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UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

SMASH, LLC,

Plaintiff,

Case No:

v.

Judge

LB INTERNATIONAL INC.,

Magistrate Judge

Defendant.

**JURY TRIAL DEMANDED**

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**COMPLAINT FOR PATENT INFRINGEMENT**

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Now comes plaintiff, Smash, LLC (“Smash”), and as a complaint against Defendant LB International, Inc. (“LB International”) hereby requests a jury trial on all issues so triable and states as follows:

**PARTIES**

1. Smash is a Minnesota corporation in good standing having its principal place of business at 310 Bergamot Drive, Medina, Minnesota 55340.
2. On information and belief, Defendant LB International, is a New York corporation having its principal place of business at 150 Engineers Road, Hauppauge, New York 11788.

**JURISDICTION AND VENUE**

3. This action arises under the Patent Laws of the United States; more specifically, this action arises under 35 USC §271. Jurisdiction is conferred on this Court pursuant to 28 USC §1331 and §1338. This court has discretion under 28 U.S.C. §1367 to exercise supplemental

jurisdiction over Smash's state law claims asserted herein, all of which arise from the same common core of operative facts as set forth more fully below. Defendant conducts business in Minnesota and is therefore subject to the jurisdiction of this Court.

4. Venue is proper in this judicial district pursuant to 28 USC §1400(b) and §1391(b) and (c) because, on information and belief, infringement by defendant has occurred in this judicial district. On information and belief, Defendant is subject to personal jurisdiction in this district.

## **BACKGROUND**

### Smash's Business

5. Smash created a unique lighted holiday ornament, which includes a hollow shell housing a portion of a string of lights. The lighted ornament creates a stunning lighted ball or other shaped ornaments ("Claimed Products").

6. Smash holds patent rights with respect to its unique lighted holiday ornament, and has built its business around this innovation.

### Defendant's Business

7. On information and belief, Defendant manufactures and sells a variety of products, including lighted holiday ornaments, including a "100 sphere light" ("Accused Products").

8. On information and belief, LB International sells its products, including the lighted holiday ornaments (the Accused Products) at least throughout the United States.

**COUNT I**  
**(Infringement of United States Patent No. 5,772,312)**

9. Susan M. Pihl-Niederman, Hollyanne M. Pihl and Sharon P. Frederickson (“Inventors”) conceived and developed certain improvements in lighted holiday ornaments for which they sought patent protection based on a patent application filed October 30, 1996, such application resulting in grant of United States Patent No. 5,772,312 (“’312 Patent”) (a copy of which is attached as **Exhibit 1**).

10. On November 22, 1999, the ‘312 Patent, including all rights related thereto and arising therefrom, was assigned by Inventors to Smash. A copy of such assignment is attached hereto as **Exhibit 2**.

11. Holiday ornaments licensed by Smash that utilizes the technology disclosed and claimed in the ‘312 Patent (the “Claimed Products”) are marked with a notice of the ‘312 Patent, pursuant to 35 USC §287(a).

12. In late 2010, Smash learned that LB International was selling the Accused Products. Throughout 2011 and 2012, Smash informed LB International that its conduct constitutes infringement of Smash’s ‘312 Patent.

13. Effective December 16, 2012, Smash and LB International entered into a Non-Exclusive License Agreement (“License Agreement”). Under the terms of the License Agreement, Smash licensed to LB International the non-exclusive right, beginning on December 16, 2012, to sell or distribute products, which in the absence of the License Agreement, would infringe at least one claim of the ‘312 Patent. In exchange for Smash’s license, LB International agreed to pay Smash a certain royalty payment for all licensed sales going forward. The parties’

License Agreement did not address LB International's infringement of Smash's '312 Patent prior to December 16, 2012.

14. The manufacture, sale and offering for sale of the Accused Products by LB International before December 16, 2012 was without consent from Smash, and constitutes infringement of the '312 Patent in violation of 35 USC §271.

15. Smash has been and continues to be irreparably harmed by such infringing acts and has suffered and continues to suffer damages in an amount to be determined at trial.

**COUNT II**  
**(Breach of License Agreement)**

16. Plaintiff hereby incorporates by reference and realleges the allegations set forth in paragraphs 1 through 15 above.

17. Under the terms of the License Agreement, LB International agreed to pay Smash defined Royalty Payments, provide Smash with quarterly Royalty Reports, and provide Smash with an annual Projection of Sales. LB International has failed to pay Smash any Royalty Payments, has failed to provide Smash with any Royalty Reports, and failed to provide Smash with its Projection of Sales. LB International's failures in these regards are material breach of and in violation of the terms of the parties' License Agreement. LB International is therefore liable to Smash for breach of contract.

18. By breaching the License Agreement, LB International has caused and continues to cause harm to Smash's business and property.

WHEREFORE, Smash requests that this Court enter judgment in favor of Smash and against Defendant as follows:

- A. Award Smash damages, pursuant to 35 USC §284, in the amount of its lost profits or an amount otherwise adequate to compensate Smash for Defendant's infringement, together with prejudgment interest thereon;
- B. Awarding Smash its full costs and expenses in bringing this action;
- C. Ordering LB International to provide an accounting of sales of Accused Products and profits;
- D. Ordering LB International to pay Smash monetary damages in the form of the royalty agreed to in the License Agreement for sales occurring after December 16, 2012, together with prejudgment interest thereon; and
- E. Ordering such other and further relief as this Court deems just and proper.

**JURY DEMAND**

Plaintiff hereby demands trial by jury on all issues triable to a jury.

Dated this 22<sup>nd</sup> day of October, 2013.

Respectfully submitted,

By: *s/ Jon R. Trembath*  
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