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Red Star Traders, LLC and Costco Wholesale Corporation.

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

<p>RED STAR TRADERS, LLC, a Utah limited liability company, and COSTCO WHOLESALE CORPORATION, a Washington corporation,</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>WANDA YING LI, an individual, and TREASURE GARDEN, INC., a California corporation, OLIVER JOEN-AN MA, an individual.</p> <p style="text-align: center;">Defendants.</p>	<p>Civil Action No. 2:12-cv-00787-DAK</p> <p><b>FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT</b></p> <p><b>JURY DEMANDED</b></p> <p>Honorable Dale A. Kimball</p>
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Plaintiffs, Red Star Traders, LLC (“Red Star”) and Costco Wholesale Corporation (“Costco”) (collectively “Plaintiffs”) complain and allege against defendants, Wanda Ying Li (“Li”), Treasure Garden, Inc. (“Treasure Garden”), and Oliver Joen-An Ma (“Ma”) (collectively “Defendants”), as follows:

**THE PARTIES**

1. Plaintiff Red Star is a Utah limited liability company with its principal place of business at 1775 West 2300 South, Salt Lake City, Utah 84119.

2. Plaintiff Costco Wholesale Corporation is a corporation with its principal place of business at 999 Lake Drive, Issaquah, Washington 98027.

3. On information and belief, Defendant Li is an individual with her principal place of residence in Los Angeles County in the state of California and, on information and belief, transacts business in the State of Utah.

4. On information and belief, Defendant Treasure Garden is a corporation with its principal place of business at 13401 Brooks Drive, Baldwin Park, CA 91706 and, on information and belief, transacts business in the State of Utah.

5. On information and belief, Defendant Oliver Joen-An Ma is an individual with his principal place of residence at 29 W. Wisteria, Arcadia, California 91007 and, on information and belief, transacts business in the State of Utah.

6. This is a Declaratory Judgment action pursuant to 28 U.S.C. §§ 2201 and 2202. This Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1338(a), 1332(a), 1367(a), 2201, and 2202.

7. On information and belief, Defendants have transacted business, contracted to supply goods or services, caused injury within the State of Utah, or have otherwise purposely availed themselves of the privileges and benefits of the laws of the State of Utah and are therefore subject to the jurisdiction of this Court pursuant to at least Rule 4(k)(1)(A) of the

Federal Rules of Civil Procedure and Utah Code Ann. §§ 78B-3-205. Defendants have also targeted their patent enforcement efforts towards the Plaintiffs' business interests in the State of Utah.

8. This Court's exercise of personal jurisdiction over Defendants is consistent with the Constitutions of the United States and the State of Utah.

9. Venue is proper in this district pursuant to at least 28 U.S.C. § 1391(b).

### **BACKGROUND**

10. Red Star is a direct import, product marketing company that provides its customers with product development, overseas manufacturing, and domestic distribution services, and Red Star's business includes hundreds of different products, including outdoor furniture, and, more specifically, outdoor umbrellas.

11. Costco is a retail establishment that sells thousands of different products throughout the United States, including outdoor furniture, and more specifically, outdoor umbrellas.

12. Two other actions are pending between the parties regarding infringement of patents for umbrella bases.

13. The first related action was filed on April 8, 2011 in the United States District Court for the Central District of California titled *Wanda Ying Li v. Costco Wholesale Corporation, and Red Star Traders, LLC*, U.S.D.C. Case No. CV11-02996 JHN (FMOx) (C.D. Cal.) (the "first related action").

14. In the first related action, Li filed a complaint for infringement of U.S. Patents Nos. 6,488,254; 6,585,219; 6,511,033; and 6,637,717 against Red Star and Costco on a now

discontinued design. Red Star and Costco sought a declaration of non-infringement and invalidity of the asserted patents. The first related action is ongoing.

15. On July 20, 2012, Li, through her attorney A. Justin Lum, asserted in a letter directed to Plaintiffs that Plaintiffs' current umbrella stand and/or outdoor umbrella infringe Li's U.S. Patents Nos. 7,513,479 ("479 patent"), 7,641,165 ("165 patent"), and 7,891,633 ("633 patent") and demanded that Plaintiffs immediately cease and desist their sales of Red Star's outdoor umbrella and account for the number of umbrellas imported and sold. *See Exhibit A.*

16. As a result of Li's actions, Plaintiffs had a reasonable apprehension that Li would commence litigation against Plaintiffs on the '479, '165, and '633 patents. Accordingly, this current Declaratory Judgment action was commenced and filed on August 13, 2012. *See United States District Court for the District of Utah, Civil Case No. 2:12-cv-787-DAK, Dkt. No. 2.*

17. On October 5, 2012, Defendant Treasure Garden filed suit in the United States District Court for the Central District of California, titled *Treasure Garden, Inc. v. Red Star Traders, LLC, and Costco Wholesale Incorporation*, U.S.D.C. Case No. CV12-0857 DDP (JEMx) (C.D. Cal.) (the "second related action"). *See Exhibit B.*

18. In the second related action, Treasure Garden alleges the Red Star and Costco infringe of the '479 patent and the '165 patent. Both of these patents are the subject of this current Declaratory Judgment action, and which Li asserted against Red Star and Costco in her July 20, 2012 letter. As noted by the dates each lawsuit was filed, the current Declaratory Judgment action in Utah was filed (August 13, 2012) almost two months before the second related action was filed (October 5, 2012) in the Central District of California. *See United States*

*District Court for the District of Utah, Civil Case No. 2:12-cv-787-DAK, Dkt. No. 2; and Exhibit B.*

19. Defendant Ma is listed on assignments recorded with the United States Patent and Trademark Office as the assignee for the '479, '165, and '633 patents. *See Exhibit C.*

20. The '165 assignment was executed on August 30, 2011. The '479 and the '633 assignments were executed on December 14, 2011. *See Exhibit C.* Such assignments transferred all “right, title, and interest in and to” such patents from Defendant Li to Defendant Ma. *Id.*

21. After such assignments, Defendant Li had no right to assert any rights in the '633, '479 and the '165 patents. Nevertheless, Defendant Li directed her July 20, 2012 letter to Plaintiffs, in Utah, wrongfully asserting her alleged rights in the '633, '479 and the '165 patents, and demanded that Plaintiffs “immediately cease and desist” their sales of their outdoor umbrella products. *See Exhibit A.*

22. Treasure Garden stated in its Complaint in the second related action that Treasure Garden is the “exclusive licensee with substantial right to sue.” *See Exhibit B, pp. 2 – 3.*

23. The California Secretary of State, Business Entity Detail website lists Defendant Ma as the agent for service of process for Defendant Treasure Garden, Inc. *See Exhibit D.*

24. Plaintiffs deny that any of their activities or products infringe any valid claim of the '479, '165, or '633 patents or any other valid, enforceable patent, if any, purportedly owned by Defendants.

25. As a result of Defendants' actions, there is also a substantial, continuing, and justiciable controversy between Plaintiffs and Defendants as to Defendants' right to threaten or maintain suit for infringement of the '479, '165, and '633 patents, as to the validity, scope, and

enforceability thereof, and as to whether Red Star infringes any valid and enforceable claim of the '479, '165, and '633 patents.

26. As a result of Defendants' actions, Plaintiffs seek a declaratory judgment from this Court that their activities do not directly infringe, do not induce infringement, and do not contributorily infringe any valid and enforceable claims, if any, of the '479, '165, or '633 patents.

27. Plaintiffs also seek a declaratory judgment from this Court that the claims of the '479, '165, and '633 patents are invalid.

**FIRST CAUSE OF ACTION  
(Declaratory Judgment of No Infringement)**

28. By this reference, Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

29. Defendants have claimed that Plaintiffs infringe the '479, '165, and '633 Patents.

30. Defendants have demanded that Plaintiffs immediately cease and desist their sales of their allegedly infringing umbrellas and account for the number of umbrellas imported and sold by Defendants.

31. As a result of Defendants' actions, there is an actual and substantial case or controversy between Plaintiffs and Defendants of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

32. Defendants allege that their activities or products do not directly infringe, do not induce infringement, and do not contributorily infringe any valid and enforceable claim, if any, of the '479, '165, or '633 Patents.

33. By reason of the foregoing, and pursuant to 28 U.S.C. §§ 2201 and 2202, Plaintiffs request a declaration from this Court that Plaintiffs' activities and products do not directly infringe, do not induce infringement, and do not contributorily infringe any valid and enforceable claim, if any, of the '479, '165, or '633 Patents.

**SECOND CAUSE OF ACTION**  
(Declaratory Judgment of Invalidity)

34. By this reference Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

35. Defendants have demanded that Plaintiffs immediately cease and desist their sales of their allegedly infringing umbrellas and account for the number of umbrellas imported and sold.

36. As a result of Defendants' actions, there is an actual and substantial case or controversy between Plaintiffs and Defendants of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

37. Plaintiffs allege that the claims of the '479, '165, and '633 Patents are invalid.

38. Plaintiffs allege on information and belief that the claims of the '479, '165, and '633 patents are invalid because, among other things, in view of the prior art, and further in view of the basic deficiencies of the '479, '165, and '633 patents, they fail to satisfy one or more of the provisions for patentability set forth in at least Title 35, Part II, United States Code §§ 102, 103, and 112, and the rules, regulations, and law pertaining thereto.

39. By reason of the foregoing, and pursuant to 28 U.S.C. §§ 2201 and 2202, Plaintiffs request a declaration from this Court that the '479, '165, and '633 patents are invalid.

**THIRD CAUSE OF ACTION**  
(Tortious Interference with Economic Relations)

40. By this reference Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

41. As set forth above, Defendant Li directed her July 20, 2012 letter to Plaintiffs, in Utah, asserting her alleged rights in the '633, '479 and '165 patents, accusing Plaintiffs of infringing various claims of such patents.

42. As set forth above, when Defendant Li sent her July 20, 2012 letter, she had previously assigned her "entire right, title and interest in and to" the '633, '479 and '165 patents to Defendant Ma. Accordingly, Li had no right to assert the '633, '479 and '165 patents at the time of her July 20, 2012 letter. *See Exhibit C.*

43. Yet despite having no right to assert the '633, '479 and '165 patents, Defendant Li alleged that Plaintiffs infringe such patents, and demanded that Plaintiffs "immediately cease and desist its sales" of their outdoor umbrellas. *See Exhibit A.*

44. Defendant Li's actions constitute tortious interference with economic relations. This includes, but is not limited to, Defendant Li: (1) fraudulently asserting rights to the '633, '479 and '165 patents; (2) alleging infringement of such patents; and (3) demanding that Plaintiffs cease and desist all sales of their umbrella products – all while Defendant Li knew that she had no right to assert any claim of infringement to such patents.

45. The allegations and misrepresentations of Defendant Li's July 20, 2012 letter were an intentional interference with Plaintiffs' existing and potential economic relations. The misrepresentations and false assertions set forth in such letter were made for an improper purpose or by an improper means. Further, such interference caused injury to the Plaintiffs.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for relief against Defendant as follows:

- A. A declaratory judgment that Plaintiffs' activities and products do not directly infringe, do not induce infringement, and do not contributorily infringe any valid and enforceable claim, if any, of the '479, '165, or '633 patents.
- B. A declaratory judgment that the claims of the '479, '165, and '633 patents are invalid;
- C. An order from this Court preliminarily and permanently enjoining Defendants, their agents and servants, and any and all parties acting in concert with her from alleging that Plaintiffs infringe any claim of the '479, '165, or '633 patents.
- D. That this be declared an exceptional case and that Plaintiffs be awarded their attorneys' fees against Defendants pursuant to 35 U.S.C. § 285;
- E. That the Court award Plaintiffs damages for the tortious interference with economic relations claim, in an amount found appropriate by the jury; and
- E. For such other and further relief as the Court in its discretion deems appropriate.

**JURY DEMAND**

Plaintiffs demand a trial by jury on all issues triable to a jury as a matter of right.

DATED October 23, 2012.

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By: /s/ Robert E. Aycock

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