

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

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Buy-Global, Inc.,)
)
Plaintiff,) **COMPLAINT**
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v.)
)
Style Asia Inc.,)
)
Defendants.)
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COMPLAINT

Plaintiff Buy-Global, Inc. (“Buy-Global” or “Plaintiff”) by and through its attorneys, for its complaint against defendant Style Asia Inc. (“Style Asia” or “Defendant”), hereby alleges as follows:

NATURE OF ACTION

This is an action for declaratory judgment that the only claim of U.S. Patent No. D646,411 S (the “411 design patent”) is not infringed either directly, contributorily or by inducement, and is invalid. A true and correct copy of the ‘411 design patent as retrieved from uspto.gov is attached hereto as Exhibit 1.

PARTIES

1. Buy-Global is a New York corporation with a principal place of business at 530 Eagle Avenue, West Hempstead, NY 11552.
2. Upon information and belief, Style Asia is a New Jersey corporation having a business address at 101 Moonachie Avenue, Moonachie, NJ 07074.
3. Buy-Global conducts business throughout this judicial district.

JURISDICTION AND VENUE

4. This action arises under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, under the patent laws of the United States, Title 35 of the United States Code. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1337, 1338, 1367, 2201 and 2202.

5. Upon information and belief, Defendant is subject to this Court's jurisdiction because it transacts, and continues to transact, business within this judicial district, and has had continuous and systematic contacts in this judicial district.

6. Upon information and belief, Defendant is subject to this Court's personal jurisdiction in accordance with due process and/or the New York long-arm statute, N.Y. C.P.L.R. § 302 because it transacts business in New York State.

7. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400.

BACKGROUND

8. Upon information and belief, Style Asia claims to be the exclusive owner of the '411 design patent.

9. On or about September 14, 2012, Style Asia sent a letter (the "September 14, 2012 letter") to Buy-Global captioned "Infringement of U.S. Design Patent No. D 646, 411. The September 14, 2012 letter states in relevant part:

Style Asia has advised us that Buy-Global, Inc. is offering for sale, selling and/or importing into the United States a lantern which is identical or virtually identical to that set forth in our client's '411 patent. Our client has not been able to obtain any product or sell sheets for your product and is unable to access additional information on the lantern over the Internet. However, our client indicates that your company has been offering the infringing lantern to its clients at a discounted price. Accordingly, we hereby notify you that we consider the manufacture, importation, use and/or sale of a substantially similar product to constitute infringement of the above-mentioned patent.

We therefore demand that you immediately cease and desist from such patent infringement forthwith and that you inform us in writing, within ten (10) days of your receipt of this letter, that you have ceased such infringement and will refrain from any infringement in the future during the term of said patent. In addition, we demand that you provide us with a full accounting of your prior infringing manufacture, importation and/or sale of this product to date. In addition, we demand the name and address of your supplier and/or the manufacturer and the persons or entities to whom you have transferred and/or sold this infringing merchandise. *Otherwise, our client will take all necessary legal steps to protect its patent rights.* (emphasis added)

10. The September 14, 2012 letter was received by Buy-Global at its place of business in New York.

11. Upon information and belief, Style Asia markets a product with the design of the ‘411 design patent as the Olde Brooklyn Lantern.

12. Upon information and belief, the product marketed as the Olde Brooklyn Lantern is not marked with the patent number of the ‘411 design patent or with any other indicia that it is subject by a U.S. design patent.

13. Upon information and belief, Defendant filed the patent application that issued as the ‘411 design patent with full knowledge of relevant prior art.

COUNT 1

NONINFRINGEMENT OF THE ‘411 DESIGN PATENT

14. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 13 above.

15. An actual controversy exists as to whether Plaintiff has infringed the ‘411 design patent.

16. Defendant has, by its September 14, 2012 letter, threatened to bring suit against Plaintiff for infringing the ‘411 design patent.

17. Plaintiff’s products do not infringe the ‘411 design patent.

18. Plaintiff has not infringed, and is not infringing, any valid claim of the '411 design patent has not contributed to, and is not contributing to, the infringement of any valid claim of the '411 design patent.

19. Plaintiff has not induced, and is not inducing, infringement of any valid claim of the '411 design patent.

20. Based on the foregoing, Plaintiff has a reasonable apprehension of a patent infringement lawsuit suit by Defendant and Plaintiff is entitled to a declaratory judgment from this Court that Plaintiff does not infringe the '411 design patent, directly or as a contributory or inducing infringer.

21. Style Asia's failure to mark its products in accordance with 35 U.S.C. § 287 prevents any claim of damages for infringement before Buy-Global's actual notice of the '411 design patent.

COUNT 2

INVALIDITY OF THE '411 DESIGN PATENT

22. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 21 above.

23. An actual controversy exists as to the validity of the '411 design patent.

24. Defendant has, by its September 14, 2012 letter, threatened to bring suit against Plaintiff for infringing the '411 design patent.

25. The '411 design patent is invalid for any of 35 U.S.C. §§ 102, 103 and/or 112.

26. Based on the foregoing, Plaintiff has a reasonable apprehension of a patent infringement lawsuit suit by Defendant and Plaintiff is entitled to a declaratory judgment from this Court that the '411 design patent is invalid for any of 35 U.S.C. §§ 102, 103 and/or 112.

RESERVATION OF RIGHTS

27. The above allegations and claims are based upon information known to Buy-Global, and/or upon Buy-Global's information and belief at this time. Buy-Global's discovery and investigation in this action is continuing and Buy-Global reserves its right to supplement and/or amend such allegations and claims.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

- (a) Declare that Plaintiff has not infringed, and does not infringe, the '411 design patent, directly, contributorily or by inducement;
- (b) Declare that Style Asia has not properly marked its products pursuant to 35 U.S.C. § 287;
- (c) Declare that the '411 design patent is invalid for any of the 35 U.S.C. §§ 102, 103 and/or 112;

(d) Declare this case “exceptional” under 35 U.S.C. § 285, and award Plaintiff its attorneys fees and costs in connection with this matter; and

(e) Grant Plaintiff such other and further relief as is just and proper, including its costs for this action.

Respectfully submitted,
Attorney for Plaintiff

Dated: October 4, 2012

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