

✓ K (Woo)  
ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS <b>FILED</b> SEP - 6 2007 CLERK, U.S. DISTRICT COURT By _____ Deputy
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14670

E'LITE OPTIK US, L.P.,

Plaintiff,

v.

HEUNG WOO LEE; SHIN WOO "KRIS"  
PARK; KNC OPTICAL, INC.

Defendants.

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CIVIL ACTION NO.

**307 - CV1515 - K**

JURY TRIAL DEMANDED

**COMPLAINT**

E'lite Optik US, L.P., ("E'lite") files this action complaining of defendants Heung Woo Lee; Shin Woo "Kris" Park; and KNC Optical, Inc. (collectively: "Lee"), and for causes of action would show as follows:

**INTRODUCTION**

Lee has harmed and continues to harm E'lite through its misappropriation of E'lite's proprietary technology (in violation of the parties agreement), by obtaining a fraudulent patent based on that technology, and by using that technology to unfairly compete with E'lite. Lee has also harmed E'lite and is continuing to harm E'lite by falsely advertising its products as "exclusive," and by warranting to prospective purchasers that Lee has the exclusive right to make and sell products containing E'lites technology. Finally, Lee has harmed E'lite by misappropriating E'lite's trade secrets, and violating its agreement with E'lite to keep those trade secrets confidential.

## NATURE OF THE SUIT

1. E'lite manufactures, markets and sells its clip-on eyewear technology under its "IntelliClip<sup>®</sup>" mark. This technology was invented by the founder of E'lite—Greg Smith, and Notice of Allowance for a United States Patent application based on this technology was dispatched by the USPTO August 27, 2007. E'lite's IntelliClip<sup>®</sup> eliminates the need for bulky magnets or post receptacles to be incorporated into eyeglass frames. Prior to E'lite's innovative IntelliClip<sup>®</sup> design, eyeglass frame designs were bulkier, heavier and restricted in design variations due to the necessary inclusion of relatively large magnets, receptacles or other devices on the frames to hold the clip-on in place.

2. Lee, despite being subject to an executed nondisclosure agreement, stole E'lite's proprietary technology, and unlawfully used it to defraud the United States Patent and Trademark Office ("USPTO") by filing a patent application claiming E'lite's invention as its own.

3. Based on Defendant Heung Woo Lee's fraudulent misrepresentations to the USPTO that he was the inventor of E'lite's technology, he was issued United States Patent No. 7,144,108 (the '108 patent).

4. Lee is now misleading consumers of eyewear products by representing to them that he is the rightful owner of the IntelliClip<sup>®</sup> technology, and that he has exclusive rights to market the technology.

5. E'lite files this action seeking judicial relief to terminate Lee's unlawful conduct and declare its fraudulently obtained patent invalid. If unchecked, Lee will continue to unlawfully profit from E'lite's technology, deceive the market through false advertising about its

own products, and engage in unfair competition. Lee's conduct is greatly and irreparably damaging E'lite.

6. E'lite seeks all relief the law allows, including declaratory relief, injunctive relief, and monetary damages.

### **PARTIES**

7. Plaintiff E'lite is a Texas limited partnership with its principal place of business in Carrollton, Texas, within the Northern District of Texas. E'lite is located at 3200 Earhart Drive Carrollton, TX 75006.

8. Defendants Heung Woo Lee and Shin Woo "Kris" Park are individuals who, upon information and belief, are Korean Nationals on extended stay in the United States for the purpose of conducting business which is the subject matter of this lawsuit. Upon information and belief, Defendants Heung Woo Lee and Shin Woo "Kris" Park may be served with process in this action by serving them at their last known domestic residence at 13907 Montfort Rd. Apartment 2223, Dallas Texas, 75240, or at their temporary residence at 4451 Belt Line Rd Addison, TX 75001.

9. Defendant KNC Optical, Inc., is a Texas Corporation with offices at 4801 Woodway Dr. Ste. 300, Houston, Texas 77056. Defendant KNC Optical, Inc., may be served with process in this action by serving its registered agent, Pacific Registered +, at the same address.

### **JURISDICTION AND VENUE**

10. These claims arise under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2201.

11. This court has subject matter jurisdiction under the patent laws set forth in Title 35 of the United States Code; in Title 28 of the United States Code, particularly 28 U.S.C. §§ 1331; and in 1338(a); Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B).

12. This Court has supplemental jurisdiction over E'lite's state law claims pursuant to 28 U.S.C. § 1367 because they are so related to E'lite's federal claims as to form a part of the same case or controversy.

13. This Court has personal jurisdiction over each of the Defendants. The facts giving rise to the claims in this complaint all arise out of the Defendant's actions within the State of Texas.

14. Lee has marketed and continue to market E'lite's IntelliClip<sup>®</sup> technology under its own "Freedom Clip" brand within Texas and the Northern District of Texas.

15. Lee's commercial activities carried on in Texas and elsewhere throughout the United States have had a substantial, direct and reasonably foreseeable effect on business and commerce in the Northern District of Texas and on interstate commerce.

16. Venue is proper in this District under 28 U.S.C. § 1391.

### **BACKGROUND FACTS**

17. E'lite is a leading United States eyewear manufacture. E'lite's IntelliClip<sup>®</sup> product incorporates micro-magnets into a clip-on that is custom made to fit a variety of eyeglass frames, also made by E'lite. E'lite's Intelliclip<sup>®</sup> design is a technological breakthrough that allows consumers of clip-on technology to choose from a broad array of stylish and ornate eyeglass frames. E'lite has been manufacturing, selling and marketing eyeglass frames and magnetic clips for the past eight years, and is considered among the best providers of innovative

and stylish eyewear solutions. E'lite attributes its success in part to its focus on state-of-the-art products, obtaining many patents in the field of eyewear during that time.

18. Among its innovative products, E'lite markets patented eyeglasses and corresponding clip-on shades for those eyeglasses under the name "IntelliClip®." IntelliClip® products have been marketed and sold since at least March 10th 2005, and are covered by United States Patent Application No. 11/273,133 (Patent allowed August 28, 2007, Patent Number not yet assigned).

19. E'lite engaged the Defendants to assist in the procurement and manufacture of certain eyewear products in 2003. On November 20, 2003, the parties executed a nondisclosure agreement ("NDA") wherein Lee agreed to keep E'lite's proprietary information and trade secrets confidential, and further agreed "not to use, appropriate copy, or disclose to any third party" any of E'lite's confidential or trade secret information.

20. Lee, after signing the NDA, obtained confidential and proprietary information from E'lite, including technical drawings, specifications and other information relating to E'lite's IntelliClip® products. Lee then violated its contractual obligations under the NDA by disclosing the information to a manufacturer and others, and using the information to manufacture, market and sell a competing product.

21. Lee further used E'lite's confidential information and trade secrets as the basis for a patent application. Lee fraudulently represented to the United States Patent and Trademark Office ("USPTO") that he was the sole inventor of the IntelliClip® technology. As a result, Lee received a patent on E'lite's technology December 5, 2006—U.S. Patent No. 7,144,108 (the '108 patent). Because this patent was fraudulently obtained, it is invalid and unenforceable.

22. Further, Lee, upon information and belief, has falsely represented to E'lite's customers and potential customers that it is the rightful owner of the IntelliClip® technology, or has misleadingly represented to those customers that it has the rights to the IntelliClip® technology. Lee has also advertised its "Freedom Clip" product in print magazines representing that it is the exclusive provider of the IntelliClip® technology.

**COUNT 1:  
NON-INFRINGEMENT AND INVALIDITY OF PATENT NO 7,144,108**

23. All preceding paragraphs of this Complaint are incorporated herein by reference as if fully set forth at length.

24. Plaintiff E'lite believes that Lee will assert or attempt to assert the '108 patent to allege infringement against E'lite and potentially E'lite's customers.

25. Plaintiff E'lite has not infringed the '108 patent.

26. The '108 patent is invalid and unenforceable because Heung Woo Lee failed to comply with his duty of candor to the USPTO during the patent application process. Defendant Heung Woo Lee violated his duty of candor by knowingly and falsely representing to the USPTO that he, rather than Greg Smith, was the inventor of the claimed technology. Defendants misappropriated the technology from E'lite and claimed it as their own.

27. Lee and/or its patent prosecution counsel, intentionally submitted false and misleading information to the USPTO, and omitted relevant information, with the intent to deceive the USPTO in order to obtain the claims in the '108 patent. All of the false, misleading or omitted information was relevant and material.

28. As a result of Lee's representations to the USPTO, the '108 patent issued based on a knowingly false statements and representations of inventorship, and is therefore invalid and unenforceable.

29. Because the invention that is the subject matter of the '108 patent rightfully belongs to E'lite, and because the '108 patent is invalid, E'lite does not infringe the '108 patent by marketing its own Intelliclip<sup>®</sup> technology.

**COUNT 2:  
FALSE ADVERTISING IN VIOLATION  
OF SECTION 43(A) OF THE LANHAM ACT**

30. All preceding paragraphs of this Complaint are incorporated herein by reference as if fully set forth at length.

31. Lee has, in connection with its "Freedom Clip" product, used in interstate commerce words, terms, names, and combinations thereof, and false and misleading descriptions and representations of fact, in commercial advertising and promotion to misrepresent the nature, characteristics, and qualities of its products, all in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B).

32. Lee has misleadingly and/or falsely used the words, terms, and names "exclusive" or "exclusively" and various other similar descriptions in commercial advertising and promotion to describe the nature, characteristics, and qualities of its "Freedom Clip" products, all in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B).

33. The foregoing descriptions, representations, and statements are illustrative, not exhaustive, and were made in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B).

34. Each of Lee's false descriptions, representations, statements, advertising, and promotions, described herein or otherwise, has been intentional and willful, and has deceived or has had the tendency to deceive a substantial portion of the intended audience in a material manner, which has influenced or has had the likelihood to influence purchasing decisions.

35. Moreover, Lee's wrongful acts have caused, and will continue to cause, E'lite to incur substantial damages, including, but not limited to, declining sales, loss of goodwill, lost profits, and loss of market share. E'lite therefore seeks recovery from Lee of all amounts it is entitled to under 15 U.S.C. § 1117(a), including, without limitation: (1) Lee's profits related to its false and misleading descriptions, representations, statements, advertisements, and promotions; (2) all damages sustained by E'lite; (3) the costs of this action; (4) treble damages, (5) reasonable attorney fees; and (6) an additional amount that the Court considers just.

36. E'lite pleads for prospective injunctive relief to enjoin Lee's ongoing false and misleading descriptions, representations, statements, advertisements, and promotions under 15 U.S.C. § 1116(a).

37. Lee has acted with unclean hands, and E'lite's claims under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B), further the public interest.

**COUNT 3:  
UNFAIR COMPETITION**

38. All preceding paragraphs of this Complaint are incorporated herein by reference as if fully set forth at length.

39. Lee's tortious conduct alleged above in this Complaint constitutes unfair competition in violation of the common law. Lee and E'lite are competitors. Lee has unfairly competed with and sought to destroy E'lite's business.

40. Lee's conduct has damaged E'lite.

**COUNT 4:  
MISAPPROPRIATION OF TRADE SECRETS**

41. All preceding paragraphs of this Complaint are incorporated herein by reference as if fully set forth at length.



42. Lee unlawfully disclosed and continues to unlawfully use E'lite's valuable trade secrets. Lee was provided information regarding E'lite's trade secrets in confidence, and it unlawfully misappropriated those trade secrets for its own benefit.

43. Lee's conduct has damaged E'lite.

**COUNT 5:  
BREACH OF CONTRACT**

44. All preceding paragraphs of this Complaint are incorporated herein by reference as if fully set forth at length.

45. Lee breached its contractual obligations set forth in the Nondisclosure and Assignment executed by the parties November 20, 2003.

46. Lee's conduct has damaged E'lite.

**INJUNCTIVE RELIEF**

47. All preceding paragraphs of this Complaint are incorporated herein by reference as if fully set forth at length.

48. E'lite is entitled to a permanent injunction preventing Lee from continuing to advertise its "Freedom Clip" product, using false and misleading descriptions and representations of fact, such as "exclusive" or "exclusively offered by" or even "offered by" given that it may not lawfully offer such products containing E'lite's proprietary technology.

49. Lee's violations of federal and Texas law are continuing, and Lee has demonstrated that it will continue in all of the conduct described herein unless enjoined. E'lite is threatened with irreparable harm from these continuing and future violations.

### **PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, Plaintiff E'lite Technologies, Inc. prays that Defendant Lee will be cited to appear and answer herein and for Judgment of this Honorable Court as follows:

- (a) The '108 patent is not infringed by E'lite;
- (b) The '108 patent is invalid and unenforceable;
- (c) That this is an exceptional case under 35 U.S.C. § 285 and that E'lite is entitled to its attorneys fees and costs;
- (d) A permanent injunction be entered against Lee, and its officers, agents, servants and employees, and all entities and individuals acting in concert with them, to permanently restrain any further advertisement, marketing, selling, use or importation of any product containing or relating to E'lite's proprietary technology;
- (e) Award E'lite (i) Lee's profits, (ii) E'lite's damages, and (iii) costs of the action, pursuant to 15 U.S.C. § 1117(a);
- (f) Awarding E'lite all reasonable attorneys' fees allowed by statute, expert fees, costs, pre-judgment interest, and post-judgment interest; and
- (g) Granting all such other relief, at law and in equity, to which E'lite is entitled.

### **JURY DEMAND**

E'lite demands a trial by jury as is its right under the Seventh Amendment to the Constitution of the United States or as given by statute. FED. R. CIV. P. 38.

Dated: September 6, 2007

Respectfully submitted,

/s/ Jason Mueller

Roy W. Hardin  
Texas Bar No. 08968300  
Jason Mueller  
Texas Bar No. 24047571

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E'LITE OPTIK US L.P.

DALLAS: 910000.10000: 1623336v1

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS  
E'lite Optik-US, L.P.

DEFENDANTS

Heung Woo Lee; and Shin Woo "Kris" Park LLC; KNC Optical, Inc.;

(b) County of Residence of First Listed Plaintiff Dallas County, TX  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Dallas County, TX  
(IN U.S. PLAINTIFF CASES ONLY)

(c) Attorney (Firm Name, Address, and Telephone Number)

Jason Mueller; Locke Liddell & Sapp, PLLC  
2200 Ross Ave, Suite 2200, Dallas, TX 75201; Phone (214) 740-8000

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NORTHERN DISTRICT OF TEXAS

307 - CV1515 - K

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       |                                       |   |                                       |                                       |
|---|---------------------------------------|---------------------------------------|---|---------------------------------------|---------------------------------------|
|   | PTF                                   | DEF                                   |   | PTF                                   | DEF                                   |
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1            | Incorporated or Principal Place of Business In This State     | <input checked="" type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2            | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5            | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input checked="" type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6            | <input type="checkbox"/> 6            |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
G 110 Insurance G 120 Marine G 130 Miller Act G 140 Negotiable Instrument G 150 Recovery of Overpayment & Enforcement of Judgment G 151 Medicare Act G 152 Recovery of Defaulted Student Loans (Excl. Veterans) G 153 Recovery of Overpayment of Veteran's Benefits G 160 Stockholders' Suits G 190 Other Contract G 195 Contract Product Liability	<b>PERSONAL INJURY</b> G 310 Airplane G 315 Airplane Product Liability G 320 Assault, Libel & Slander G 330 Federal Employers' Liability G 340 Marine G 345 Marine Product Liability G 350 Motor Vehicle G 355 Motor Vehicle Product Liability G 360 Other Personal Injury	<b>PERSONAL INJURY</b> G 362 Personal Injury—Med. Malpractice G 365 Personal Injury—Product Liability G 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> G 370 Other Fraud G 371 Truth in Lending G 380 Other Personal Property Damage G 385 Property Damage Product Liability	<b>LABOR</b> G 710 Fair Labor Standards Act G 720 Labor/Mgmt. Relations G 730 Labor/Mgmt. Reporting & Disclosure Act G 740 Railway Labor Act G 790 Other Labor Litigation G 791 Empl. Ret. Inc. Security Act	<b>PROPERTY</b> G 820 Copyrights <input checked="" type="checkbox"/> 830 Patent G 840 Trademark <b>SOCIAL</b> G 861 HIA (1395ff) G 862 Black Lung (923) G 863 DIWC/DIWW (405(g)) G 864 SSID Title XVI G 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> G 870 Taxes (U.S. Plaintiff or Defendant) G 871 IRS—Third Party 26 USC 7609	G 400 State Reapportionment G 410 Antitrust G 430 Banks and Banking G 450 Commerce/ICC Rates/etc. G 460 Deportation G 470 Racketeer Influenced and Corrupt Organizations G 810 Selective Service G 850 Securities/Commodities/Exchange G 875 Customer Challenge 12 USC 3410 G 891 Agricultural Acts G 892 Economic Stabilization Act G 893 Environmental Matters G 894 Energy Allocation Act G 895 Freedom of Information Act G 900 Appeal of Fee Determination Under Equal Access to Justice G 950 Constitutional of State Statutes G 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
G 210 Land Condemnation G 220 Foreclosure G Rent Lease & Ejectment G 240 Torts to Land G 245 Tort Product Liability G 290 All Other Real Property	G 441 Voting G 442 Employment G 443 Housing/Accommodations G 444 Welfare G 440 Other Civil Rights	G 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> G 530 General G 535 Death Penalty G 540 Mandamus & Other G 550 Civil Rights G 555 Prison Condition			

V. ORIGIN

- (PLACE AN "X" IN ONE BOX ONLY)
- 1 Original Proceeding
  - 2 Removed from State Court
  - 3 Remanded from Appellate Court
  - 4 Reinstated or Reopened
  - 5 Transferred from another district (specify)
  - 6 Multidistrict Litigation
  - 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION:

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. (Do not cite jurisdictional statutes unless diversity):

35 U.S.C. §§ 1 et seq.; 15 U.S.C. 1125(a): Declaratory Judgment Complaint seeking non-infringement and invalidity of Patent 7144108 and False Advertising and related claims.

VII. REQUESTED IN COMPLAINT G DEMAND: Unspecified damages, declaratory relief and injunctive relief

CHECK YES only if demanded in complaint:

JURY DEMAND:  Yes  No

VIII RELATED CASE(S) IF ANY (See instructions): None known.

Date 9/6/07 JUDGE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG JUDGE \_\_\_\_\_