

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 1:12-cv-2859

DE-KOR BY MILE HIGH BALUSTERS, INC.,
a Colorado corporation,

Plaintiff,

v.

CREATIVE INDUSTRIES, LLC,
a Texas limited liability corporation,
UNIVERSAL FOREST PRODUCTS, INC.,
a Michigan corporation, and
UNIVERSAL CONSUMER PRODUCTS, INC.,
a Michigan corporation,

Defendants.

FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, by and through its undersigned attorneys, states and alleges its First Amended Complaint against Defendants as follows. Allegations made on information and belief are premised on the belief that the same are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

I. PARTIES

1. Plaintiff, DE-KOR by Mile High Balusters, Inc. (“Plaintiff”), is a corporation organized and existing under the law of the State of Colorado and has its principal place of business at 2655 South Santa Fe Drive, Unit 4-A, Denver, Colorado 80223.

2. Defendant Creative Industries, LLC (“CREATIVE” or “Defendant”), is a limited liability company organized and existing under the law of the State of Texas and has its principal place of business at 140 Old San Antonio Road, Boerne, Texas 78006-3413.

3. Defendant Universal Forest Products, Inc. (“UFP” or “Defendant”), is a corporation organized and existing under the law of the State of Michigan and has its principal place of business at 2801 East Beltline NE, Grand Rapids, Michigan 49525.

4. Defendant Universal Consumer Products, Inc. (“UCP” or “Defendant”), is a corporation organized and existing under the law of the State of Michigan and has a principal place of business at 2801 East Beltline NE, Grand Rapids, Michigan 49525.

5. Upon information and belief, at all relevant times, UCP has been a wholly owned subsidiary of UFP. UCP and UFP present themselves to the public, such as via a website, in a manner that suggests they are one entity and act as one entity, without practical distinction.

II. SUBJECT MATTER JURISDICTION

6. This action arises under the patent laws of the United States, 35 U.S.C. § 1 et seq. This Court has jurisdiction over the subject matter under the provisions of 28 U.S.C. §§ 1338, 1367, and 2201. This Court also has jurisdiction over this action under 28 U.S.C. § 1332, as there is diversity of citizenship between the parties, and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

III. IN PERSONAM JURISDICTION

7. Jurisdiction over the person of Defendants is vested in this Federal Judicial District in that Defendants each have transacted business, are found, and are amenable to service of process in this District.

IV. VENUE

8. Venue over the action is proper in this Federal Judicial District under 28 U.S.C. §§ 1391(b) and 1400(b).

V. COUNT ONE

INFRINGEMENT OF U.S. PATENT NO. 8,297,777

9. Plaintiff realleges and incorporates herein by references the averments in paragraphs 1-8 above.

10. On October 30, 2012, United States Letters Patent No. 8,297,777 (“the ’777 Patent”) was duly and validly issued to Plaintiff for an invention entitled “Barrier With Ornamental Lighting”. Plaintiff has owned the ’777 Patent since its issuance, and Plaintiff continues to own the ’777 Patent. A copy of the ’777 Patent is attached hereto as Exhibit A.

11. Defendants have infringed and are about to infringe and continue to infringe the ’777 Patent by at least making, using, offering to sell, and selling in the United States railings incorporating the products known as “Lighted Willow Balusters”, “Lighted Square Balusters”, “Lighted Basket Baluster”, “Lighted Cubic Baluster”, “Lighted Orb Baluster”, “Lighted Tear Baluster”, “Dual Lighted Basket Baluster”, “Dual Lighted Cubic Baluster”, “Dual Lighted Orb Baluster”, “Dual Lighted Tear Baluster”, and “Dual Lighted Willow Baluster” (hereinafter “Accused Balusters”).

12. Defendants, with knowledge of the '777 Patent, have contributorily infringed and are about to contributorily infringe and continue to contributorily infringe the '777 Patent by at least offering to sell and selling in the United States at least the Accused Balusters either alone or together with associated rails and/or electrical components, sometimes in a kit, which items constitute a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of the '777 Patent, and not a staple article or commodity of commerce suitable for substantially non-infringing use.

13. Defendants have disseminated photographs, drawings, and assembly and installation instructions, such as via Defendants' websites, that encourage and direct others to employ such items in a manner that infringes the '777 Patent.

14. Defendants, with knowledge of the '777 Patent, have induced others to infringe and are about to induce others to infringe and continue to induce others to infringe the '777 Patent.

15. Plaintiff has complied with the statutory marking requirement of placing a notice of the '777 Patent to the extent that Plaintiff has made or sold products covered by the '777 Patent.

16. Plaintiff has suffered damage and harm due to Defendants' infringement of the '777 Patent. Plaintiff is unaware of the full monetary amount or value of the damages and harm Plaintiff has suffered as the result of Defendants' infringement.

17. Defendants' infringement has caused, and, unless enjoined by this Court, will continue to cause, irreparable damage and injury to Plaintiff. It would be difficult to ascertain the exact amount of compensation which would afford Plaintiff adequate relief for such continuing acts of infringement, and a multiplicity of judicial proceedings would be required to determine such amount of compensation. Plaintiff has no adequate remedy at law.

VI. COUNT TWO
INJUNCTIVE RELIEF FOR PROSPECTIVE INFRINGEMENT OF U.S.
PATENT NO. 8,297,777

18. Plaintiff realleges and incorporates herein by reference the averments in paragraphs 1-17 above.

19. Plaintiff seeks, pursuant to 35 U.S.C. § 283, to prevent prospective violations of its rights in the '777 Patent by Defendants' prospective acts of infringement, including contributory infringement and inducing infringement.

VII. COUNT THREE
DECLARATORY JUDGMENT OF INFRINGEMENT OF U.S. PATENT
NO. 8,297,777

20. Plaintiff realleges and incorporates herein by reference the averments in paragraphs 1-19 above.

21. Plaintiff seeks a declaration that Defendants' prospective acts constitute infringement, including contributory infringement and inducing infringement, of the '777 Patent.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief against Defendants:

A. That this Court enter judgment that Defendants have each infringed the '777 Patent.

B. That this Court enter judgment that Defendants are each liable as contributory infringers of the '777 Patent.

C. That this Court enter judgment that Defendants each have induced infringement of the '777 Patent.

D. That this Court enter judgment that Plaintiff be awarded its actual damages from Defendants' infringement, contributory infringement, and inducing infringement of the '777 Patent, including, but not limited to, a recovery of Plaintiff's profits lost because of such infringement.

E. That this Court increase said damages pursuant to 35 U.S.C. § 284.

F. That this Court award Plaintiff its attorney fees pursuant to 35 U.S.C. § 285.

G. For a preliminary, and thereafter a permanent, injunction enjoining each of Defendants, its officers, agents, servants, employees and attorneys, and those in active concert or participation with them, and each Defendant's successors and assigns from further infringement of the '777 Patent, including, but not limited to, making, using, offering to sell, selling, and importing in the United States the products known as "Lighted Willow Balusters", "Lighted Square Balusters", "Lighted Basket Baluster", "Lighted Cubic Baluster", "Lighted Orb Baluster", "Lighted Tear Baluster", "Dual Lighted Basket Baluster", "Dual Lighted Cubic Baluster", "Dual Lighted Orb Baluster", "Dual Lighted Tear Baluster", and "Dual Lighted Willow Baluster" and from inducing their customers to use and or employ such products in a manner that infringes the '777 Patent.

H. That Plaintiff be awarded its costs of this action.

I. That Plaintiff have such other and further relief as this Court may deem just and proper.

JURY DEMAND

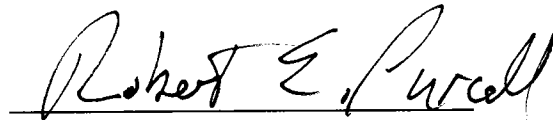
Plaintiff demands a jury trial of all issues so triable.

Respectfully submitted,

The Law Office of Robert E. Purcell, PLLC

Date:

1/9/13



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ATTORNEYS FOR PLAINTIFF

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CERTIFICATE OF SERVICE

I certify that on January 9, 2013, a true and correct copy of FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL was served by First Class Mail and email (pdf) as follows:

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