

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

WHELEN ENGINEERING COMPANY, INC.)	
)	
Plaintiff,)	
)	
v.)	
)	Civil Action No.
CPS EMERGENCY LED LIGHTING & EQUIPMENT)	
)	
Defendant.)	
)	

**COMPLAINT FOR PATENT AND TRADEMARK INFRINGEMENT
AND JURY DEMAND**

Plaintiff Whelen Engineering Company, Inc. (“Plaintiff”), for its patent infringement complaint against Defendant CPS Emergency LED Lighting & Equipment (“Defendant”), states as follows:

I. PARTIES, JURISDICTION AND VENUE

1. This is an action for patent infringement arising under the patent laws of 35 U.S.C. § 1 *et seq.* and trademark infringement arising under the Lanham Act, 15 U.S.C. § 1051 *et seq.*
2. Plaintiff is a corporation organized and existing under the laws of the State of Connecticut with a principal place of business in Chester, Connecticut.
3. Upon information and belief, Defendant is a company organized and existing under the laws of the State of Alabama with a principal place of business in Opelika, Alabama.
4. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a).

5. Personal jurisdiction exists generally over Defendant because Defendant has sufficient minimum contacts with this forum as a result of its business conducted in the State and District of Connecticut. Defendant has and continues to sell its infringing products in the District of Connecticut. Defendant also maintains an active website whereon Defendant uses one or more of Plaintiff's trademarks and offers for sale items that infringe one or more of Plaintiff's valid patents.

6. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400(b).

II. PATENT INFRINGEMENT

7. United States Letters Patent No. 6,641,284, entitled "LED Light Assembly," a copy of which is attached hereto as Exhibit A (hereinafter "the '284 patent"), was duly and legally issued by the U.S. Patent and Trademark Office on November 4, 2003 and named James L. Stopa and Todd J. Smith, both residents of Connecticut, as inventors.

8. Plaintiff is, and at all times relevant has been, the lawful owner of all right, title and interest in and to the '284 Patent, including all rights to recover for past infringement thereof by virtue of an assignment from inventors James L. Stopa and Todd J. Smith, duly executed on February 20, 2002 and recorded in the Assignment Division of the United States Patent and Trademark Office at reel/frame 012643/0841.

9. The '284 patent is valid and enforceable.

10. United States Letters Patent No. D500,384, entitled "Reflector for Light Assembly," a copy of which is attached hereto as Exhibit B (hereinafter "the '384 patent"), was duly and legally issued by the U.S. Patent and Trademark Office on December 28, 2004 and named Jon H. Lyons, Todd J. Smith and James L. Stopa, all residents of Connecticut, inventors.

11. Plaintiff is, and at all times relevant has been, the lawful owner of all right, title and interest in and to the '384 Patent, including all rights to recover for past infringement thereof by

virtue of an assignment from inventors Jon H. Lyons, Todd J. Smith and James L. Stopa, duly executed on December 13, 2002 and recorded in the Assignment Division of the United States Patent and Trademark Office at reel/frame 013593/0798.

12. Plaintiff has marked its products embodying the invention claimed in the '284 patent and the ornamental design claimed in the '384 patent in accordance with 35 U.S.C. §287.

13. Defendant has been infringing and is continuing to infringe, directly and indirectly by way of inducement and/or contributory infringement, literally and/or under the doctrine of equivalents, the '284 patent and the '384 patent under 35 U.S.C. §271 by importing, manufacturing, using, offering to sell and/or selling in this District and elsewhere in the United States products that fall within the scope of one or more claims of each of the '284 patent and '384 patent.

14. Defendant has sold products covered by one or more claims of each of the '284 patent and '384 patent to customers in the State of Connecticut through its website, "www.hidheadquarters.net".

15. Defendant's acts of infringement and active inducement of infringement set forth above have damaged Plaintiff and will continue to cause Plaintiff irreparable harm for which Plaintiff has no adequate remedy at law unless such acts of infringement and active inducement of infringement are enjoined and restrained by this Court.

III. LANHAM ACT – TRADEMARK INFRINGEMENT

16. Plaintiff realleges and incorporates herein by reference paragraphs 1-15 above.

17. Plaintiff is the owner of all right and title to, and goodwill associated with, United States Trademark Registration No. 76424588 for the trademark LINEAR-LED[®] used in connection with, *inter alia*, warning lights and warning light systems sold in interstate commerce.

18. In sales of warning light products on its website, Defendant consistently has used and

continues to use the LINEAR-LED[®] trademark without Plaintiff's permission or authorization.

19. Defendant has used, and is believed to be continuing to use, Plaintiff's LINEAR-LED[®] trademark in connection with Defendant's interstate sale of warning lights and warning light systems that are not manufactured by or affiliated with Plaintiff.

20. Defendant's use of the LINEAR-LED[®] trademark in connection with the sale of warning lights and warning light systems that are not manufactured by Plaintiff is likely to cause confusion as to the source or origin of said warning lights and warning light systems.

21. Defendant has used the LINEAR-LED[®] trademark in connection with the sale of warning lights delivered to Connecticut.

22. Defendant's acts constitute willful infringement under the Lanham Act, 15 U.S.C. § 1114.

23. Defendant's acts of trademark infringement have damaged Plaintiff and will continue to cause Plaintiff irreparable harm for which Plaintiff has no adequate remedy at law unless such acts are enjoined and restrained by this Court.

IV. TRADEMARK INFRINGEMENT

24. Plaintiff realleges and incorporates herein by reference paragraphs 1-23 above.

25. In addition to the registered trademark LINEAR-LED[®], Plaintiff is the owner of all right and title to, and goodwill associated with, the trademarks FREEDOM[™] and VERTEX[™] used in connection with, *inter alia*, warning lights and warning light systems sold in interstate commerce.

26. In sales of warning lights on its website, Defendant consistently has used and continues to use the trademark FREEDOM[™], and the term "VTX" which is confusingly similar to the trademark VERTEX[™], without Plaintiff's permission or authorization.

27. Defendant has used, and is believed to be continuing to use, Plaintiff's FREEDOM[™]

and VERTEX™ trademarks in connection with Defendant's interstate sale of warning lights and warning light systems that are not manufactured by or affiliated with Plaintiff.

28. Defendant's use of the FREEDOM™ and VERTEX™ trademarks in connection with the sale of warning lights and warning light systems that are not manufactured by Plaintiff is likely to cause confusion as to the source or origin of said warning lights and warning light systems.

29. Defendant has used the FREEDOM™ and VERTEX™ trademarks in connection with the sale of warning lights delivered to Connecticut.

30. The aforesaid acts of Defendant, including blatant and wonton use of Plaintiff's LINEAR-LED®, FREEDOM™ and VERTEX™ trademarks, constitute willful infringement of Plaintiff's trademarks under the laws of the State of Connecticut and other states.

V. LANHAM ACT – UNFAIR COMPETITION

31. Plaintiff realleges and incorporates herein by reference paragraphs 1-30 above.

32. The aforesaid acts of Defendant constitute unfair competition in violation of the Lanham Act, 15 U.S.C. § 1125(a).

VI. UNFAIR TRADE PRACTICES UNDER CONN. GEN. STAT. § 42-110b(a)

33. Plaintiff realleges and incorporates herein by reference paragraphs 1-32 above.

34. The aforesaid acts of Defendant violate federal laws; violate laws of the State of Connecticut; are immoral, unethical or unscrupulous; are substantially injurious to competition; and divert goodwill and money or property in the form of profits, reasonable royalties and business opportunities away from Plaintiff.

35. The aforesaid acts of Defendant constitute an unfair act or practice in violation of Conn. Gen. Stat. § 42-110b(a).

36. As a result of the aforesaid acts of Defendant, Plaintiff has suffered, and continues to

suffer, an ascertainable loss of money or property, including but not limited to loss of profits, loss of a reasonable royalty on the sale of all products sold by Defendant that infringe at least one claim of each of the '284 patent and '384 patent, and the costs of taking legal action to halt Defendant's infringement of the '284 patent, '384 patent and Plaintiff's LINEAR-LED[®], FREEDOM[™] and VERTEX[™] trademarks.

VII. DEMAND FOR JURY TRIAL

Plaintiff respectfully demands a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure of any issues so triable.

VIII. PRAYER FOR RELIEF

Wherefore, Plaintiff requests that this Court adjudicate the rights of the parties and enter judgment as follows:

(a) That Defendant has willfully infringed, and actively induced others to infringe, the '284 patent and '384 patent;

(b) That Defendant's use of Plaintiff's LINEAR-LED[®] registered trademark in connection with the sale of warning light products not manufactured by Plaintiff is a willful violation of 15 U.S.C. § 1114;

(c) That Defendant's use of Plaintiff's LINEAR-LED[®], FREEDOM[™] and VERTEX[™] trademarks in connection with the sale of warning light products not manufactured by Plaintiff is a willful violation of 15 U.S.C. § 1125;

(d) That Defendant, its officers, agents, servants, employees, attorneys, all parent, subsidiary and affiliate corporations or other business entities, and all other persons acting in concert, participation or in privity with them, and their successors and assigns are permanently enjoined and restrained from (1) further infringement and inducement of infringement of the '284 patent and '384

patent as provided by 35 U.S.C. §283, and (2) further use of Plaintiff's LINEAR-LED[®], FREEDOM[™] and VERTEX[™] trademarks in a manner which is likely to cause confusion as to the source or origin of Defendant's warning light products as provided by 15 U.S.C. § 1116;

(e) That Plaintiff be awarded damages available under 15 U.S.C. § 1117, trebled and/or enhanced as permitted;

(f) That Defendant's pattern of conduct constitute an unfair act or practice in violation of Conn. Gen. Stat. § 42-110b(a);

(g) That Plaintiff be awarded punitive damages pursuant to Conn. Gen. Stat. § 42-110g(a), in an amount sufficient to deter Defendant from future patent and/or trademark infringement;

(h) That Defendant's infringing products be destroyed;

(i) That Plaintiff be awarded the damages to which it is entitled under 35 U.S.C. § 284 for Defendant's past infringement and any continuing or future infringement until the date Defendant is finally and permanently enjoined from further infringement; and

(j) That Plaintiff be awarded such other legal or equitable relief as the Court may deem just and proper.

Plaintiff demands a jury trial for all issues so triable.

Respectfully submitted,

WHELEN ENGINEERING COMPANY, INC.

Date: March 29, 2012

By: /s/: Thomas J. Menard

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