

**IN THE UNITED STATES DISTRICT COURT
FOR DISTRICT OF NEW JERSEY**

SIMON NICHOLAS RICHMOND,)

Plaintiff,)

v.)

WALGREEN CO.,)

Defendant.)
_____)

Civil Action No.

COMPLAINT AND JURY DEMAND

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COMPLAINT AND JURY DEMAND

Plaintiff Simon Nicholas Richmond (“Richmond” or “Plaintiff”), for his claims against Defendant Walgreen Co. makes and files this Complaint and alleges as follows:

1. THE PARTIES

A. Plaintiff Richmond.

1. Plaintiff Richmond is an individual and resident of New Jersey.

B. Defendant Walgreens.

2. Upon information and belief, Defendant Walgreen Co. (hereinafter “Walgreens”) is a corporation organized and existing under the laws of the State of Illinois, having a principal place of business at 200 Wilmot Road, Deerfield, Illinois 60015. Walgreens may be served through its agent for service of process, Illinois Corporation Service C, 801 Adlai Stevenson Drive, Springfield, IL 62703.

2. SUBJECT MATTER JURISDICTION

3. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code, including 35 U.S.C. §§ 271 and 281-285. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. PERSONAL JURISDICTION AND VENUE

A. General.

4. Personal jurisdiction over the Defendant is proper pursuant to New Jersey Long-Arm Statute, J.J. CT. R. 4:4-4 and principles of due process.

5. Walgreens has sufficient minimum contacts with New Jersey and this district and the maintenance of this suit does not offend traditional notions of fair play and substantial justice.

B. Specific Jurisdiction.

6. Personal jurisdiction over Walgreens is proper under principles of specific jurisdiction. Upon information and belief, Walgreens has transacted and solicited business in New Jersey and in this district related to the subject matter of the claims alleged herein and, upon information and belief, has committed infringement in this state and district by importing, offering to sell and/or selling goods infringing one or more of the Patents-in-Suit, to one or more customers in this state and district, and/or by exposing for sale, offering for sale and/or selling such infringing goods to New Jersey residents. Further, Walgreens's infringement that is the subject of the claims alleged has caused Plaintiff to suffer damages and other losses in New Jersey and this district, a result that was reasonably foreseeable to Walgreens at the time it committed its misconduct.

C. General Jurisdiction.

7. Personal jurisdiction over Walgreens is also proper under principles of general jurisdiction in that Walgreens either resides in this state and district and/or has regularly and purposefully conducted business in New Jersey and this district.

D. Venue.

8. Venue also properly lies in this district pursuant to 28 U.S.C. § 1400(b) because Walgreens either resides in this district and/or has committed acts of infringement in this district.

9. Venue also properly lies in this district under 28 U.S.C. § 1391(b) (2) and/or (3) because either a substantial part of the events giving rise to the claims recited below occurred in this district, or a substantial part of the property that is the subject of the action is in this district, or because there is no district in which the action may otherwise be brought as provided in 28 U.S.C. § 1391, and this court has personal jurisdiction over Walgreens.

5. FACTUAL BACKGROUND – PATENTS IN SUIT

10. For many years, Richmond has engaged in the development, manufacture, and sale of solar-powered garden lighting. Richmond has taken steps to protect his innovative inventions and designs. In particular, Richmond owns United States utility and design patents relating to his solar garden lights.

11. Richmond is the inventor and owner of all right, title, and interest to the United States patent number 7,196,477 A1, entitled “Solar Powered Light Assembly to Produce Light of Varying Colors,” (“the ’477 Color-Changing Patent”), which duly and legally issued to Richmond on March 27, 2007.

12. Richmond is the inventor and owner of all right, title, and interest to the United States patent number 7,429,827 A1, entitled “Solar Powered Light Assembly to Produce Light of Varying Colors,” (“the ’827 Color-Changing Patent”), which duly and legally issued to Richmond on September 30, 2008.

13. Richmond is the inventor and owner of all right, title, and interest to the United States patent number 8,362,700 A1, entitled “Solar Powered Light Assembly to Produce Light of Varying Colors,” (“the ’700 Color-Changing Patent”), which duly and legally issued to Richmond on January 29, 2013.

14. Richmond continues to engage in the development and sale of solar-powered garden lighting and continues to take steps to protect his innovative inventions and designs and in this regard has applied for additional patent protection for his inventions. For example, on November 3, 2011, United States Patent Publication No. US 2011/0266953 (the “’953 Published Application”) was published. A copy of the ‘953 Published Application may be obtained for free from

the official United States Patent and Trademark website, uspto.gov and is attached hereto as Exhibit 1. The invention as claimed in the ‘700 Patent is substantially identical to the invention as claimed in the ‘953 Published Application. On March 29, 2012, United States Patent Publication No. US 2012/0075104 A1 (the “‘104 Published Application”) was published, and on April 5, 2012, United States Patent Publication No. US 2012/0081888 A1 (the “‘888 Published Application”) was published. Copies of the ‘104 and ‘888 Published Applications may be obtained for free from the official United States Patent and Trademark website, uspto.gov and are attached as Exhibits 2 and 3, respectively.

15. At all times relevant to this action, Richmond has complied with any notice provisions of 35 U.S.C. § 287 as they may relate to the Patents in Suit.

6. COUNT NO. 1 – INFRINGEMENT OF PLAINTIFF’S PATENTS

16. Upon information and belief, Walgreens infringes one or more claims of Plaintiff’s, ‘477 and ‘827 Color Changing Patents and, for those sold on or after January 29, 2013, Plaintiff’s ‘700 Color-Changing Patent, by making, using, selling, offering to sell, and/or importing, a solar-powered garden light generally described as a “Living Solutions” brand Solar Fiber Optic Garden Stake, Item 220841 and/or by knowingly inducing others to do so.

17. Upon information and belief, Walgreens infringes one or more claims of Plaintiff's, '827 Color Changing Patents and, for those sold on or after January 29, 2013, Plaintiff's '700 Color-Changing Patent, by making, using, selling, offering to sell, and/or importing, a solar-powered garden light generally described as a "Living Solutions" brand Color-Changing Solar Crackle Light/Solar Mini Crackle Glass Stake, Item 218927 and/or by knowingly inducing others to do so.

18. Upon information and belief, Walgreens also sells and/or has sold one or more other models of solar-powered lights which infringe one or more claims of Plaintiff's '477 and '827 Color Changing Patents, including but not limited to its "Nature's Mark" branded Solar Lighted Fiber Optic Fairy Garden Stake, and its "Holiday Seasons" branded Solar LED Crackle Snowman Stake – Color Changing, Item 433042.

19. Plaintiff has been damaged as a result of Walgreens' infringing activities and will continue to be damaged unless such activities are enjoined by this Court. Pursuant to 35 U.S.C. § 284, Plaintiff is entitled to damages adequate to compensate for the infringement of Plaintiff's Patents, including, inter alia, lost profits and/or a reasonable royalty.

20. Plaintiff will be irreparably harmed if Walgreens's patent infringement

continues. Plaintiff relies upon his for protection of his business's intellectual property and the rampant infringement of his patents by Walgreens robs Plaintiff's business of its intellectual assets and denies Plaintiff the exclusivity in the marketplace for offering and selling his products to which he is entitled under the Patent Laws. This seriously damages Plaintiff in a manner that cannot be adequately compensated by money alone. Plaintiff is entitled to a permanent injunction prohibiting Walgreens, its directors, officers, employees, agents, parents, subsidiaries, affiliates, and anyone else in active concert or participation with them, from taking any other actions that would infringe Plaintiff's Patents.

2. WILLFULNESS OF THE INFRINGEMENT

21. As a result of Richmond's activities, Walgreens is believed to have long had knowledge of at least Plaintiff's '477 and '827 Color Changing Patents and that one or more of their products infringe one or more claims of those patents. As such, Defendant Walgreens's infringement of Plaintiff's '477 and '827 Color Changing Patents is deliberate and willful. The allegations and factual contentions set forth in this paragraph are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. See Fed. R. Civ. P. 11(b)(3).

8. JURY DEMAND

22. Plaintiff hereby demands a trial by jury, pursuant to Fed. R. Civ. Proc. 38(b), for all issues so triable.

9. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the court enter judgment granting Plaintiff the following relief:

- a. For the utility Patents-in-Suit, awarding Plaintiff his damages adequate to compensate for Defendant Walgreens's infringement of Plaintiff's Patents, including, inter alia, lost profits and/or a reasonable royalty;
- b. Awarding treble of the damages and/or reasonable royalty, and that those damages be trebled on account of the willful nature of the infringement, pursuant to 35 U.S.C. § 284;
- c. Declaring this case to be exceptional under 35 U.S.C. §285 and awarding Plaintiff his attorneys' fees, costs and expenses related to bringing this action;
- d. Enjoining Walgreens from infringing Plaintiff's Patents; and
- e. Awarding Plaintiff such further and other relief as the Court deems just and equitable.

Respectfully submitted,

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