

FILED
CHARLOTTE, N.C.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

2005 MAR 21 PM 3:22

LOWE'S COMPANIES, INC. and)
 LOWE'S HOME CENTERS, INC.,)
)
 Plaintiffs,)
)
 v.)
)
 SCHONBEK WORLDWIDE LIGHTING,)
 INC. and BEL AIR LIGHTING, INC.,)
)
 Defendants.)
 _____)

U.S. DISTRICT COURT
W. DIST. OF N.C.

CIVIL ACTION NO.:

5:05CV33-H

Jury Trial Demanded

COMPLAINT FOR DECLARATORY RELIEF

Plaintiffs LOWE'S COMPANIES, INC. (hereinafter referred to as "LCI") and LOWE'S HOME CENTERS, INC. (hereinafter referred to as "LHC") (LCI and LHC are referenced together herein as "Plaintiffs"), for their Complaint against Defendants SCHONBEK WORLDWIDE LIGHTING, INC. (hereinafter referred to as "Schonbek") and BEL AIR LIGHTING, INC. (hereinafter referred to as "Bel Air") (Schonbek and Bel Air are referenced together herein as "Defendants"), allege as follows:

1. This is an action for Declaratory Judgment and other relief brought under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201-02.
2. Plaintiff LCI is a corporation organized and existing under the laws of the State of North Carolina, having a principal place of business at 1000 Lowe's Boulevard, Mooresville, North Carolina 28117, and is doing business in this State and District.
3. Plaintiff LHC is a corporation organized and existing under the laws of the State of North Carolina, having offices at 1605 Curtis Bridge Road, North Wilkesboro,

**DOCUMENT
SCANNED**

North Carolina 28697, and is doing business in this State and District. LHC is a wholly owned subsidiary of LCI. LHC owns and operates retail home improvement warehouses known as “Lowe’s Home Improvement” warehouses.

4. Upon information and belief, Defendant Schonbek is a corporation organized and existing under the laws of New York, having a principal place of business at 61 Industrial Boulevard, Plattsburgh, New York 12901. On information and belief, Schonbek is in the business of manufacturing and selling chandeliers, lamps, wall sconces, candelabra, and other lighting products.

5. Upon information and belief, Defendant Bel Air is a corporation organized and existing under the laws of California, having a principal place of business located at 8238 Lankershim Boulevard, North Hollywood, California 91065. Upon information and belief, Bel Air is in the business of wholesale manufacturing and distributing chandeliers and other lighting products.

6. Defendant Schonbek has alleged that it owns rights in U.S. Design Patent Nos. D498,325 (entitled “Light Fixture”), D498,557 (entitled “Light Fixture”), and D499,837 (entitled “Light Fixture Trim”) (copies of which are attached hereto as Exhibit 1) (collectively referred to herein as “the Patents”), and has alleged that Plaintiffs have and are infringing any such rights in the Patents. The products accused by Defendant Schonbek of infringing its purported rights are sold to Plaintiffs by Defendant Bel Air.

7. This Court has jurisdiction over the subject matter of this action on the following grounds:

- (a) 28 U.S.C. §§ 1331, this being a civil action arising under the laws of the United States;

- (b) 28 U.S.C. § 1337(a), this being a civil action arising under an Act of Congress regulating commerce and protecting trade and commerce;
- (c) 28 U.S.C. § 1338(a), this being a civil action arising under an Act of Congress relating to alleged patent rights;
- (d) 28 U.S.C. § 1367(a), this being a civil action including claims that are so related to claims that are within the original jurisdiction of this Court that they form part of the same case or controversy under Article III of the United States Constitution; and
- (e) 28 U.S.C. § 1332, this being a civil action between citizens of different states in which the amount in controversy exceeds seventy-five thousand dollars (\$75,000.00) exclusive of interest and costs.

8. This Court may declare the rights and other legal relations of the parties in this case under 28 U.S.C. § 2201, and Rule 57, Fed.R.Civ.P., because an actual and justiciable controversy exists concerning the rights of, and legal relations between, Plaintiffs and Defendants.

9. This Court has personal jurisdiction over Defendants consistent with the principles underlying the U.S. Constitution and N.C. Gen. Stat. § 1-75.4 because, among other things, any injury caused to Plaintiffs occurred in the State of North Carolina as a result of Defendants' actions within the State of North Carolina and this District. Schonbek sent a letter to this State and District threatening Plaintiff LCI with possible litigation and thus creating a reasonable apprehension of suit by Schonbek against Plaintiffs. Additionally, upon information and belief, Defendants are doing business in this State and District. Further, Defendant Bel Air has entered into a contractual

agreement with Plaintiffs wherein it agreed to submit to the jurisdiction of the courts of this State.

10. Venue is proper in this Court under the provisions of 28 U.S.C. §§ 1391 and/or 1400 because, among other things, (a) this is an action arising out of allegations of patent infringement, (b) Plaintiffs are in this District, (c) a substantial part of the events giving rise to Plaintiffs' claims occurred in this District, and (d) on information and belief, Defendants are subject to personal jurisdiction in this District.

11. On or about December 7, 2004, counsel for Defendant Schonbek sent a letter to LCI's corporate offices in Mooresville, North Carolina, alleging that Defendant Schonbek is the owner of certain rights in the Patents, which Patents are directed to the design of certain chandeliers. The letter states, among other things, that Lowe's "is selling . . . infringing light fixtures," that "any such infringement of these designs will be prosecuted to the fullest extent of the law," and that Schonbek "considers this to be a serious infringement of its intellectual property for which Schonbek is seeking redress." The letter concludes with a request that Plaintiffs cease and desist, cancel outstanding sales orders, identify its suppliers, and make an accounting to Schonbek.

12. Defendant Schonbek has alleged that it is the owner of whatever rights, if any, may exist in the Patents.

13. Defendant Schonbek has alleged that its purported rights in the Patents are infringed by Plaintiffs' "Antique Pendant" products (Item Nos. 147323 and 147504) and "Ashley Mini 4 Light Chandelier" product (Item No. 147245) (collectively referred to herein as "the Accused Products").

14. On information and belief, the Accused Products do not infringe any valid and enforceable rights of Schonbek in the Patents.

15. There is an actual, substantial, and justiciable controversy between Plaintiffs and Defendants of sufficient immediacy and reality to warrant the rendering of a declaratory judgment by this Court. Defendant Schonbek has made a clear threat against Plaintiffs' business sufficient to create in Plaintiffs a reasonable apprehension of suit by Schonbek concerning its alleged patent rights. Plaintiffs are entitled to a judgment declaring their rights as requested herein.

COUNT I

DECLARATORY JUDGMENT REGARDING ALLEGATIONS OF PATENT INFRINGEMENT

16. Plaintiffs incorporate by reference paragraphs 1 through 15 above as if set forth fully herein.

17. There is an actual, substantial, and justiciable controversy between Plaintiffs and Defendant Schonbek concerning Schonbek's allegations that Plaintiff LCI has infringed the Patents, and by implication that Plaintiff LHC, as LCI's primary channel of distribution for the accused product, also has infringed the Patents.

18. These allegations place a cloud over Plaintiffs' business activities and will cause uncertainty among customers, prospective customers, suppliers, and others in the marketplace, likely leading Plaintiffs and/or their related companies to lose revenues and/or business opportunities.

19. On information and belief, the Accused Products do not infringe the Patents, as alleged by Schonbek.

20. Plaintiffs are entitled to a judgment declaring that any and all making, using, selling, offering for sale, and/or importing into the United States of the Accused Products by Plaintiffs, or either of them, is and has been lawful, and otherwise declaring that Plaintiffs have not infringed whatever rights, if any, that Defendant Schonbek may hold in the Patents.

21. As a direct and proximate result of Schonbek's allegations of patent infringement against products made, used, sold, offered for sale, and/or imported into the United States by or for Plaintiffs, Plaintiffs are suffering irreparable injury to their reputation and goodwill in an amount that cannot presently be ascertained and cannot be compensated adequately by monetary relief alone.

COUNT II

IN THE ALTERNATIVE, FOR INDEMNIFICATION FROM DEFENDANT BEL AIR

22. Plaintiffs incorporate by reference paragraphs 1 through 21 above as if set out fully herein.

23. On information and belief, Defendant Bel Air has supplied the accused products to Plaintiffs.

24. In the event that Plaintiffs, or either of them, are found liable for violating Schonbek's alleged patent rights under 35 U.S.C. § 1 *et seq.*, pursuant to the contractual agreement between Bel Air and Plaintiffs, Bel Air agreed to indemnify and hold harmless Plaintiffs from and against any and all liability, losses, and damage, arising out of any alleged infringement of any patent, design, trade name, trademark, trade dress, copyright or trade secret.

25. Defendant Bel Air's obligation to indemnify and hold harmless Plaintiffs includes court costs, expenses, and attorney's fees, and specifically applies to any alleged claims of patent infringement.

26. Additionally, Plaintiffs are entitled to an indemnification from Bel Air for all expenses and costs, including attorneys' fees, that are incurred by Plaintiffs as a result of their defense against the allegations made by Schonbek.

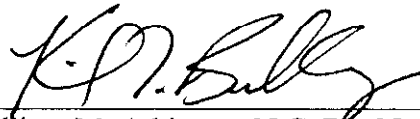
WHEREFORE, Plaintiffs Lowe's Companies, Inc. and Lowe's Home Centers, Inc. pray that this Court enter judgment:

- (a) Declaring that Plaintiffs, and including specifically the Accused Products made, used, imported, sold and/or offered for sale by Plaintiffs, or either of them, or their related companies, have not infringed any purported patent rights of Schonbek in the Patents, or otherwise violated any provision of the patent laws of the United States;
- (b) Permanently enjoining Schonbek, its successors, assigns, and others from asserting the Patents against Plaintiffs with respect to the Accused Products made, used, imported, sold and/or offered for sale by Plaintiffs, or either of them, or their related companies;
- (c) Finding in favor of Plaintiffs and declaring this case to be exceptional pursuant to 35 U.S.C. § 285;
- (d) Awarding Plaintiffs their attorneys' fees and other costs and expenses;
- (e) Awarding interest to Plaintiffs to the extent permitted by law;

- (f) In the alternative, awarding to Plaintiffs indemnification from Bel Air of all damages, costs, and expenses, including attorneys' fees, awarded to Schonbek as a result of any claim alleged by Schonbek;
- (g) Awarding to Plaintiffs indemnification from Bel Air of all damages, costs, and expenses, including attorneys' fees, incurred by Plaintiffs as a result of their defense against the allegations made by Schonbek; and
- (h) Awarding to Plaintiffs such further relief as the Court deems just and proper.

PLAINTIFFS HEREBY DEMAND A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

This 21st day of March, 2005.



William M. Atkinson, N.C. Bar No. 17830
Kirk T. Bradley, N.C. Bar No. 26490
ALSTON & BIRD LLP
101 South Tryon Street, Suite 4000
Charlotte, North Carolina 28280-4000
(704) 444-1000 (telephone)
(704) 444-1111 (facsimile)

ATTORNEYS FOR LOWE'S COMPANIES, INC.
and LOWE'S HOME CENTERS, INC.