

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MARVELLOUS DAY ELECTRIC (S.Z.) CO.,)	
LTD., a Taiwanese company,)	
)	
Plaintiff,)	
)	
v.)	CASE NO.
)	
ACE HARDWARE CORPORATION,)	
an Illinois corporation,)	
)	
Defendant.)	
)	

**COMPLAINT FOR PATENT INFRINGEMENT, FALSE PATENT MARKING
AND UNFAIR COMPETITION**

Plaintiff, MARVELLOUS DAY ELECTRIC (S.Z.) CO., LTD., by its counsel, Steven N. Malitz, Jerold I. Schneider and Judith L. Grubner, Arnstein & Lehr LLP, of *counsel*, sues the Defendant, ACE HARDWARE CORPORATION, and in support of its claims states as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff, MARVELLOUS DAY ELECTRIC (S.Z.) CO., LTD., (“MARVELLOUS DAY”), is a limited liability company organized and existing under the laws of Taiwan with its principal place of business at Lai-Wu-Shan Village, Lunghua Town, Pao-An-District, Shenzhen, Guangdong, China 518109.

2. Defendant, ACE HARDWARE CORPORATION (“ACE”), is a Delaware Corporation, registered to do business in Illinois as a foreign corporation, and having a principal place of business at 2200 Kensington Court, Oak Brook, Illinois 60523, within this judicial district and division.

3. This Court has subject matter jurisdiction over Count I (patent infringement) pursuant to 28 U.S.C. §1338(a). This Court has subject matter jurisdiction over Count II (patent mismarking) pursuant to 28 U.S.C. § 1338(a). This Court has subject matter jurisdiction over Counts III and IV pursuant to 28 U.S.C. §§ 1331, 1332 and 1338(b). This Court has subject matter jurisdiction over Counts V, VI, VII and VIII pursuant to 28 U.S.C. § 1338(b) and 28 U.S.C. § 1367.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and 28 U.S.C. § 1400(b) because (a) Defendant resides in this judicial district and division and/or (b) and the acts complained of occurred within this judicial district and division and (c) Defendant has committed acts of infringement within this judicial district and division and has a regular and established place of business within this judicial district and division.

FACTS COMMON TO AND APPLICABLE TO ALL COUNTS

5. Prior to March 1, 2010, Hsin-Wei Wu, also known as Hank Wu, invented a new, improved and ornamental design for an LED (light emitting diode) bulb.

6. Mr. Wu applied for and obtained United States Design Patent No. D627,494 which was duly and legally issued on November 16, 2010. (The '494 Patent). A true and correct copy of the '494 patent is attached as Exhibit A.

7. Plaintiff, MARVELLOUS DAY, is the owner of all right, title and interest in and to the '494 Patent including but not limited to the owner of the right to sue for past infringement.

8. Plaintiff manufactured and sold ornamental LED string lights using the ornamental design of the '494 patent which were imported into the United States by

and/or for Defendant ACE, were advertised by Defendant ACE in the United States and were sold by Defendant ACE through one or more of its ACE HARDWARE stores within the United States.

9. The ornamental LED string lights manufactured by Plaintiff and sold by ACE were advertised as including an “always lit” feature. The “always lit” feature was understood to mean and explained to mean that if an individual LED bulb in a string of lights was damaged, or “burned out”, the remaining lights in a string of lights would remain lit and the individual bulb could be replaced without extinguishing the remaining lights in a string of lights, thereby avoiding both (a) the need to disconnect the string of lights to replace individual bulbs and (b) various individual bulbs not being replaceable.

10. Plaintiff obtained the appropriate listing through Underwriters’ Laboratory (UL) for its LED string lights.

11. Defendant ACE identifies itself as a retailer-owned cooperative having 4600 stores in all 50 states and in more than 60 countries, generating annual retail sales of approximately \$12 billion.

12. The activities of Defendant as alleged in this Complaint occurred in interstate commerce within the United States and within the State of Illinois.

COUNT I – DESIGN PATENT INFRINGEMENT

13. Plaintiff realleges paragraphs 1 – 12 as fully and completely as if set forth herein verbatim.

14. This is a Count for design patent infringement under the laws of the United States.

15. Commencing at some unknown time in 2011, Defendant began infringing the '494 Patent by making, using, offering to sell or selling within the United States and/or importing into the United States, LED light sets having the ornamental feature of the '494 Patent.

16. The specific infringing LED light sets include at least those LED string lights identified by ACE as T5 Red LED 50 Light Set, T5 Multi-Colored LED 50 Light Set, T5 Classic White LED 50 Light Set, T5 Pure White LED 50 Light Set, and T5 Multi-Colored Commercial Grade LED Icicle Lights.

17. The activities complained of in this Count I occurred without license from and/or permission of Plaintiff.

18. Plaintiff has given notice to Defendant ACE but Defendant continues to infringe the '494 Patent.

19. The infringement by Defendant to the extent that it has continued after notice has been willful.

20. The infringement complained of herein has been to the injury and damage of Plaintiff.

WHEREFORE, Plaintiff seeks:

- a) Such damages as Plaintiff may have suffered but in no event less than a reasonable royalty pursuant to 35 U.S.C. § 284;
- b) Additional damages as expressly provided for in the case of a design patent under 35 U.S.C. § 289;
- c) A finding of willful infringement and an enhancement of damages;
- d) A determination that this is an exceptional case;

- e) An injunction preliminarily and permanently enjoining infringement;
- f) An award to Plaintiff of its attorney fees under 35 U.S.C. § 285;
- g) An award to Plaintiff of its costs; and
- h) Such other and further relief as to the Court appears just and proper.

COUNT II – FALSE PATENT MARKING

21. Plaintiff realleges paragraphs 1 – 12 and 16 - 20 as fully and completely as if set forth herein verbatim.

22. This is a count for False Patent Marking under the Patent Laws of the United States, 35 U.S.C. § 292 (as amended September 16, 2011).

23. Defendant ACE, while purchasing the T5 LED lights strings including the T5 LED bulb, has advertised on its website in connection with the LED light strings that the T-5 LED bulb is patented, such advertisement being without the consent of Plaintiff and/or the patentee of the '494 patent.

24. The activities complained of in this count occurred with the intent of deceiving the public and inducing members of the public to believe that the Defendant's T5 LED light bulbs were made, offered for sale, sold, or imported into the United States by or with the consent of the patentee, in violation of 35 U.S.C. § 292 (as amended)

25. The activities complained of in this count were to the competitive injury of Plaintiff.

WHEREFORE, Plaintiff seeks:

- a) Such damages adequate to compensate Plaintiff for the competitive injury which it has suffered pursuant to 35 U.S.C. § 292(b) (as amended September 16, 2011);

- b) An injunction against further false patent marking;
- c) An award to Plaintiff of its costs; and
- d) Such other and further relief as to the Court appears just and proper.

COUNT III – FALSE DESIGNATION OR DESCRIPTION - “PATENTED”

26. Plaintiff realleges paragraphs 1 – 12, 16-20 and 23-25 as fully and completely as if set forth herein verbatim.

27. This is a count for violation of the Lanham Act 15 U.S.C. § 1125(a).

28. If Defendant ACE contends that its T5 LED bulbs as advertised on Defendant ACE’s website and/or advertised within the United States do not infringe the ‘494 patent, then and in that event, Defendant’s conduct amounts to a false or misleading description of fact or misleading representation of fact which misrepresents the nature, characteristics or qualities of Defendant’s T5 LED bulbs.

29. The activities complained of in this count were to the injury and damage of Plaintiff.

WHEREFORE, Plaintiff seeks:

- a) Such damages as Plaintiff may have suffered and/or Defendant’s profits pursuant to 15 U.S.C. § 1117(a);
- b) A determination that the activities of Defendant were intentional and willful and an increase in the award of damages pursuant to 15 U.S.C. §1117(b);
- c) An award of attorney fees and costs;
- d) An impounding of infringing articles and subsequent destruction of infringing articles;
- e) An injunction against further false designation and description;

- f) An award to Plaintiff of its costs; and
- g) Such other and further relief as to the Court appears just and proper.

COUNT IV -- FALSE DESIGNATION OR DESCRIPTION - "ALWAYS LIT"

30. Plaintiff realleges paragraphs 1 – 12 as fully and completely as if set forth herein verbatim.

31. This is a count for violation of the Lanham Act 15 U.S.C. § 1125(a).

32. In connection with T5 LED string lights manufactured by Plaintiff, Defendant ACE had advertised such string lights within the United States as "always lit" and sold such string lights within the United States with an "always lit" label.

33. In connection with T5 LED string lights not manufactured by Plaintiff, Defendant ACE continues to advertise such string lights within the United States as "always lit" and sell such string lights within the United States with an "always lit" label.

34. The "always lit" feature was understood to mean that if an individual LED bulb in a string of lights was damaged, or "burned out", the remaining lights in a string of lights would remain lit and the individual bulb could be replaced without extinguishing the remaining lights in a string of lights, thereby avoiding both (a) the need to disconnect the string of lights to replace individual bulbs and (b) various individual bulbs not being replaceable.

35. Defendant's T5 LED string lights do not include the "always lit" feature.

36. Defendant's conduct in advertising T5 LED string lights as "always lit" amounts to a false or misleading description of fact or misleading representation of fact which thus misrepresents the nature, characteristics or qualities of Defendant's T5 LED bulbs.

37. The activities complained of in this count occurred to the injury and damage of Plaintiff.

WHEREFORE, Plaintiff seeks:

- a) Such damages as Plaintiff may have suffered and/or Defendant's profits pursuant to 15 U.S.C. § 1117(a);
- b) A determination that the activities of Defendant were intentional and willful and an increase in the award of damages pursuant to 15 U.S.C. §1117(b);
- c) An award of attorney fees and costs;
- d) An impounding of infringing articles and subsequent destruction of infringing articles;
- e) An injunction against further false designation of origin;
- f) An award to Plaintiff of its costs; and
- g) Such other and further relief as to the Court appears just and proper.

COUNT V – VIOLATION OF ILLINOIS UNIFORM DECEPTIVE TRADE PRACTICES ACT – USE OF THE TERM “PATENTED”

38. Plaintiff realleges paragraphs 1- 12 and 23 as fully and completely as if set forth herein verbatim.

39. If Defendant contends that the T5 LED light bulbs do not infringe Plaintiff's '494 Patent, then the activities complained of in this Count occurred with the intent of deceiving the public and inducing members of the public to believe that the Defendant's T5 LED light bulbs were made, offered for sale, sold, or imported into the United States by or with the consent of the patentee.

40. The misuse of the term “patented” amounts to a violation of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS §510, including at least one or more of sections 510/2 (a) (1- 5, 7, 9, 11 and 12).

41. The activities complained of in this count were to the injury and damage of Plaintiff.

WHEREFORE, Plaintiff seeks:

- a) An award of attorney fees under 815 ILCS §510/3;
- b) An award of costs;
- c) An injunction against further false designation and description under 815 ILCS §510/3; and,
- d) Such other and further relief as to the Court appears just and proper.

COUNT VI – VIOLATION OF ILLINOIS UNIFORM DECEPTIVE TRADE PRACTICES ACT – USE OF THE TERM “ALWAYS LIT”

42. Plaintiff realleges paragraphs 1-12 and 32-36 as fully and completely as if set forth herein verbatim.

43. The ornamental LED string lights manufactured by Plaintiff and sold by ACE were advertised as including an “always lit” feature. The “always lit” feature was understood to mean and explained to mean that if an individual LED bulb in a string of lights was damaged, or “burned out”, the remaining lights in a string of lights would remain lit and the individual bulb could be replaced without extinguishing the remaining lights in a string of lights, thereby avoiding both (a) the need to disconnect the string of lights to replace individual bulbs and (b) various individual bulbs not being replaceable.

44. The misuse of the term "always lit" amounts to a violation of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS §510, including at least one or more of sections 510/2 (a) (1- 5, 7, 9, 11 and 12).

45. The activities complained of in this Count were to the injury and damage of Plaintiff.

WHEREFORE, Plaintiff seeks:

- a) An award of attorney fees under 815 ILCS §510/3;
- b) An award of costs;
- c) An injunction against further false designation of origin under 815 ILCS §510/3; and,
- d) Such other and further relief as to the Court appears just and proper.

COUNT VII – VIOLATION OF ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT – USE OF THE TERM "PATENTED"

46. Plaintiff realleges paragraphs 1- 12, 23 and 39-41 as fully and completely as if set forth herein verbatim.

47. The activities complained of in this count occurred at least within the State of Illinois.

48. The misuse of the term "patented" amounts to a violation of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS §510, including at least one or more of sections 510/2 (a) (1- 5, 7, 9, 11 and 12).

49. Defendant's violation of Section 2 of the Uniform Deceptive Trade Practices Act, 815 ILCS 510/2, constitutes a violation of the Illinois Consumer Fraud and Deceptive Practices Act, 815 ILCS 505/2.

50. As alleged above, defendant's conduct involves trade practices addressed to the market generally or otherwise implicates consumer protection concerns.

51. Specifically, If Defendant contends that the T5 LED light bulbs do not infringe Plaintiff's '494 Patent, then the activities complained of in this Count occurred with the intent of deceiving the public and inducing members of the public to believe that the Defendant's T5 LED light bulbs were made, offered for sale, sold, or imported into the United States by or with the consent of the patentee.

52. The activities complained of in this count occurred to the injury and damage of Plaintiff.

WHEREFORE, Plaintiff seeks:

- a) Such damages as Plaintiff may have suffered and/or Defendant's profits;
- b) An award of attorney fees under 815 ILCS §505/10(a);
- c) Punitive damages under 815 ILCS §505/10(a);
- d) An award of costs 815 ILCS §505/10(a); and,
- e) Such other and further relief as to the Court appears just and proper.

COUNT VIII – VIOLATION OF ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT – USE OF THE TERM “ALWAYS LIT”

53. Plaintiff realleges paragraphs 1-12, 32-36 and 43-45 as fully and completely as if set forth herein verbatim.

54. The activities complained of in this count occurred at least within the State of Illinois.

55. The misuse of the term "always lit" amounts to a violation of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS §510, including at least one or more of sections 510/2 (a) (1- 5, 7, 9, 11 and 12).

56. Defendant's violation of Section 2 of the Uniform Deceptive Trade Practices Act, 815 ILCS 510/2, constitutes a violation of the Illinois Consumer Fraud and Deceptive Practices Act, 815 ILCS 505/2.

57. As alleged above, defendant's conduct involves trade practices addressed to the market generally or otherwise implicates consumer protection concerns.

58. Specifically, Defendant's conduct in advertising T5 LED string lights as "always lit" amounts to a false or misleading description of fact or misleading representation of fact to the public, which misrepresents the nature, characteristics, or qualities of Defendants' T5 LED bulbs.

59. The activities complained of in this count occurred to the injury and damage of Plaintiff.

WHEREFORE, Plaintiff seeks:

- a) Such damages as Plaintiff may have suffered and/or Defendant's profits;
- b) An award of attorney fees under 815 ILCS §505/10(a);
- c) Punitive damages under 815 ILCS §505/10(a);
- d) An award of costs 815 ILCS §505/10(a); and,
- e) Such other and further relief as to the Court appears just and proper.

MARVELLOUS DAY ELECTRIC (S.Z.) CO.,
LTD., a Taiwanese company,

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