

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

MINKA LIGHTING, INC.,	§	
	§	
PLAINTIFF,	§	
V.	§	Case _____
	§	
WIND RIVER CEILING FANS LLC,	§	
SUMMER WIND INTERNATIONAL LLC,	§	JURY TRIAL DEMANDED
AND MONTE HALL,	§	
	§	
DEFENDANTS.	§	

**ORIGINAL COMPLAINT**

Plaintiff Minka Lighting, Inc. (“Minka”) files this Original Complaint pursuant to the Lanham Act (15 U.S.C. § 1125(a)) for trade dress infringement and unfair competition; patent infringement pursuant to the Patent Act (35.U.S.C. § 271); and common-law trade dress infringement and unfair competition against Defendants Wind River Ceiling Fans LLC (“Wind River”), Summer Wind International LLC (“Summer Wind”), and Monte Hall (“Hall”) (collectively, "Defendants"), and for cause would show as follows:

**THE PARTIES**

1. Plaintiff Minka is a corporation organized and existing under the laws of the State of California, with its principal place of business at 1151 West Bradford Court, Corona, California 92882.
2. On information and belief, Defendant Wind River Ceiling Fans LLC d/b/a Wind River Fan Company is a Limited Liability Company organized and existing under the laws of the State of Texas, with its principal place of business at 755 Regent Blvd., Suite 275, Grapevine, Texas 75261. On information and belief, Defendant Wind River is a wholly-owned subsidiary of

Defendant Summer Wind. Defendant Wind River may be served with process at 755 Regent Blvd., Suite 275, Grapevine, Texas 75261.

3. On information and belief, Defendant Summer Wind is a Limited Liability Company organized and existing under the laws of the State of Texas, with its principal place of business at 1170 Corporate Dr. West, Suite 204, Arlington, TX 76006-6884. On information and belief, Defendant Summer Wind is the parent entity of Defendant Wind River. Defendant Summer Wind may be served with process through its registered agent Chin Po, at 1170 Corporate Dr. West, Suite 204, Arlington, TX 76006-6884.

4. Defendant Monte Hall is an individual and resident citizen of Texas. He may be served with process at his place of business located at 1170 Corporate Dr. West, Suite 204, Arlington, TX 76006-6884.

### **JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction over this controversy pursuant to 28 U.S.C. §§ 1331 and 1338 because it is a civil action involving federal questions related to claims for trade dress infringement arising under the Lanham Act, 15 U.S.C. § 1125(a), and claims for patent infringement arising under the Patent Act, 35 U.S.C. § 271.

6. This Court has personal jurisdiction over Defendants because they are residents of this State, and conduct business in this State, including without limitation, the manufacture, use, importation, distribution, sale and/or offer for sale of infringing products in this State and this District, and Defendants should reasonably anticipate being haled into court in this State. Defendants: (1) transacts business in this District; (2) contract to supply goods or services in this

District; (3) have committed tortious acts in this District; (4) have committed tortious acts causing injury to Plaintiff in this District; (5) regularly solicit business, or engage in other persistent courses of conduct, or derive substantial revenue from goods provided or services rendered in this District; (6) expect or should reasonably expect their acts to have consequences in this District and derive substantial revenue from interstate or international commerce; (7) have systematic and continuous contacts with this District; (8) continue to transact and do business in this District; and (9) have websites and social media accounts that are accessible in this District, and through which Defendants transact business. Defendants' acts form a substantial part of the events or omissions giving rise to Plaintiff's claims. For example, Defendants offer to sell and/or sell infringing products to retailers in this District.

7. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) and 1400(b) because a substantial part of the events giving rise to Plaintiff's claims occurred in this District, including without limitation, Defendants' manufacture, use, importation, distribution, sale and/or offer for sale of infringing products in this District; Defendants are subject to personal jurisdiction in this District; and Defendants have committed torts in whole or in part in this District.

8. This Court has supplemental jurisdiction over Texas common-law trade dress infringement and unfair competition claims pursuant to 28 U.S.C. § 1367.

### **GENERAL ALLEGATIONS**

9. Plaintiff Minka is in the business of designing, manufacturing, importing, distributing, marketing, offering to sell and/or selling high-quality home products, including ceiling fans. Minka sells its ceiling fans via authorized distributors located throughout the United States, including in this District. Consumers purchase Minka's products because of Minka's

service, reputation and goodwill, and the high quality and reliability of the products that Minka designs and sells.

10. Minka has invested substantial time, effort, skill, expense, and resources in designing and engineering its ceiling fans and the distinctive trade dress embodied in the packaging for Minka's ceiling fans.

11. On information and belief, Defendant Wind River is in the business of manufacturing, importing, distributing, marketing, offering to sell and/or selling ceiling fans. On information and belief, Defendant Wind River directly competes with Minka in the U.S. ceiling fan market.

12. On information and belief, Defendant Wind River offers for sale and sells its ceiling fans to consumers through authorized retailers in this State, as well as throughout the United States. On information and belief, Defendant Wind River's authorized retailers in this State and in this District distribute, market, offer for sale and/or sell Defendant Wind River's infringing ceiling fans provided in Defendant Wind River's infringing packaging.

13. On information and belief, Defendant Summer Wind is in the business of manufacturing, importing, distributing, marketing, offering to sell and/or selling ceiling fans. On information and belief, Defendant Summer Wind directly competes with Minka in the U.S. ceiling fan market.

14. On information and belief, Defendant Summer Wind offers for sale and sells its ceiling fans to consumers in this State, as well as throughout the United States. On information and belief, Defendant Summer Wind caused Defendant Wind River to offer for sale and sell its infringing ceiling fans to retailers in this State, as well as throughout the United States.

15. Minka manufactures the majority of its ceiling fans in China and it uses various manufacturers to do so. One of Minka's manufacturers is Defendant Summer Wind. Defendant Summer Wind has manufactured Minka ceiling fans for approximately the last seven years. Defendant Summer Wind manufactures Minka ceiling fans according to Minka's specifications and required quality controls. Minka's requirements include the ceiling fan designs, technical specifications, all aspects of the packaging for the ceiling fans, and accompanying product literature.

16. Ancillary to the design and fabrication of Minka ceiling fans, Minka provided and transmitted specific information to Defendant Summer Wind about the packaging for Minka's ceiling fans. Minka's packaging information included templates, guidelines, color choices, font details, placement of all text, lay-out of all pictured ceiling fans, and other detailed information.

17. At the inception of Minka's manufacturing relationship with Defendant Summer Wind, Defendant Summer Wind had recently lost Craftmade International Fan Company as its number one customer. Defendant Summer Wind was desperately looking for another fan company to use Defendant Summer Wind as its primary or alternative manufacturing source. In its manufacturing negotiations with Minka, Defendant Summer Wind represented that it was not interested in becoming a wholesaler of ceiling fans.

18. Approximately two years ago, it came to Minka's attention that Defendant Summer Wind was providing ceiling fans for sale to retailers. Defendant Summer Wind was contacted and represented that its manufacturing effort was temporary, incidental, and only to assist the president of Defendant Wind River - a former Craftmade officer and customer who needed some temporary manufacturing assistance. Defendant Summer Wind assured Minka that

this business relationship with Defendant Wind River would neither infringe nor negatively impact Minka's fan designs and Defendant Summer Wind's obligations to Minka.

19. Each January, there is an international ceiling fan and lighting show at the Dallas Market Center (the "Dallas Market"). Exhibitors from all over the world display their lights, ceiling fans and other home products to commercial customers/retailers. Those retail customers include single retail outlets and chains, builders, developers, interior decorators and other professionals. The retail customers in turn sell their products to end consumers.

20. On or about January 17, 2019, Minka representatives were made aware of Defendant Wind River's appearance as a new exhibitor at the Dallas Market. Minka was informed by long-time Minka customers who advised Minka that Defendant Wind River was copying the distinctive trade dress embodied in Minka's packaging for its ceiling fans, and using a confusingly similar trade dress to promote, market and sell Defendant Wind River's ceiling fans. Upon Minka's investigation, it confirmed that Defendant Wind River had in fact copied Minka's trade dress for its ceiling fan packaging, and moreover, had specifically infringed the design of several of Minka's ceiling fans that are protected by United States design patents.

21. On information and belief, Defendants Summer Wind and Wind River are attempting to obtain exhibit space at the Dallas Market for 2020 that is significantly larger than their current 2019 exhibitor space. The Defendants' obvious intent is to fully compete against Minka using Minka's own trade dress and patented designs.

### **Plaintiff's Distinctive Trade Dress**

22. Minka has developed, adopted, uses and owns distinctive trade dress embodied in the inherently distinctive packaging for Minka's ceiling fans. Examples of Plaintiff's

distinctive Trade Dress have appeared in its distributors' retail outlets, Minka's showroom, in marketing materials, and in other marketing media.

23. Minka's distinctive trade dress embodied in the packaging for Minka's ceiling fans comprises the combination of at least the following elements on the box (collectively, "Minka Trade Dress"): (a) a rectangular box; (b) white color; (c) absence of a separate background color; (d) absence of a contrasting color; (e) number of colors limited to white box and black lettering; (f) absence of any shading of white color; (g) contains a photograph of the ceiling fan; (h) the photograph is located on the front (long) side of the box; (i) the picture is located on-center on the long side of the box; (j) a full or partial image of the ceiling fan, including its fan blades; (k) a full or partial image/photograph of the ceiling fan is located on the end-caps of the box; (l) the image is a birds-eye view on the end-caps; (m) the image on the end caps has cropped fan blades less than 1/2 of the overall length of the fan blade; (n) there is a side view image of the ceiling fan at eye level on the long side of the box; (o) the image of the ceiling fan is shown on all four long sides of the box; (p) the image is placed on-center on every side of the box; (q) all writing is in black color on the box; (r) there is written information on the top of the box pertaining to the manufacturer's instructions, performance information and energy guide; (s) the ceiling fan model and manufacturer's name is placed on the left side of the box on every side of the box; (t) the company name or trademark is displayed on all four sides of the box; (u) other images on the box (such as a swirl or pattern that is part of manufacturer's name) are shown on the left side of the box; and (v) the overall look and appearance of the packaging is clean, modern, and minimalist depicted in the white, uncluttered, clean appearance with no contrasting colors, with the focus on the picture portraying the ceiling fan.

24. Plaintiff was the first company to adopt and introduce the combination of features comprising Plaintiff's Trade Dress for ceiling fans into interstate commerce. Other than Minka and now Defendants Wind River and Summer Wind, no one else uses a combination of elements that is like Minka's Trade Dress.

25. Minka adopted the elements of the Minka Trade Dress for aesthetic reasons. No element of the Minka Trade Dress is functional in combination with the other elements. The combination of elements comprising the Minka Trade Dress is not essential to the use or purpose of the packaging, it does not reduce the cost or improve the performance of the packaging, and its use by Minka does not put competitors at any significant non-reputation-related disadvantage. Indeed, competitors, such as Defendants, have multitudes of alternative packaging they can use. The only reason to mimic the Minka Trade Dress is to attempt to trade off of the goodwill and siphon away sales from Minka.

26. The Minka Trade Dress has been extensively and continually used, advertised and promoted by Minka in the United States for many years. Substantial time, effort and money have been expended over the years to ensure that consumers associate the Minka Trade Dress exclusively with Minka.

27. Minka uses the Minka Trade Dress with its ceiling fans to advertise and promote Minka ceiling fans to consumers directly.

28. Plaintiff's Trade Dress is distinctive of Plaintiff.

29. Plaintiff's Trade Dress is inherently distinctive.

30. Plaintiff's Trade Dress has acquired distinctiveness.

31. Plaintiff's Trade Dress has acquired distinctiveness as demonstrated by, *inter alia*, Plaintiff's expenditure of significant amounts of money promoting and popularizing Plaintiff's



Trade Dress through marketing, sales, and displays as an exhibitor to hundreds of thousands of commercial buyers on a semi-annual basis; Plaintiff's sales have generated millions of dollars of revenue; the recognition of Plaintiff's Trade Dress and the goodwill associated therewith in the ceiling fan market; and Defendants' infringement, which trades off of Plaintiff's Trade Dress and the goodwill and success associated therewith.

32. Plaintiff's Trade Dress is also non-functional.

33. Plaintiff's Trade Dress provides a unique ornamental and aesthetic appearance that Plaintiff designed.

34. Plaintiff's Trade Dress is not essential to the use or the purpose of Plaintiff's ceiling fans or its packaging. There are numerous alternative means to perform the function of promoting and selling ceiling fans without using Plaintiff's Trade Dress.

35. Plaintiff's Trade Dress has become associated with Plaintiff. Since Minka's formation, Plaintiff has been devoted to bringing high-quality fans and lighting products to the consuming public.

36. Plaintiff's Trade Dress is inherently distinctive and strong when used with ceiling fans.

37. Because of Plaintiff's extensive, exclusive use and promotion of Plaintiff's Trade Dress, the same has become distinctive of Plaintiff, indicates a single source of origin of Plaintiff's ceiling fans, and has acquired secondary meaning.

38. Plaintiff has used Plaintiff's Trade Dress continuously, exclusively, and extensively for decades with ceiling fans.

39. Plaintiff has advertised and otherwise promoted Plaintiff's Trade Dress extensively since its first use thereof, through various advertising means.

40. Plaintiff's ceiling fans associated with Plaintiff's Trade Dress have been sold extensively throughout the United States.

41. By virtue of Plaintiff's use, advertising, promotion, and sale of ceiling fans with Plaintiff's Trade Dress, Plaintiff's Trade Dress has become associated with Plaintiff. Plaintiff has earned valuable and residual goodwill and reputation in the minds of consumers in the United States for being the sole source of ceiling fans with Plaintiff's Trade Dress.

42. Defendant Monte Hall, as an owner, officer and/or member of Defendant Summer Wind, is personally liable for trade dress infringement because he is a moving, active conscious force behind the Defendant companies' infringement.

43. The Defendants have willfully infringed Minka's exclusive rights in its Trade Dress by adopting and using a confusingly similar trade dress on Defendants' packaging for their ceiling fans.

44. As a direct and proximate result of the Defendants' willful misconduct, Minka has suffered and is suffering irreparable harm to the value and goodwill associated with its Trade Dress, and to Minka's nationwide reputation as a designer, manufacturer and distributor of high-quality ceiling fans.

45. Unless the Defendants are restrained and enjoined from further infringement of Minka's Trade Dress, Minka will continue to be irreparably harmed as it has no control over the substantial goodwill associated with its Trade Dress, which the Defendants are unlawfully exploiting.

46. Minka has no adequate remedy at law that could compensate it for the continued and irreparable harm it has suffered, and will continue to suffer if the Defendants' willful misconduct is allowed to continue.

47. As a direct and proximate result of the Defendants' willful misconduct, Minka has suffered damages to its valuable Trade Dress, reputation and goodwill, along with other damages in an amount not yet known but to be proved at trial.

### **Plaintiff's Design Patents**

48. Plaintiff has protected its various ceiling fan designs by obtaining U.S. design patents.

49. On February 23, 2016, the United States Patent Office duly and lawfully issued United States Design Patent No. D750,213 entitled "Ceiling Fan with Light Fixture" (the "'213 Patent"). Minka is named as the applicant on the face of the '213 Patent. The '213 Patent covers an ornamental design for a ceiling fan and light fixture.

50. On November 13, 2018, the United States Patent Office duly and lawfully issued United States Design Patent No. D796,660 entitled "Combination Ceiling Fan and Light Fixture" (the "'660 Patent"). Minka is named as the applicant on the face of the '660 Patent. The '660 Patent covers an ornamental design for a ceiling fan and light fixture.

51. Plaintiff is the owner of all right, title, and interest in the '213 Patent.

52. Plaintiff is the owner of all right, title, and interest in the '660 Patent.

53. As alleged above, Defendants Summer Wind and Wind River manufacture, use, sell, offer to sell and/or import into the United States ceiling fans that infringe Plaintiff's '213 and '660 Patents.

54. A true and correct copy of the '213 Patent is attached as Exhibit 1, which is incorporated herein by reference. As alleged above, Defendants manufacture, use, sell, offer to sell and/or import into the United States ceiling fans that infringe Plaintiff's '213 Patent.

55. A true and correct copy of the '660 Patent is attached Exhibit 2, which is incorporated herein by reference. As alleged above, Defendants manufacture, use, sell, offer to sell and/or import into the United States ceiling fans that infringe Plaintiff's '660 Patent.

**COUNT ONE**  
**VIOLATIONS OF 15 U.S.C. § 1125(a)**  
**(Federal Unfair Competition)**

56. Minka repeats and realleges the allegations of Paragraphs 1 through 55 as if fully set forth herein.

57. Pursuant to 15 U.S.C. § 1125(a), the owner of an unregistered trade dress may be granted injunctive relief to prevent or restrain infringement of its trade dress and may petition the Court to award damages, disgorgement of profits, and attorneys' fees as a result of the trade dress infringement.

58. Defendants' acts described above, including their use in commerce of trade dress that is confusingly similar to Plaintiff's Trade Dress, have caused or are likely to cause confusion, mistake, deception, or misunderstanding as to the source, origin, sponsorship, affiliation, or approval of Defendants and their ceiling fans, and constitute infringement of Plaintiff's Trade Dress and unfair competition in violation of the Lanham Act and trade dress and unfair competition laws. Further, Defendants' acts described above are likely to cause confusion, mistake, or deception as to the source, origin, sponsorship, affiliation, or approval of Defendants and their ceiling fans, all in violation of 15 U.S.C. § 1125(a) and trade dress and unfair competition laws.

59. As alleged above, Plaintiff's Trade Dress has become well known in the ceiling fan market. After Plaintiff's Trade Dress became well known, Defendants started to use and continue to use Plaintiff's Trade Dress, or trade dress confusingly similar thereto, for commercial purposes and without Plaintiff's permission. Defendants' infringement of Plaintiff's Trade Dress is therefore willful.

60. On information and belief, Defendants are willfully offering for sale and selling ceiling fans in packaging that infringes Plaintiff's Trade Dress in order to benefit from Plaintiff's

goodwill and reputation. Furthermore, Defendants are falsely creating an association between Defendants and Plaintiff, and Defendants' ceiling fans and Plaintiff's ceiling fans.

61. Defendants' actions have damaged Plaintiff's business, reputation, and goodwill and have interfered with Plaintiff's own use of its Trade Dress.

62. Unless restrained and enjoined by this Court, Defendants will persist in their activities, causing irreparable harm and injury not only to Plaintiff, but to those who purchase or may purchase ceiling fans from Plaintiff.

63. Defendant should be preliminarily, and upon final hearing, permanently enjoined from using Plaintiff's Trade Dress or any confusingly similar Trade Dress, pursuant to 15 U.S.C. § 1116.

64. Plaintiff is entitled, under 15 U.S.C. § 1117(a), to recover from Defendants: (i) Defendants' profits in providing their ceiling fans using Plaintiff's Trade Dress or a confusingly similar trade dress; (ii) damages sustained by Plaintiff due to Defendants providing their ceiling fans using a trade dress confusingly similar to Plaintiff's Trade Dress; and (iii) the costs of this action.

65. Because this is an exceptional case, involving willful misconduct by Defendants, Plaintiff is also entitled, under 15 U.S.C. § 1117(a), to recover: (i) exceptional damages for intentional infringement, bad faith, and willful conduct equal to three times profits or damages, whichever is greater; and (ii) attorneys' fees.

66. Plaintiff has no adequate remedy at law and is suffering irreparable harm.

**COUNT TWO**  
**INFRINGEMENT OF U.S. PATENT NO. D750,213**

67. Minka repeats and realleges the allegations of Paragraphs 1 through 66 as if fully set forth herein.

68. Minka is the sole owner of U.S. Patent No. D750,213 (the “‘213 Patent”) entitled “Ceiling Fan with Light Fixture,” issued on February 23, 2016. A true and correct copy of the ‘213 Patent is attached as Plaintiff’s Exhibit 1 and incorporated by reference herein.

69. Minka offers for sale and sells ceiling fans that are commercial embodiments of the invention claimed in the ‘213 Patent, including without limitation, a ceiling fan offered under the trademark “LIGHT WAVE.” Minka offers for sale and sells its patented “LIGHT WAVE” ceiling fans throughout the United States, including in this District.

70. From the date of issuance of the ‘213 Patent to the present, Minka has identified the ‘213 Patent with its “LIGHT WAVE” ceiling fans.

71. Minka has not licensed any of its rights in the ‘213 Patent to Defendants.

72. On information and belief, Defendant Wind River, without license from Minka, (1) has made, used, imported, distributed, sold and/or offered for sale; (2) has caused the manufacture, use, importation, distribution, sale and/or offer for sale; (3) is making, using, importing, distributing, selling and/or offering for sale; (4) is causing the manufacture, use, importation, distribution, sale and/or offer for sale; and/or (5) is making, using, importing, distributing, selling and/or offering for sale the “DROID” line of ceiling fans that infringe the claim of the ‘213 Patent, either literally or under the Doctrine of Equivalents.

73. On information and belief, Defendant Summer Wind, without license from Minka, (1) has made, used, imported, distributed, sold and/or offered for sale; (2) has caused the manufacture, use, importation, distribution and/or offer for sale of the "DROID" line of ceiling fans that infringe the claim of the ‘213 Patent, either literally or under the Doctrine of Equivalents.

74. On information and belief, the Defendants’ infringement occurred with actual and/or constructive knowledge of the ‘213 Patent.

75. By reason of Defendants' infringement, Minka is entitled to damages to the full extent authorized by 35 U.S.C. § 284 and/or § 289, and injunctive relief pursuant to 35 U.S.C. § 283. Minka is also entitled to its attorneys' fees under 35 U.S.C. § 285.

76. The infringing acts of Defendants have been the actual and proximate cause of damage to Minka, and Minka has sustained damages and will continue to sustain damages as a result of Defendants' infringement of the '213 Patent.

77. Minka has no adequate remedy at law. The foregoing acts of Defendants have caused Minka irreparable harm. Unless enjoined, Defendants' acts as alleged herein will continue to cause Minka irreparable harm.

**COUNT THREE**  
**INFRINGEMENT OF U.S. PATENT NO. D796,660**

78. Minka repeats and realleges the allegations of Paragraphs 1 through 77 as if fully set forth herein.

79. Minka is the sole owner of U.S. Patent No. D796,660 (the "'660 Patent") entitled "Combination Ceiling Fan and Light Fixture," issued on September 5, 2017. A true and correct copy of the '660 Patent is attached as Plaintiff's Exhibit 2 and incorporated by reference herein.

80. Minka offers for sale and sells ceiling fans that are commercial embodiments of the invention claimed in the '660 Patent, including without limitation, a ceiling fan offered under the trademark "DYNO." Minka offers for sale and sells its patented "DYNO" ceiling fans throughout the United States, including in this District.

81. From the date of issuance of the '660 Patent to the present, Minka has identified the '660 Patent number with its "DYNO" ceiling fans.

82. Minka has not licensed any of its rights in the '660 Patent to Defendants.

83. On information and belief, Defendant Wind River, without license from Minka, (1) has made, used, imported, distributed, sold and/or offered for sale; (2) has caused the manufacture, use, importation, distribution, sale and/or offer for sale; (3) is making, using, importing, distributing, selling and/or offering for sale; (4) is causing the manufacture, use, importation, distribution, sale and/or offer for sale; and/or (5) is making, using, importing, distributing, selling and/or offering for sale the "SOLERO" line of ceiling fans that infringe the claim of the '660 Patent, either literally or under the Doctrine of Equivalents.

84. On information and belief, Defendant Summer Wind, without license from Minka, (1) has made, used, imported, distributed, sold and/or offered for sale; (2) has caused the manufacture, importation, use, distribution, and/or offer for sale of the "SOLERO" line of ceiling fans that infringe the claim of the '660 Patent, either literally or under the Doctrine of Equivalents

85. On information and belief, the Defendants' infringement occurred with actual and/or constructive knowledge of the '660 Patent.

86. By reason of Defendants' infringement, Minka is entitled to damages to the full extent authorized by 35 U.S.C. § 284 and/or § 289, and injunctive relief pursuant to 35 U.S.C. § 283. Minka is also entitled to its attorneys' fees under 35 U.S.C. § 285.

87. The infringing acts of Defendants have been the actual and proximate cause of damage to Minka, and Minka has sustained damages and will continue to sustain damages as a result of Defendants' infringement of the '660 Patent.

88. Minka has no adequate remedy at law. The foregoing acts of Defendants have caused Minka irreparable harm. Unless enjoined, Defendants' acts as alleged herein will continue to cause Minka irreparable harm.



**COUNT FOUR**  
**COMMON-LAW TRADE DRESS INFRINGEMENT**

89. Minka repeats and realleges the allegations of Paragraphs 1 through 88 as if fully set forth herein.

90. Plaintiff is the owner of common-law rights in Plaintiff's Trade Dress in Texas and throughout the United States. These rights are senior and superior to any rights that Defendant may claim. Defendants have used in commerce, without Plaintiff's consent, a trade dress that is confusingly similar to Plaintiff's Trade Dress. Defendants' use of Plaintiff's Trade Dress, or a confusingly similar Trade Dress is likely to cause consumer confusion, deception, or mistake among consumers as to the origin, source, sponsorship, affiliation, or approval by Plaintiff of Defendants or their ceiling fans.

91. Defendants' conduct as described above has been intentional, willful, deliberate, malicious, and intended to injure Plaintiff, in clear disregard of Plaintiff's legal rights.

92. Plaintiff has no adequate remedy at law because money damages alone would not adequately compensate Plaintiff for the harm to its rights, goodwill, and business reputation.

93. Defendants' acts described above irreparably damage Plaintiff and will continue to damage Plaintiff unless enjoined by this Court.

**COUNT FIVE**  
**COMMON-LAW UNFAIR COMPETITION**

94. Minka repeats and realleges the allegations of Paragraphs 1 through 93 as if fully set forth herein.

95. Plaintiff is the owner of common-law rights in Plaintiff's Trade Dress.

96. Plaintiff has invested substantial time, labor, skill, and money in the development of Plaintiff's Trade Dress.

97. Through their conduct described above, including the unauthorized use of Plaintiff's Trade Dress or a confusingly similar Trade Dress with their ceiling fans, Defendants have passed off their ceiling fans as those of Plaintiff or being in connection or affiliation with Plaintiff, and have intentionally misappropriated Plaintiff's labors, investments, and expenditures and intentionally exploited Plaintiff's Trade Dress and Plaintiff's reputation and goodwill associated therewith.

98. Defendants' conduct is intended and likely to cause confusion, deception, or mistake among consumers as to the source, origin, sponsorship, affiliation, or approval of Defendants and their ceiling fans by Plaintiff.

99. Defendants have used and are using a trade dress that is confusingly similar to Plaintiff's Trade Dress with ceiling fans having a substantially similar appearance to Plaintiff's patented ceiling fans and in competition with Plaintiff, all of which provided and continue to provide Defendants with an unfair advantage, because Defendants bore little or no burden of the expense of development and promotion of Plaintiff's Trade Dress and Plaintiff's patented ceiling fan designs.

100. Defendants' conduct was made in bad faith, with full knowledge of Plaintiff's ownership of Plaintiff's Trade Dress and patented ceiling fans.

101. By knowingly competing against Plaintiff using a confusingly similar trade dress with substantially similarly appearing ceiling fans, Defendants have misappropriated a commercial advantage belonging to Plaintiff.

102. Defendants' conduct is illegal and actionable under the common law of the State of Texas.

103. Defendants' conduct as described above has been intentional, willful, deliberate, malicious, and intended to injure Plaintiff, in clear disregard of Plaintiff's legal rights.

104. Plaintiff has no adequate remedy at law because money damages alone would not adequately compensate Plaintiff for the harm to its rights, goodwill, and business reputation.

105. Defendants' acts described above irreparably damage Plaintiff and will continue to damage Plaintiff unless enjoined by this Court.

**JURY DEMAND**

106. Plaintiff demands a trial by jury.

**RELIEF REQUESTED**

Wherefore, Plaintiff Minka Lighting, Inc. prays for a judgment:

1. Granting a preliminary and permanent injunction enjoining and restraining Defendants and their officers, agents, servants, employees, owners, representatives, and attorneys, and all those in active concert of participation with them, from:

- a) Selling or offering any ceiling fans using Plaintiff's Trade Dress or any confusingly similar trade dress in or as part of any business, service or commercial activity;
- b) Using Plaintiff's Trade Dress or any confusingly similar trade dress in or as part of any business, service or commercial activity;
- c) Using Plaintiff's Trade Dress or any confusingly similar trade dress or design with goods or services related to ceiling fans, or in any manner likely to cause confusion, mistake or deception;
- d) Filing or pursuing any application to register Plaintiff's Trade Dress or a confusingly similar Trade Dress in the U.S;

- e) Offering for sale, selling or marketing goods that tend in any way to deceive, mislead or confuse the public into believing that Defendants' goods in any way originate with, are sanctioned by, or are affiliated with Plaintiff;
- f) Otherwise competing unfairly with Plaintiff;
- g) Engaging in further acts of misrepresentation regarding Plaintiff or Plaintiff's goods;
- h) Engaging in further acts infringing Plaintiff's rights under Texas law.
- i) Directly or indirectly manufacturing, using, importing, offering for sale, selling, causing to be sold or in any way distributing any ceiling fan that directly infringes the '213 and '660 Patents;
- j) Directly or indirectly manufacturing, using, importing, distributing, offering for sale, selling, causing to be sold, or in any way distributing any ceiling fan that infringes the '213 and '660 Patents under the Doctrine of Equivalents; and
- k) Attempting, causing, or assisting any of the above-described acts.

2. Directing Defendants to:

- a) Notify all customers, sellers, distributors, suppliers, manufactures, advertisers, and other persons involved in Defendants' offer of, or attempt to offer, goods under Plaintiff's Trade Dress or a confusingly similar Trade Dress, that Plaintiff's Trade Dress is owned and controlled exclusively by and for the benefit of Plaintiff;
- b) Deliver to Plaintiff to be destroyed all products, labels, signs, prints, packages, wrappers, receptacles, and advertisements in Defendants' possession or control and/or using Plaintiff's Trade Dress (or any other name, or other

designation, description, or representation that violates 15 U.S.C. § 1125(a)) or the '213 or '660 Patents); and

c) Within ten (10) days of judgment, take all steps necessary to remove from Defendants' place(s) of business and website(s) all references to Plaintiff's Trade Dress or confusingly similar Trade Dress, including but not limited to, the offering for sale of goods that are offered that infringe Plaintiff's Trade Dress or a confusingly similar Trade Dress.

3. Ordering an accounting by Defendants of all revenues and profits derived from the providing of goods through the unauthorized use of Plaintiff's Trade Dress, or confusingly similar Trade Dress, or patented designs;

4. Ordering Defendants to account for and pay over to Plaintiff any and all revenues and profits derived by them and all damages sustained by Plaintiff by reason of the acts complained of in this Complaint, including an assessment of interest on the damages so computed, and that the damages be trebled pursuant to Section 35 of the Lanham Act, 15 U.S.C. § 1117, 35 U.S.C. §§ 284 and 289, and all other applicable laws;

5. Awarding to Plaintiff Defendants' profits, awarding an amount equal to three times Plaintiff's actual damages, and awarding Plaintiff the costs of this action, along with Plaintiff's reasonable attorneys' fees;

6. That each such award of damages be enhanced to the maximum available for each infringement in view of each of Defendants' willful infringements of Plaintiff's rights;

7. That Plaintiff be awarded punitive or exemplary damages under Texas law because of the egregious, malicious, and tortious conduct of Defendants complained of herein;
8. That Plaintiff recover the costs of this action including its expenses and reasonable attorneys' fees pursuant to 15 U.S.C. §1117, 35 U.S.C. § 285 and all other applicable law, because of the deliberate and willful nature of the infringing activities of Defendants sought to be enjoined hereby, which make this an exceptional case warranting such an award;
9. That Plaintiff be awarded pre-judgment and post-judgment interest;
10. Enter an order for Judgment in favor of Plaintiff and against Defendants on each Claim of this Complaint, including by granting the following relief against Defendants:
  - a) That Defendants be adjudged to have engaged in federal unfair competition and trade dress infringement under Section 43 of the Lanham Act, 15 U.S.C. § 1125 and unfair competition and trade dress infringement under the common law of the State of Texas;
  - b) That Defendants be adjudged to have infringed Plaintiff's Trade Dress by the acts complained of herein;
  - c) That Defendants be adjudged to have engaged in patent infringement of Plaintiff's rights under the '213 and '660 Patents, under 35 U.S.C. § 101 *et seq.*; and
  - d) That the '213 and '660 Patents were duly and legally issued by the U.S. Patent Office, and are valid and enforceable;

11. Requiring that Defendants, within thirty (30) days after service of notice of the entry of judgment, or an injunction pursuant thereto, file with the Court and serve on Plaintiff's counsel a written report under oath setting forth in detail the manner in which Defendants have complied with the Court's order;

12. Awarding to Plaintiff such other and further relief as the Court may deem just and proper or otherwise provided by law.

13. The Court retain jurisdiction of this action for the purpose of enabling Minka to apply to the Court at any time for such further orders and interpretation or execution of any order entered in this action; for the modification of any such order; for the enforcement or compliance therewith; and for the punishment of any violations thereof;

14. Minka be awarded such other and further relief, at law or in equity, as the Court may deem just.

Dated: January 18, 2019

Respectfully submitted,

*/s/ Lisa H. Meyerhoff*

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