

**IN THE UNITED STATES DISTRICT COURT
FOR NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SIMON NICHOLAS RICHMOND,)
)
 Plaintiff,)
)
 v.)
)
 FOREVER GIFTS, INC. (TEXAS))
 d/b/a/ FACTORY DIRECT COST, and)
 FOREVER GIFTS, INC. (CHINA),)
)
 Defendants.)

Civil Action No.
14-cv-583

COMPLAINT AND JURY DEMAND

Theodore F. Shiells
Texas State Bar No. 00796087
Shiells Law Firm P.C.
1201 Main Street – Suite 2470
Dallas, Texas 75202
Tel: (214) 979-7312
Fax: (214) 979-7301
tfshiells@shiellslaw.com
Attorney for Plaintiff Simon Nicholas Richmond

COMPLAINT AND JURY DEMAND

Plaintiff Simon Nicholas Richmond (“Richmond” or “Plaintiff”), for his claims against Forever Gifts, Inc. (Texas) d/b/a Factory Direct Cost and Forever Gifts, Inc. (China) (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. Forever Gifts, Inc. d/b/a Factory Direct Cost (Forever Gifts Texas) is a corporation organized and existing under the laws of the State of Texas, having a principal place of business at either or both of 825 Avenue H East, Suite 117, Arlington, TX 76011 and/or Suite 501 2005 108th St Grand Prairie, TX 75050 and may be served through its agent for service of process, Chiue Corp, 1112 W. Northwest Highway, Grapevine, TX 76051.

3. Forever Gifts Texas also has a China showroom at Room 17E, ZhiBen Building, FuMing Road, Futian District, Shenzhen, China 518033.

4. Forever Gifts, Inc. (Forever Gifts China) is a corporation organized

and existing under the laws of China, having a principal place of business at Room 17E, ZhiBen Building, FuMing Road, Futian District, Shenzhen, China 518033.

Forever Gifts China may be served pursuant to the Hague Convention or upon a director or officer of the company.

5. Upon information and belief, Forever Gifts Texas is owned by Mr. Hendra Wijaya and/or his spouse Yu-Ping Sung, who are both Directors.

6. Upon information and belief, Forever Gifts China and Forever Gifts Texas 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.

7. For purposes of this Complaint Forever Gifts China and Forever Gifts Texas shall be collectively referred to as “Forever Gifts.”

2. SUBJECT MATTER JURISDICTION

8. 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.

9. Upon information and belief, Defendant Forever Gifts Texas has regular and established places of business, regularly transacts business, and has committed and/or induced acts of patent infringement within the State of Texas and within the Northern District of Texas. Defendant Forever Gifts Texas is, therefore, subject to the personal jurisdiction of this Court.

10. Upon information and belief, Defendant Forever Gifts Texas is incorporated, resides, has conducted extensive commercial activities, and continues to conduct business, within the State of Texas and within this district. Upon information and belief, Defendant Forever Gifts Texas has a warehouse and principal office in or near Arlington, Texas and a permanent customer showroom at the Dallas Market Center in Dallas, Texas. Upon information and belief, Forever Gifts Texas also has exhibited and offered its products for sale at the Dallas International Gift Show, at the Dallas Trade Mart in Dallas, Texas.

11. Upon information and belief, Forever Gifts China has shipped products to Forever Gifts Texas' Texas warehouse and/or to customers within the United States.

12. Upon information and belief, Defendant Forever Gifts, directly or

through intermediaries, has purposefully and voluntarily placed one or more of their products (including, but not limited to, the products that are accused of infringement in this complaint) into the stream of commerce in the Northern District of Texas and elsewhere, including from and through Forever Gifts' retail distribution network, which includes the national retail chains Home Depot and/or True Value Hardware under the private-label packaging of one or more of those retail chains.

13. Upon information and belief, Forever Gifts sold products specifically identified in this complaint to Home Depot under Home Depot's private label brand "Home Accents Holiday". Since the private label "Home Accents Holiday" products are well known to be sold by Home Depot in its stores on a nationwide basis, Forever Gifts' sale of accused infringing products to Home Depot under the "Home Accents Holiday" brand constitutes use of an intentionally established distribution channel that Forever Gifts knew, or reasonably could have foreseen would cause its goods that are accused of infringement in this lawsuit to be sold in Texas, this district and elsewhere in the United States.

14. Defendant Forever Gifts has sufficient minimum contacts with Texas and this district and the maintenance of this suit does not offend traditional notions

of fair play and substantial justice.

15. Personal jurisdiction over foreign Defendant Forever Gifts China is proper pursuant to Texas Long-Arm Statute § 17.042 of the Texas Civil Practice and Remedies Code, and principles of due process.

16. Foreign Defendant Forever Gifts China has 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 Defendant Forever Gifts Texas.

17. Personal jurisdiction over Defendant Forever Gifts Texas is proper under principles of specific jurisdiction. Upon information and belief, Defendant has transacted and solicited business in Texas and in this district related to the subject matter of the claims alleged herein. Upon information and belief, Forever Gifts Texas has committed infringement in this state of Texas and in this district by importing, offering to sell and/or selling goods infringing the '094 Patent, 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 Texas residents and others at least via its Dallas showroom and/or its customer's retail stores in Texas including under

one or more of its retail customers' private-label branded retail packaging.

2. Foreign Defendant Forever Gifts China.

18. Personal jurisdiction over foreign Defendant Forever Gifts China is proper under principles of specific jurisdiction. Upon information and belief, Defendant Forever Gifts China 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, Defendant Forever Gifts China has knowingly induced infringement in the United States by offering to sell and/or selling goods infringing Plaintiff's '094 Patent to its customers, with knowledge of Plaintiff's '094 Patent and with knowledge that Defendant Forever Gifts China's goods infringe Plaintiff's '094 Patent, and with knowledge and/or willful blindness to the fact that its products will be imported into and offered for sale, sold and/or used in the United States by others. Further, Defendant Forever Gifts China'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 Defendant Forever Gifts China at the time it committed its misconduct.

C. General Jurisdiction.

19. Personal jurisdiction over Defendant Forever Gifts Texas is also proper under principles of general jurisdiction in that it resides in this state and district and as such has continuous and systematic contacts with Texas and this district and has regularly and purposefully conducted business in Texas and this district.

20. Personal jurisdiction over the foreign Defendant Forever Gifts China is also proper under principles of general jurisdiction in that, upon information and belief, Defendant Forever Gifts China has regularly and purposefully conducted business in the United States.

21. 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 defendant.

D. Venue.

22. Venue also properly lies in this district pursuant to 28 U.S.C. § 1400(b) because Defendant Forever Gifts Texas resides or may be found in this district and/or has committed acts of infringement in this district and/or has a regular and established place of business in this district.

23. Venue also properly lies in this district under 28 U.S.C. § 1391(b) (1) and/or (2) because Defendant Forever Gifts Texas resides in this district and/or a substantial part of the events 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.

24. 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 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.

25. Venue is proper in this district over Forever Gifts China 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 defendant.

26. Upon information and belief, there are no other lawsuits or proceedings in any other jurisdiction relating to the validity and/or infringement of the patent that is the subject of this complaint.

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

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

28. As to Forever Gifts China, joinder is 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 defendant.

5. FACTUAL BACKGROUND – PATENT IN SUIT

29. 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.

30. Richmond is the inventor and owner of all right, title, and interest to the United States patent number 8,514,094 B2, entitled “Solar Gazing Globe,” (“the ’094 Patent”), which duly and legally issued to Richmond on August 20, 2013.

31. Richmond is the sole owner of the ‘094 Patent and has the exclusive right to sue for infringement and recover damages for all past, present, and future infringement. The ‘094 patent has never been licensed, assigned or sold.

32. On April 5, 2012, United States Patent Publication No. US

2011/0081888 A1 (the “‘888 Published Application”) was published. A copy of the ‘888 Published Application may be obtained for free from the official United States Patent and Trademark website, uspto.gov. The invention as claimed in at least some infringed claims in the ‘094 Patent is substantially identical to the invention as claimed in at least some claims of the ‘888 Published Application.

33. Richmond’s own commercial products covered by the ‘094 Patent were offered for sale and sold after filing and prior to the issuance of the ‘094 Patent and Richmond is currently involved in developing, marketing and offering for sale, new commercial embodiments of the ‘094 Patent.

34. 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 ‘094 Patent.

6. COUNT NO. 1 – INFRINGEMENT OF PLAINTIFF’S PATENT

35. Upon information and belief, Forever Gifts sells, offered for sale, sold and/or imported, one or more models of solar-powered garden lights that infringe one or more claims of Plaintiff’s ‘094 Patent including, but not limited to, its “Patriot Lighting” – branded Solar Mini Crackle Ball Path Lights model numbers 343-0358 and 343-1976.

36. Upon information and belief, Defendant Forever Gifts also sells, and

has offered for sale, sold and/or imported, one or more other models of solar-powered garden lights including its “Home Accents Holiday”-branded, Solar LED Crackle Ball Stake Light, model S1401 / Store SKU 1000007589 , its “Living Solutions”-branded model number WIC218927 Solar Mini Crackle Glass Stake, its “Enchanted Forest”-branded model number: S11963RWH / SKU: 343-1963 Crackle Ball Christmas 1-Light 14-3/4" Red and White Solar Landscape Light, and its “Four Seasons Courtyard”-branded Solar Pathway Light with Crackle Glass Sphere, S110300102-A / 160321 which, if sold after the issue date of the ‘094 Patent, infringe one or more claims of Plaintiff Richmond’s ‘094 Patent.

37. Plaintiff Richmond has been damaged as a result of Defendant Forever Gifts’ infringing activities and will continue to be damaged unless such activities are enjoined by this Court. Pursuant to 35 U.S.C. § 284, Plaintiff Richmond is entitled to damages adequate to compensate for the infringement of Plaintiff Richmond’s ‘094 Patent, including, inter alia, lost profits and/or a reasonable royalty.

38. Plaintiff Richmond will be irreparably harmed if Defendant Forever Gifts’ patent infringement continues. Plaintiff relies upon his patents for protection of his business’s intellectual property and the rampant infringement of

his patents by Defendant Forever Gifts deprives 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 Defendant Forever Gifts, its directors, officers, employees, agents, parents, subsidiaries, affiliates, and anyone else in active concert or participation with it, from taking any other actions that would infringe Plaintiff's '094 Patent.

**7. COUNT NO. 2 - INFRINGEMENT OF PROVISIONAL RIGHTS IN
THE '094 PATENT**

39. Upon information and belief, Forever Gifts and all its retail customers of the products that are referred to in this complaint had actual notice of the '888 Published Application including its specification and claims prior to the issue date of the '094 Patent.

40. Upon information and belief, Forever Gifts' retail customer, Menard Inc. had actual notice of the '888 Published Application including its specification and claims on July 20, 2012 via an email from Plaintiff to Danielle Hawke, a buyer at Menard as part of Menard's annual "Solar Landscape Lighting Review" to

which Plaintiff received an invitation from Ms. Hawke to join. Upon information and belief, this Review included quotations and submissions by current and potential vendors of solar-powered garden light products for consideration by the Menard's buyer for possible future purchase and resale by Menard.

41. Upon information and belief, subsequent to receiving the aforementioned email and commercial submissions from Plaintiff, Ms. Hawke compared the aforementioned "Patriot Lighting" – branded model numbers 343-0358 and 343-1976 supplied by Defendant Forever Gifts with an item of similar structure detailed in the commercial submission supplied to Menard by Plaintiff in July 2012.

42. Upon information and belief, Menard shortly thereafter supplied the '888 Published Application to their current vendor at that time, namely Forever Gifts, thereby providing Forever Gifts with actual notice of the '888 Published Application. The allegations and factual contentions set forth in this paragraph are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. See Fed. R. Civ. P. 11(b)(3).

43. Upon information and belief, Forever Gifts had additional actual notice of the '888 Published Application on May 7, 2013 via service of an

Amended Complaint upon Mr. Hendra Wijaya in civil action 3:13-CV-01949-MLC-DEA para. 38, and then again on May 16, 2013, via email from Plaintiff to Mr. Wijaya, including its specification and claims.

44. Upon information and belief, pursuant to 35 U.S.C. § 154(d), since having actual notice of the ‘888 Published Application, Forever Gifts has made, used, offered for sale, sold and/or imported into the United States the invention as claimed in one or more claims of the ‘888 Published Application, by making, using, offering for sale, selling and/or importing into the United States one or more models of solar-powered garden lights, including, but not limited to, its “Home Accents Holiday”-branded, Solar LED Crackle Ball Stake Light, model 1000007589.

45. As a result of infringement of Plaintiff’s provisional rights in the ‘888 Published Application by Forever Gifts, Plaintiff is entitled to recover a reasonable royalty pursuant to 35 U.S.C. § 154(d)(1), in addition to Plaintiff’s other rights provided by the Patent Statute.

8. COUNT NO. 3 - WILLFULNESS OF THE INFRINGEMENT

46. Upon information and belief, Defendant Forever Gifts has had actual knowledge of Plaintiff Richmond's ‘094 Patent and that one or more of its products

infringe one or more claims of that patent. Upon information and belief, not only has Defendant Forever Gifts had notice of Plaintiff Richmond's '094 Patent, Defendant Forever Gifts, without justification, continues to flagrantly infringe such '094 Patent. There was an objectively high likelihood of infringement and Defendant Forever Gifts knew this, or the infringement was so obvious that Defendant Forever Gifts should have known it. As such, Forever Gifts' infringement of Plaintiff's '094 Patent is deliberate and willful. The allegations and factual contentions set forth in this paragraph are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. See Fed. R. Civ. P. 11(b)(3).

9. JURY DEMAND

47. Plaintiff hereby demands a trial by jury, pursuant to Fed. R. Civ. Proc. 38(b), for all issues so triable.

10. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the court enter judgment granting Plaintiff the following relief:

a. Awarding Plaintiff his damages adequate to compensate for Defendants' infringement of Plaintiff's '094 Patent, including, inter alia, lost

profits and/or a reasonable royalty;

b. Awarding Plaintiff treble of the damages and/or reasonable royalty, and that those damages and/or reasonable royalty be trebled on account of the willful nature of the infringement, pursuant to 35 U.S.C. § 284, against Defendants;

c. Awarding Plaintiff a reasonable royalty pursuant to 35 U.S.C. § 154(d)(1) for Defendants' infringement of provisional rights in the '888 Published Application;

d. 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;

e. Enjoining Defendants Forever Gifts from infringing Plaintiff's Patent; and

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

Respectfully submitted,

/s/ Theodore F. Shiells
Theodore F. Shiells
Texas State Bar No. 00796087

Shiells Law Firm P.C.
1201 Main Street – Suite 2470
Dallas, Texas 75202
Tel: (214) 979-7312
Fax: (214) 979-7301
tfshiells@shiellslaw.com
Attorney for Plaintiff
Simon Nicholas Richmond