plaintiff Unique Industries, Inc.  
Birch, Stewart, Kolasch & Birch, LLP  
Suite 100 East  
8110 Gatehouse Road  
Falls Church, VA 22042  
Telephone: 703-205-8000  
Facsimile: 703-205-8050  
E-mail: qrc@bskb.com

Of Counsel:  
Gerard F. Dunne  
Law Office of Gerard F. Dunne, P.C.  
156 Fifth Avenue, Suite 1223  
New York, NY 10010-2007  
Tel: 212-645-2410  
Fax: 212-645-2435  
email:jerry.dunne@dunnelaw.net