

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

| | | |
|---------------------------------|---|-----------------------------|
| RABBIT TANAKA CORPORATION, USA, |) | |
| a Texas Corporation, |) | |
| |) | Civil Action No. 08 CV 3349 |
| Plaintiff |) | |
| TLMS |) | |
| v. |) | Judge Kennelly |
| |) | |
| The Paradies Shops, Inc. |) | |
| a Georgia Corporation, |) | Magistrate Judge Schenkier |
| |) | |
| and |) | |
| |) | |
| Image Masters, Inc |) | |
| a California Corporation, |) | |
| |) | |
| and |) | |
| |) | |
| Big Lots Stores, Inc., |) | |
| An Ohio Corporation, |) | |
| |) | |
| Defendants |) | |
| _____ |) | |

FILED
AUGUST 26, 2008
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, Rabbit Tanaka Corporation, USA, complains of the Defendants, The Paradies Shops, Inc. (*Paradies*), Image Masters, Inc. (*Image Masters*), and Big Lots Stores, Inc. (*Big Lots*) as follows:

1. Plaintiff is a corporation of Texas with its principal place of business at 5925 Lovell Avenue, Fort Worth, Texas 76107. It is doing business in this district and generally throughout the

United States by the sale and distribution of its products under the Rabbit Tanaka and other brand names.

2. Defendant Paradies is a corporation of Georgia, with headquarters at 5950 Fulton Industrial Boulevard, Atlanta, Georgia 30336, and having places of business at 5950 Fulton Industrial Boulevard, Atlanta, Georgia 30336, and elsewhere and in many other states of the United States.

3. Defendant Image Masters, Inc. is a corporation of California, with a place of business at 2899 Agoura Rd., Westlake Village, California 91361 and at 429 Grogan Avenue, Merced, California 95341-6401.

4. Defendant Big Lots is a corporation of Ohio, with headquarters at 300 Philippi Road, Columbus, Ohio 43228, and having a regular and established place of business at 4628 W. Diversey Avenue, Chicago, Illinois 60639 in this judicial district, and elsewhere.

5. The Court has personal jurisdiction over the Defendants because, among other things, each defendant transact business in this judicial district, at least by offering to sell, selling, delivering, shipping and/or advertising infringing products at retail stores and through the Internet and other distribution channels in such a way as to reach customers in Illinois and this judicial district. The Defendants have specifically committed acts of infringement in this judicial district by selling and shipping infringing products to customers in this judicial district.

6. This Court has jurisdiction of this civil action for patent infringement under 28 USC § 1331, pursuant to the Patent Laws of the United States, 35 USC §§ 1 et seq.

7. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) and § 1400(b), as each Defendant resides in this district, has committed acts of infringement in this district, and has a regular and established place of business in this district herein as alleged.

8. On November 11, 1997, United States Patent No. 5,685,097 (the '097 patent) was duly and legally issued for "Illuminated Colored Display Device". An exclusive license to the '097 patent was granted to Plaintiff, together with the right to sue for past infringements, so Plaintiff has standing to sue. A copy of the '097 Patent is attached hereto as Exhibit A.

9. Prior to the commencement of this action, Defendants have infringed the '097 patent, within this judicial district and elsewhere, within the provisions of 35 USC § 271, by making, selling, offering for sale, delivering and/or using illuminated, color display devices which embody an equivalent structure to the patented invention as set forth in Claim 1 and other claims of that patent, and they will continue to do so unless enjoined by this Court. The Infringing Products include, at least, (1) the Jungle Parade Revolving Lamp from Image Masters (A photocopy of the packaging and the product is attached hereto as Exhibit B); (2) the Dolphin Family Aquarium Lamp from Image Masters (A photocopy of the packaging and the product is attached hereto as Exhibit C); (3) the Living Sea Aquarium Lamp from Image Masters (A photocopy of the packaging and the product is attached hereto as Exhibit D); and (4) the Aquarium Motion Lamp of Big Lots (A photocopy of the packaging and the product is attached as Exhibit E).

10. Among other elements, each of the Infringing Products noted above includes two translucent members, each of which includes translucent color patterns that are sufficiently translucent so that when the translucent members move relative to one another, light passing through the inner and outer color patterns result in seeing, from an outside observer's perspective, changing patterns and colors. This is shown, for example, in the product photograph of Exhibit C where the "Blue" translucent dolphin morphs through varying shapes and shades of "green" as it passes the yellow coral. A third translucent member includes magnifying portions through which the illumination passes creating various magnifications of the changing color patterns.

11. Defendants have also infringed the '097 patent by knowingly and actively inducing others to infringe, and by contributing to the infringement of others through the manufacture, use, sale, importation, and/or offer for sale of the Infringing Products.

12. Defendants' infringement, contributory infringement and/or knowing and intentional inducement to infringe has injured Plaintiff, and Plaintiff is entitled to recover damages adequate to compensate it for such patent infringement in the amount of \$250,000.00, but in no event less than a reasonable royalty.

13. Plaintiff makes and sells the authentic patented motion lamp device under, among others, the brand name "Coral Fish Aquarium Motion Lamp" and has provided notice to the public pursuant to 35 U.S.C. § 287 by marking the packaging for its products with the '097 patent number. Therefore, Defendants have had constructive notice of the '097 patent, but despite that notice have committed acts of infringement, including but not limited to those described herein.

14. Defendants have known of the '097 patent yet have, without any reasonable and well-founded belief that they are entitled to make and sell their Infringing Products, deliberately and willfully infringed and continue to infringe the '097 patent, making this an exceptional case and justifying the assessment of treble damages pursuant to 35 USC § 284, and the award of attorney fees pursuant to 35 USC § 285.

WHEREFORE, PLAINTIFF PRAYS THAT:

a. Temporary, preliminary, and permanent injunctions be issued from this Court, barring the Defendants and their privies from any further making, importation, sale, offering for sale, and use of their products so as to infringe Plaintiff's '097 patent.

b. Temporary, preliminary, and permanent injunctions be issued from this Court, directing that Defendants immediately destroy, or turn over to Plaintiff for destruction or disposal, all remaining Infringing Products in their possession at all stores and warehouses of Defendants, in transit among places of business of Defendants, and coming into possession of Defendants in the import trade.

c. An Order be entered awarding Plaintiff its damages, increased damages, attorneys' fees, and costs and expenses in this matter, and

d. Such further and other relief be granted, including costs of suit, as may be just and equitable in the circumstances.

e. Increased damages as permitted under 35 U.S.C. § 284; and

f. A finding that this case is exceptional and an award to Plaintiff of its reasonable attorneys' fees and costs as provided by 35 U.S.C. § 285.

Respectfully submitted,

August 22, 2008

/s/ Robert J. Schneider
Robert J. Schneider
John R. Crossan
COUNSEL FOR PLAINTIFF,
RABBIT TANAKA CORPORATION, USA
CHAPMAN AND CUTLER LLP
111 W. Monroe St., #1600
Chicago, IL 60603
312/845-3000
fax: 312/803-5299