

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

SIMON NICHOLAS RICHMOND,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
LUMISOL ELECTRICAL LTD.,)	
NINGBO HANGSHUN ELECTRICAL CO., LTD.,)	
ETHAN ELECTRONIC APPLIANCES)	
(NINGBO) CO., LTD.,)	
ETHAN GROUP, LTD.,)	
ROBERT KANG,)	
COSTCO WHOLESALE CORPORATION,)	
COSTCO WHOLESALE MEMBERSHIP, INC., and)	
PINE TOP SALES CORP.,)	
)	
Defendants.)	
)	

COMPLAINT AND JURY DEMAND

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COMPLAINT AND JURY DEMAND

Plaintiff Simon Nicholas Richmond (“Richmond” or “Plaintiff”), for his claims against Defendants Lumisol Electrical Ltd., Ningbo Hangshun Electrical Co., Ltd., Ethan Electronic Appliances (Ningbo) Co., Ltd., Ethan Group, Ltd., Robert Kang, Costco Wholesale Corporation, Costco Wholesale Membership, Inc., and Pine Top Sales Corp., (collectively, “Defendants”) 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. Defendants.

2. LumiSol Electrical Ltd. (LumiSol Electrical) is a corporation organized and existing under the laws of the British Virgin Islands, having a principal place of business at SHRM Trustees (BVI) Limited, Trinity Chambers, PO Box 4301, Road Town, Tortola, British Virgin Islands. Lumisol may be served pursuant to the Hague Convention.

3. Ningbo Hangshun Electrical Co., Ltd. (Ningbo Hangshun) is a corporation organized and existing under the laws of China, having a principal

place of business at Simen Town, Yuyao City, Zhejiang, China. Ningbo Hangshun may be served pursuant to the Hague Convention.

4. Ethan Electronic Appliances Ningbo Co., Ltd. (Ethan Electronic) is a corporation organized and existing under the laws of China, having a principal place of business at Simen Town, Yuyao City, Zhejiang, China. Ethan Electronic Appliances Ningbo Co., Ltd. may be served pursuant to the Hague Convention.

5. Ethan Group, Ltd. (Ethan Group) is a corporation organized and existing under the laws of China, having a principal place of business at 140 Mei Zhi Guo Garden, Suzhou, China. Ethan Group may be served pursuant to the Hague Convention.

6. Upon information and belief, Lumisol Electrical, Ningbo Hangshun, Ethan Electronic and Ethan Group are alter egos of each other and/or are so closely related to one another that they are jointly and severally liable and may be considered the same company for purposes of this lawsuit.

7. Lumisol Electrical, Ningbo Hangshun, Ethan Electronic and Ethan Group shall be collectively referred to as “Lumisol/Ethan.”

8. Robert Kang (Kang) is an individual having an address of c/o Ningbo Hangshun Electrical Co. Ltd, Xiao Lu Xia, Simen Town, Yuyao City, Zengjiang,

315472, China.

9. Upon information and belief, Kang is the alter ego of, and the active, conscious and moving force behind, Lumisol Electrical, Ningbo Hangshun, Ethan Electronic and Ethan Group. Kang and may be served pursuant to the Hague Convention.

10. For purposes of this Complaint, unless the context states otherwise, all references to Lumisol Electrical, Ningbo Hangshun, Ethan Electronic and Ethan Group. shall be deemed to encompass Kang.

11. Costco Wholesale Corporation (Costco Wholesale Corporation) is a corporation organized and existing under the laws of the State of Washington, having a principal place of business at 999 Lake Drive, Issaquah, Washington 98027. Costco Wholesale Corporation may be served through its agent for service of process, The Corporation Trust Company, Corporation Trust Center, 1029 Orange St., Wilmington DE 19801.

12. Costco Wholesale Membership, Inc. (Costco Wholesale Membership) is a corporation organized and existing under the laws of the State of Washington, having a principal place of business at 999 Lake Drive, Issaquah, Washington 98027. Costco Wholesale Membership, Inc. may be served through its agent for

service of process, The Corporation Trust Company, Corporation Trust Center, 1029 Orange St., Wilmington DE 19801.

13. Upon information and belief, Costco Wholesale Corporation and Costco Wholesale Membership are alter egos of each other and/or are so closely related to one another that they are jointly and severally liable and may be considered the same company for purposes of this Complaint.

14. For purposes of this Complaint, Costco Wholesale Corporation and Costco Wholesale Membership will be hereinafter referred to collectively as “Costco.”

15. Pine Top Sales Corp. (Pine Top Sales) is a corporation organized and existing under the laws of the State of Pennsylvania, having a principal place of business at 2525 Main Street, Suite 2A, Bethlehem, PA 18018-5841. Pine Top Sales may be served through its agent for service of process, President, Pine Top Sales Corp., 2525 Main Street, Suite 2A, Bethlehem PA 18018-5841.

2. SUBJECT MATTER JURISDICTION

16. 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.

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

18. The United States Defendants all have 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.

19. The foreign Defendants have sufficient minimum contacts with the United States and the maintenance of this suit does not offend traditional notions of fair play and substantial justice.

B. Specific Jurisdiction.

1. United States Defendants.

20. Personal jurisdiction over all United States Defendants is proper under principles of specific jurisdiction. Upon information and belief, all United States Defendants have 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, including by means of a commercially interactive website targeting New Jersey residents. Further, each Defendant'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 each United States Defendant at the time each committed its misconduct.

2. Foreign Defendants.

21. Personal jurisdiction over all foreign Defendants is proper under principles of specific jurisdiction. Upon information and belief, each foreign Defendant has transacted and solicited business in the United States related to the subject matter of the claims alleged herein and, upon information and belief, has committed acts of direct infringement in the United States and/or has knowingly induced others to do so. Upon information and belief, all foreign Defendants have knowingly induced infringement in the United States by offering to sell and/or selling goods infringing one or more of the Patents-in-Suit to its or his customers, with knowledge of one or more of Plaintiff's patents and that the foreign

Defendant's goods infringe one or more of Plaintiff's patents, and with knowledge and/or willful blindness to the fact that its or his products will be imported into and offered for sale, sold and/or used in the United States by others. Further, each foreign Defendant's infringement that is the subject of the claims alleged has caused Plaintiff to suffer damages and other losses in the United States, a result that was reasonably foreseeable to each foreign Defendant at the time each committed its misconduct.

C. General Jurisdiction.

22. Personal jurisdiction over the United States Defendants is also proper under principles of general jurisdiction in that these Defendants either reside in this state and district and/or have regularly and purposefully conducted business in New Jersey and this district.

23. Personal jurisdiction over the foreign corporate Defendants and the individual Defendant Kang is also proper under principles of general jurisdiction in that, upon information and belief, these Defendants have regularly and purposefully conducted business in the United States.

24. Pursuant to 28 U.S.C. § 1391 (c) (3), an alien may be sued in any judicial district and the joinder of such a Defendant shall be disregarded in

determining whether the action may be brought with respect to the other Defendants.

D. Venue.

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

26. 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 or omissions giving rise to the claims recited below, or a substantial part of the property that is the subject of the action is in this district, or 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 at least one Defendant.

27. Venue is proper in this district over the foreign corporations and the individual Kang pursuant to 28 U.S.C. § 1391 (c) (3) in that an alien may be sued in any judicial district and the joinder of such a Defendant shall be disregarded in determining whether the action may be brought with respect to the other Defendants.

4. JOINDER PURSUANT TO 35 U.S.C. § 299

28. Joinder is proper under 35 U.S.C. § 299.

29. Joinder is proper and in accordance with 35 U.S.C. § 299(a) because (1) Plaintiff is asserting his right to relief from the Defendants' unlawful patent infringement against the Defendants jointly, severally, or in the alternative with respect to or arising out of the same series of transactions or occurrences relating to the using, importing into the United States, offering for sale, or selling the same solar-powered garden light that infringes one or more of the Patents-in-Suit and (2) questions of fact related to Defendants' unlawful patent infringement and common to all Defendants will arise in this action.

30. Upon information and belief, the aforementioned solar-powered garden light is the same between and among the Defendants because, regardless of brand name or model numbers, the solar-powered garden light of each Defendant is being repeatedly produced by a common Chinese-located manufacturer.

31. Upon information and belief, the aforementioned same solar-powered garden lights are also the same between and among the Defendants because, regardless of brand name or model numbers, the solar-powered garden lights of each Defendants are the same in all respects pertinent to at least the '477, '827 and

‘700 Color-Changing Patents and the ‘370 Framed Patent and the facts underlying the claim of infringement asserted against each Defendant share an aggregate of operative facts that give rise to each cause of action, such that the same proof of infringement as to any one Defendant’s solar-powered garden light will also prove infringement of the other Defendants’ solar-powered garden lights. In particular, upon information and belief, the acts of infringement occurred during the same time period, the Defendants are related as at least supplier-customer, the Defendants use identically sourced components, there is an overlap of the products’ development and manufacture in that the Defendants copied one another’s products, and that this case involves a claim for lost profits.

32. As to the foreign Defendants, joinder is also proper in that, pursuant to 28 U.S.C. § 1391 (c) (3), an alien may be sued in any judicial district and the joinder of such a Defendant shall be disregarded in determining where the action may be brought with respect to the other Defendants.

5. FACTUAL BACKGROUND – PATENTS-IN-SUIT

33. 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.

34. 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.

35. 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.

36. 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.

37. Richmond is the inventor and owner of all right, title, and interest to the United States patent number 8,089,370 A1, entitled “Illuminated Wind Indicator,” (“the ’370 Framed Patent”), which duly and legally issued to Richmond on January 3, 2013.

38. 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

A. Same Accused Product Infringement by All Defendants.

39. Upon information and belief, each Defendant infringes, and/or have infringed one more claims of Plaintiff’s ‘477, ‘827 Color Changing Patents and Plaintiff’s ‘370 Framed Patent, by making, using, selling, offering to sell, and/or importing, the same solar-powered garden light, generally described as a Color-Changing Sun and Moon Solar Stake Path Light, and/or by knowingly inducing others to do so, and have infringed and/or are engaged in plans to sell products that infringe Plaintiff’s ‘700 Patent.

40. Upon information and belief, Costco has sold, and may resume selling, the Color-Changing Sun and Moon Solar Stake Path Light under the designation Lumisol Brand - Celestial Series Sun and Moon Light, which infringes one or more claims of Plaintiff’s ‘477, ‘827 and Plaintiff’s ‘370 Framed Patent. If Costco resumes sales, such sales would also infringe Plaintiff’s ‘700 Color Changing Patent.

41. Upon information and belief, Lumisol has sold, and may resume selling, the Color-Changing Sun and Moon Solar Stake Path Light under the

designation Lumisol Brand - Celestial Series Sun and Moon Light, which infringes one or more claims of Plaintiff's '477, '827 and '700 Color Changing Patents and Plaintiff's '370 Framed Patent. If Lumisol resumes sales, such sales would also infringe Plaintiff's '700 Color Changing Patent.

42. Upon information and belief, Ningbo Hangshun has sold, and may resume selling, the Color-Changing Sun and Moon Solar Stake Path Light under the designation HSA121-9 Solar Moon On Stick Light, which infringes one or more claims of Plaintiff's '477 and '827 Color Changing Patents and Plaintiff's '370 Framed Patent. If Ningbo Hangshun resumes sales, such sales would also infringe Plaintiff's '700 Color Changing Patent.

43. Upon information and belief, Ethan has sold, and may resume selling, the Color-Changing Sun and Moon Solar Stake Path Light under the designation MT-1025 Solar Moon On Stick Light, which infringes one or more claims of Plaintiff's '477 and '827 Color Changing Patents and Plaintiff's '370 Framed Patent. If Ethan resumes sales, such sales would also infringe Plaintiff's '700 Color Changing Patent.

44. Upon information and belief, Kang has sold, and may resume selling, the Color-Changing Sun and Moon Solar Stake Path Light under the Ethan

designation MT-1025 Solar Moon On Stick Light, under the Ningbo Hangshun designation under the designation HSA121-9 Solar Moon On Stick Light, and the Lumisol designation Lumisol Brand - Celestial Series Sun and Moon Light, as their alter egos, and/or knowingly induces them to do as their active, moving and conscious force, which infringes one or more claims of Plaintiff's '477 and '827 Color Changing Patents and Plaintiff's '370 Framed Patent. If Kang resumes sales, such sales would also infringe Plaintiff's '700 Color Changing Patent.

45. Upon information and belief, Pine Top Sales has sold and is selling the Color-Changing Sun and Moon Solar Stake Path Light under the designation 508-0007 Pine Top brand - Solar Moon On Stick light, which infringes one or more claims of Plaintiff's '477, '827 and '700 Color Changing Patents and Plaintiff's '370 Framed Patent.

B. Additional Infringements by Defendants.

46. Upon information and belief, Costco, Lumisol/Ethan and Kang, as Lumisol/Ethan's and Ningbo Hangshun's alter ego, also sell, import, offer for sale, and/or have sold, imported, or offered for sale, one or more other models of solar-powered garden lights that infringe one or more claims of Plaintiff's '477, '827 and '700 Color Changing Patents and/or Plaintiff's '370 Framed Patent, and/or have

induced others to do so.

47. Plaintiff has been damaged as a result of Defendants' 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.

48. Plaintiff will be irreparably harmed if Defendants' patent infringement continues. Plaintiff relies upon his patents for protection of his business' intellectual property and the rampant infringement of his patents by Defendants 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 Defendants, their 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.

7. WILLFULNESS OF THE INFRINGEMENT

49. As a result of Richmond's activities, Defendants Lumisol, Ninbo Hanghun, Ethan and Kang are 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, their infringement of Plaintiff's '477 and '827 Color Changing Patents is deliberate and willful.

8. JURY DEMAND

50. Plaintiffs hereby demand 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 Plaintiffs the following relief:

a. For the utility Patents-in-Suit, awarding Plaintiff his damages adequate to compensate for Defendants' 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, for those Defendants against whom willfulness is

alleged;

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 Defendants from infringing Plaintiff's Patents; and

e. Awarding Plaintiff such further and other relief as the Court deems just and equitable.

Respectfully submitted,

/s/ Lawrence C. Hersh
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