

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

Civil Action No.: 12-2859

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.

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, by and through its undersigned attorneys, states and alleges its 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. Plaintiff is informed and believes, and therefore avers, that 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. Plaintiff is informed and believes, and therefore avers, that 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. Plaintiff is informed and believes, and therefore avers, that 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 and 1367. 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

(MISAPPROPRIATION OF TRADE SECRETS)

9. Commencing in about May of 2008, Plaintiff and Defendants UFP and UCP discussed the possibility of Defendants UFP and UCP commercializing various of Plaintiff's designs and inventions pertaining to ornamental lighting for railings such deck and stairway railings (hereinafter "Inventions"). At the time of such discussions, Inventions were Plaintiff's confidential, trade secret information, and Defendants UFP and UCP knew and understood the confidential, trade secret nature of Inventions.

10. Plaintiff and Defendants UFP and UCP entered into an agreement covering such discussions pursuant to which Defendants UFP and UCP agreed to maintain the confidentiality of Inventions and not to use Inventions.

11. Plaintiff disclosed to Defendants UFP and UCP Inventions and confidential information related to Inventions pursuant to the agreement. Both Plaintiff and Defendants UFP and UCP understood that, if Defendants UFP and UCP were to use or otherwise commercially exploit Inventions for Defendants UFP's

and UCP's own benefit, then Defendants UFP and UCP would need Plaintiff's prior authorization to do so and would need to compensate Plaintiff to do so.

12. After evaluating Inventions on a confidential basis, Defendants UFP and UCP represented to Plaintiff that Defendants UFP and UCP were not interested in commercializing Inventions or in any further relationship with Plaintiff.

13. Despite Defendants UFP's and UCP's confidential access to and review of Inventions and the related confidential information, Defendants UFP and UCP subsequently began commercializing, marketing, and distributing products essentially the same as Inventions, including products known as "Lighted Willow Balusters" and "Lighted Square Balusters" either alone or together with associated rails and/or electrical components -- all without Plaintiff's authorization.

14. Defendants UFP and UCP misappropriated Plaintiff's trade secrets in violation of both Colorado law, C.R.S. § 7-74-101 et seq., and Michigan law, MCLS § 445.1901 et seq.

15. Upon information and belief, such misappropriation was attended by willful, wanton, and malicious disregard of Plaintiff's rights and feelings.

16. Plaintiff has suffered harm and damage due to Defendants UFP's and UCP's misappropriation. Plaintiff is unaware of the full monetary amount or value of the damages and harm Plaintiff has suffered as the result of Defendants UFP's and UCP's misappropriation.

17. Defendants UFP's and UCP's misappropriation 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 acts of misappropriation, and a multiplicity of judicial proceedings would be required to determine such an amount of compensation. Plaintiff has no adequate remedy at law.

VI. COUNT TWO
(QUANTUM MERUIT)

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

19. At the Plaintiff's expense, Defendants UFP and UCP received a benefit under circumstances that would make it unjust for Defendants UFP and UCP to retain the benefit without paying for it.

20. Plaintiff demands compensation for such benefit under quantum meruit.

VII. COUNT THREE
(UNJUST ENRICHMENT)

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

22. A benefit was conferred on Defendants UFP and UCP by Plaintiff; the benefit was appreciated by Defendants UFP and UCP; and the benefit was accepted by Defendants UFP and UCP under such circumstances that retaining the benefit without paying its value would be inequitable.

23. Plaintiff demands compensation for such benefit as unjust enrichment.

VIII. COUNT FOUR

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

24. Plaintiff realleges and incorporates herein by references the averments in paragraphs 1-23 above.

25. 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.

26. Defendants have infringed 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”).

27. Defendants have contributorily infringed 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.

28. 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.

29. Defendants have induced others to infringe the '777 Patent.

30. 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.

31. 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.

32. 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. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief against Defendants:

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

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

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

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

E. 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 its customers to use and or employ such products in a manner that infringes the '777 Patent.

F. That Plaintiff be awarded damages for Defendants UFP's and UCP's misappropriation of trade secrets;

G. That Plaintiff be awarded exemplary damages for Defendants UFP's and UCP's misappropriation of trade secrets;

H. That Plaintiff be awarded its attorneys' fees for Defendants UFP's and UCP's misappropriation of trade secrets;

I. That Plaintiff be awarded the value of the benefit received and accepted by Defendants UFP and UCP under both quantum meruit and unjust enrichment.

- J. That Plaintiff be awarded its costs of this action.
- K. 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: 10/30/12



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