

**IN THE UNITED STATES DISTRICT COURT DISTRICT OF MARYLAND**

Erik B. Cherdak  
149 Thurgood Street  
Gaithersburg, Maryland 20878

*Plaintiff,*

v.

E.S. Originals, Inc.  
450 West 33<sup>rd</sup> St., 9<sup>th</sup> Floor  
New York, New York 10001

*Defendant.*

***SERVE ON:***

E.S. Originals, Inc.  
450 West 33<sup>rd</sup> St., 9<sup>th</sup> Floor  
New York, New York 10001

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

**COMPLAINT FOR PATENT  
INFRINGEMENT**

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiff Erik B. Cherdak (“Cherdak”), by and through undersigned counsel and in and for his Complaint against Defendant E.S. Originals, Inc. (also referred to herein as “ESO”), alleges the follows:

**JURISDICTION AND VENUE**

1. This is an action for patent infringement under the laws of the United States and, in particular, under Title 35 of the United States Code (Patents). Jurisdiction and venue are based on Sections 1338(a), 1391(b) and (c), and/or 1400(b) of Title 28, United States Code.

2. Plaintiff Erik B. Cherdak is an individual who resides in Gaithersburg, Maryland. At all times relevant herein, Mr. Cherdak has been and is the named inventor and owner of United States Patent Nos. 5,343,445 (“the ‘445 patent”) and 5,452,269 (“the ‘269 patent”) (hereinafter collectively referred to as “the Cherdak patents”), which were duly and legally issued by the U.S.

Patent and Trademark Office on August 30, 1994 and September 19, 1995, respectfully. True and correct copies of each of the Cherdak patents, both entitled “Athletic Shoe with Timing Device,” are attached hereto at Exhibits A & B. Mr. Cherdak is the owner of the entire rights, title, and interests in and to the ‘445 and ‘269 patents and has the right to recover for past infringement of the Cherdak patents.

3. Defendant E.S. Originals, Inc. is, on information and belief, a New York corporation with its principal place of business at 450 West 33<sup>rd</sup> Street, 9<sup>th</sup> Floor, New York, NY 10001.

4. ESO is presently and has in the past engaged in the design, import, distribution, licensing, sale, and offering for sale, of what are commonly referred to as light up shoes. At certain relevant times for purposes of this Complaint, ESO engaged in the infringement of, and/or induced the infringement of and/or committed contributory infringement of, the Cherdak patents throughout the United States, including, but not limited to, in the District of Maryland.

### **FACTUAL ALLEGATIONS**

5. On July 6, 1993, Mr. Cherdak filed a patent application entitled “Athletic Shoe with Timing Device” that resulted in the issuance of the ‘445 patent on August 30, 1994. On August 29, 1994, as a continuation of the ‘445 patent application, Mr. Cherdak filed a continuation patent application entitled “Athletic Shoe with Timing Device” that resulted in the issuance of the ‘269 patent on September 19, 1995. The Cherdak patents are directed to shoe products and, more particularly, shoes containing lighting systems.

6. ESO has in the past imported, distributed, sold and offered for sale, and continues to import distribute, sell and offer for sale, infringing light up shoes either directly or via branded channels such as those bearing the TEENAGE MUTANT NINJA TURTLES, STRAWBERRY SHORTCAKE, and HELLO KITTY trademarks. One exemplary infringing shoe product

marketed, sold and/or otherwise placed in U.S. commerce by the Defendant is the TEENAGE MUTANT NINJA TURTLES lighted shoe product having a tongue label bearing a product identifier of “093064204.” Another exemplary infringing shoe product marketed, sold and/or otherwise placed in U.S. commerce by the Defendant is the HELLO KITTY lighted shoe product having a tongue label bearing Defendant ESO’s name (“E.S. Originals”).

### **COUNT I**

#### **PATENT INFRINGEMENT UNDER 35 U.S.C. § 271**

7. Paragraphs 1 through 6 are hereby incorporated by reference as though completely set forth herein.

8. On August 30, 1994, the ‘445 patent was duly and legally issued by the U.S. Patent and Trademark Office. On September 19, 1995, the ‘269 patent was duly and legally issued by the U.S. Patent and Trademark Office. Plaintiff Cherdak is the owner of the ‘445 and ‘269 patents.

9. On information and belief, ESO has infringed, contributed to the infringement of, and/or induced the infringement of one or more claims of the ‘445 and ‘269 patents in violation of U.S.C. § 271 (a), (b) and (c) by Defendant’s importation, distribution, sales and offers for sale of infringing light up shoe products including, but not limited to, the light up shoe products identified in paragraph 6 hereof.

10. Upon information and belief, ESO has infringed one or more claims of the ‘445 and ‘269 patents in violation of U.S.C. § 271(b) by actively inducing its distributors, customers, and/or retailers to infringe one or more claims of the ‘445 and ‘269 patents.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Cherdak prays for judgment and relief against ESO as follows:

11. For a judgment that the '445 and '269 patents are valid and infringed by Defendant including, but not limited to, its subsidiaries, predecessors-in-interest and business units however and wherever formed;
12. That a permanent injunction issue against continued infringement of the '445 and '269 patents by Defendant and its parents, subsidiaries, officers, directors, employees, affiliates representatives and agents, and all those acting in concert with or through Defendant, directly or indirectly, including, but not limited to, distributors, customers and retailers;
13. That an accounting be had for damages caused to Plaintiff Cherdak by Defendant's infringement, together with pre-judgment and post-judgment interest;
14. Such other further relief as the Court shall deem just and proper.

**DEMAND FOR TRIAL BY JURY**

Plaintiff demands a trial by jury on all issues so triable.

Respectfully submitted,

JOSEPH GREENWALD & LAAKE, P.A.

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