

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

CREE, INC.

Plaintiff,

v.

**MILWAUKEE WHOLESALE LLC d/b/a
LED King and/or LEDKING.US and
SMART TECHNOLOGY LLC d/b/a LED
King and/or LEDKING.US,**

Defendants.

Case No. 17- cv - 1804

COMPLAINT

Plaintiff Cree, Inc. (“Cree”), for its Complaint against Defendants Milwaukee Wholesale LLC and Smart Technology LLC (referred collectively herein as “Defendants”), states and alleges as follows:

PARTIES

1. Plaintiff Cree is a corporation organized and existing under the laws of the State of North Carolina with a principal place of business at 4600 Silicon Drive, Durham, North Carolina, 27703. Cree also has facilities located in Wisconsin at 9201 Washington Avenue, Racine, Wisconsin 53406 (formerly the headquarters of Ruud Lighting, Inc. (“Ruud Lighting”), which was acquired by Cree in 2011 and subsequently merged with Cree).

2. On information and belief, Defendant Milwaukee Wholesale LLC, doing business as LED King and/or LEDKING.US, is a privately held company organized and existing under the laws of the State of Wisconsin with a principal place of business at 400 W. Marquette Ave., Oak

Creek, WI 53154. Milwaukee Wholesale LLC's registered agent for service of process in the state of Wisconsin is Naseer A. Nasir, 400 W. Marquette Ave., Oak Creek, WI 53154.

3. On information and belief, Defendant Smart Technology LLC, doing business as LED King and/or LEDKING.US, is a privately held company organized and existing under the laws of the State of Wisconsin. Smart Technology LLC's registered agent for service of process in the state of Wisconsin is Bashir Ahmad, 9770 S. 54th Street, Franklin, WI 53132.

4. Defendants make, use, sell, offer to sell in, and/or import into the United States lighting products including LED products and apparatuses utilizing LEDs.

JURISDICTION AND VENUE

5. Cree incorporates the foregoing paragraphs of the Complaint by reference as though fully set forth herein.

6. This is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 1 *et seq*, including without limitation 35 U.S.C. §§ 271 and 281. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

7. This Court has personal jurisdiction over Defendants under Wis. Stat. § 801.05(1)(d), among other provisions. Defendants regularly and deliberately engage in and continue to engage in activities that result in using, selling, offering for sale, and/or importing infringing products in and/or into the State of Wisconsin and this judicial district. This Court has personal jurisdiction over the Defendants because, among other things, Defendants conduct business in the State of Wisconsin and in this judicial district and thus enjoy the privileges and protections of Wisconsin law.

8. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1400(b) because each of the Defendants is subject to personal jurisdiction in this district, resides in this district, has

committed acts of infringement in this district, and has a regular and established place of business in this district.

BACKGROUND

9. Plaintiff repeats and re-alleges each and every allegation of the foregoing paragraphs as though fully set forth herein.

10. Cree is a market-leading innovator engaged in the design, manufacture, and sale of lighting products including light emitting diode (“LED”) products as well as devices and apparatuses utilizing LEDs.

11. One of Cree’s products is the industry-leading CPY250[®] Canopy/Soffit luminaire, an outdoor LED light that helps increase location visibility and incoming traffic at service stations, convenience stores, drive-thru restaurants, parking garages or banking locations. Two models of Cree’s CPY250[®] product are shown below:



12. Cree devoted substantial time, effort, and resources to the development and promotion of the CPY250[®] luminaire. As a result, the public has come to recognize and rely upon the CPY250[®] luminaire as an indication of the high quality associated with Cree.

13. The distinctive design of the CPY250[®] LED luminaire has become well known in the industry. The CPY250[®] LED luminaire designs have a thin profile constructed of rugged cast aluminum with a distinctive capital “I” shaped design through the center. The luminaires also contain unique ribbing down the length of the fixtures. Cree has two design patents claiming ornamental designs for light fixtures, as described below, relating to its CPY250[®] luminaire.

14. After the introduction of Cree’s CPY250[®] luminaire, Defendants Milwaukee Wholesale LLC and Smart Technology LLC, began selling a knock-off “Canopy Light Modern Design” product, the LED Canopy 130W 5700K, through a website called LED King (ledking.us). The depiction below is from the LEDKING.US website, as compared to the patented design in U.S. Patent No. D743,084:

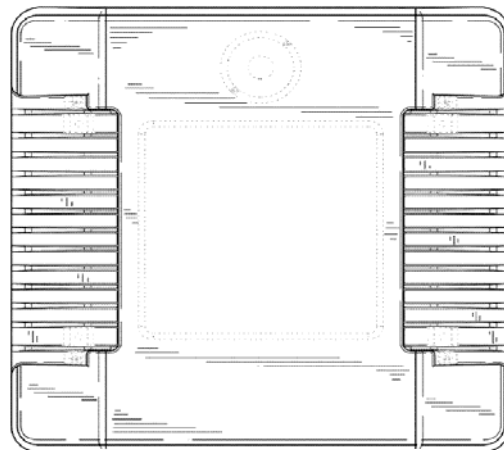


FIG. 2

<http://www.ledking.us/hikashop-menu-for-categories-listing/product/69-canopylight130w5700k>, accessed on December 20, 2017. The depiction below is from the LEDKING.US website, as compared to the patented design in U.S. Patent No. D721,844:

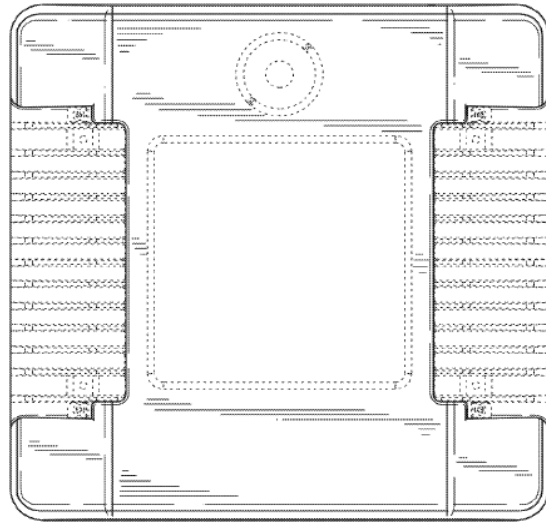


FIG. 2

<http://www.ledking.us/hikashop-menu-for-categories-listing/product/69-canopylight130w5700k>, accessed on December 20, 2017.

15. Defendants' LED Canopy 100W and 130W 5700K luminaire products, and substantially similar luminaires sold through LED King, ledking.us, Amazon, eBay or otherwise are hereinafter referred to as the "LED King knock-off canopy luminaires."

16. Upon information and belief, Defendants Smart Technology LLC and/or Milwaukee Wholesale LLC are selling LED King knock-off canopy luminaires on eBay under the username "ledking*us." LED King knock-off canopy luminaires are being offered on eBay using the same picture as in paragraph 14 above, for example as the "130Watt LED Gas Station Canopy LED Light" at <http://www.ebay.com/itm/Canopy-130W-LED-Light-Drop-Lens-Gas-Station-Warehouse-Highbay-5700K-UL-DLC-130-W-/121974668198?epid=1562731115&hash=item1c6641bba6:g:S2UAAOSwoydWlo8W>, accessed on December 20, 2017.

17. Upon information and belief, Defendants Smart Technology LLC and/or Milwaukee Wholesale LLC are selling LED King knock-off canopy luminaires on eBay under the username “ourledhouse.” The LED King knock-off canopy luminaires are being offered for sale through the “ourledhouse” username using the same pictures as described in paragraph 14 above, for example as the “130Watt LED Gas Station Canopy LED light” at <https://www.ebay.com/itm/Canopy-130W-LED-Light-Drop-Lens-Gas-Station-Warehouse-Highbay-5700K-UL-DLC-10yr/162072931194?hash=item25bc4cab7a:g:ZJcAAOSwZetXOdiH>, accessed on December 20, 2017.

18. Upon information and belief, Defendants Smart Technology LLC and/or Milwaukee Wholesale LLC are also selling LED King knock-off canopy luminaires in 100 watts on eBay under the username “ledking*us.” LED King knock-off canopy luminaires are being offered on eBay using a near-identical picture as in paragraph 14 above, for example as the “100Watt LED Gas Station Canopy LED Light” at <https://www.ebay.com/itm/Canopy-100W-LED-Light-Drop-Lens-Gas-Station-Warehouse-Highbay-5700K-UL-DLC-10yrs/121991001150?epid=1562731115&hash=item1c673af43e:g:LtwAAOSwiYFXJ3OG>, accessed on December 20, 2017.

19. Upon information and belief, Defendants Smart Technology LLC and/or Milwaukee Wholesale LLC are also selling LED King knock-off canopy luminaires on Amazon. LED King knock-off canopy luminaires are being offered on Amazon using the same picture as in paragraph 14 above, for example as the “130Watt LED Gas Station Canopy LED Light” at https://www.amazon.com/LED-Station-Warehouse-130W-5700K/dp/B01FL6AV8I/ref=sr_1_8?ie=UTF8&qid=1513806176&sr=8-8&keywords=LED+king+canopy.

20. Upon information and belief, Defendants Smart Technology LLC and/or Milwaukee Wholesale LLC have knowledge of the '844 and '084 patents and/or have willfully blinded themselves as to the infringing nature of their activities.

21. Defendants' LED King knock-off canopy luminaires are copies of Cree's CPY250[®] luminaire design. Defendants' sales of LED King knock-off canopy luminaires are damaging to the goodwill associated with Cree's product and Cree's reputation.

COUNT I – INFRINGEMENT OF U.S. DESIGN PATENT NO. D721,844

22. Cree repeats and re-alleges each and every allegation of the foregoing paragraphs as though fully set forth herein.

23. Cree is the owner of United States Design Patent No. 721,844 (“the '844 Patent”) titled “Light Fixture.” The '844 Patent was duly and legally issued by the United States Patent and Trademark Office on January 27, 2015. A true and correct copy of the '844 Patent is attached as Exhibit A.

24. Cree has practiced the '844 patent in connection with the commercialization of its CPY250[®] product. Cree marks its CPY250[®] products with the '844 patent.

25. As the owner of the '844 Patent, Cree is authorized and has standing to bring legal action to enforce all rights arising under the '844 Patent.

26. Defendants have infringed, and will continue to infringe, in violation of 35 U.S.C. § 271, by making, using, selling, offering, to sell in, and/or importing into the United States LED King knock-off canopy luminaires. Milwaukee Wholesale LLC and Smart Technology LLC offer the LED King knock-off canopy luminaires for sale through a website called LED King, which can be found at the following hyperlink: <http://www.ledking.us/hikashop-menu-for-categories-listing/product/69-canopylight130w5700k>, on Amazon, and on eBay.

27. Defendants infringe the '844 Patent because, *inter alia*, in the eye of an ordinary observer, giving such attention as a purchaser usually gives, the design of the '844 Patent and the designs of Defendants' LED King knock-off canopy luminaires are substantially the same, the resemblance being such as to deceive such an ordinary observer, inducing them to purchase one supposing it to be the other.

28. Upon information and belief, Defendants have actual knowledge of the '844 Patent and actual knowledge that its activities constitute direct infringement of the '844 Patent, or has willfully blinded itself to the infringing nature of its activities, and yet continues its infringing activities.

29. Defendants' infringement of the '844 Patent has been and will continue to be willful, deliberate and intentional.

30. As a result of Defendants' infringement of the '844 Patent, Cree has suffered and will continue to suffer irreparable and monetary damages in an amount to be determined at trial, but in no event less than a reasonable royalty, together with interest and costs as fixed by the Court.

COUNT II – INFRINGEMENT OF U.S. DESIGN PATENT NO. D743,084

31. Cree repeats and re-alleges each and every allegation of the foregoing paragraphs as though fully set forth herein.

32. Cree is the owner of United States Design Patent No. 743,084 (“the '084 Patent”) titled “Light Fixture.” The '084 Patent was duly and legally issued by the United States Patent and Trademark Office on November 10, 2015. A true and correct copy of the '084 Patent is attached as Exhibit B.

33. Cree has practiced the '084 patent in connection with the commercialization of its CPY250[®] product. Cree marks its CPY250[®] products with the '084 patent.

34. As the owner of the '084 Patent, Cree is authorized and has standing to bring legal action to enforce all rights arising under the '084 Patent.

35. Defendants have infringed, and will continue to infringe, in violation of 35 U.S.C. § 271, by making, using, selling, offering, to sell in, and/or importing into the United States LED King knock-off canopy luminaires. Milwaukee Wholesale LLC and Smart Technology LLC offer the LED King knock-off canopy luminaires for sale through a website called LED King, which can be found at the following hyperlink: <http://www.ledking.us/hikashop-menu-for-categories-listing/product/69-canopylight130w5700k>, on Amazon, and on eBay.

36. Defendants infringe the '084 Patent because, *inter alia*, in the eye of an ordinary observer, giving such attention as a purchaser usually gives, the design of the '084 Patent and the design of Defendants' LED King knock-off canopy luminaires are substantially the same, the resemblance being such as to deceive such an ordinary observer, inducing them to purchase one supposing it to be the other.

37. Upon information and belief, Defendants have actual knowledge of the '084 Patent and actual knowledge that its activities constitute direct infringement of the '084 Patent, or has willfully blinded itself to the infringing nature of its activities, and yet continues its infringing activities.

38. Defendants' infringement of the '084 Patent has been and will continue to be willful, deliberate and intentional.

39. As a result of Defendants' infringement of the '084 Patent, Cree has suffered and will continue to suffer irreparable and monetary damages in an amount to be determined at trial,

but in no event less than a reasonable royalty, together with interest and costs as fixed by the Court.

COUNT III – TRADE DRESS INFRINGEMENT UNDER THE LANHAM ACT, 15 U.S.C. § 1125(A)

40. Cree repeats and re-alleges each and every allegation of the foregoing paragraphs as though fully set forth herein.

41. Cree's CPY250[®] luminaires constitute protectable trade dress pursuant to 15 U.S.C. § 1125. The protectable trade dress of Cree's CPY250[®] luminaire are nonfunctional features that identify the product and its source to customers.

42. Defendants unauthorized distribution and sale of the LED King knock-off canopy luminaires is likely to cause confusion, mistake or deception of purchasers and potential purchasers as to the origin, sponsorship, approval, or association of Defendants' products.

43. On information and belief, Defendants have used in connection with sales of LED King knock-off canopy luminaires, false designations of origin and false and misleading descriptions and representations, which misrepresent the nature, characteristics and qualities of those goods and falsely describe the origin, sponsorship, approval, or association of Defendants' products.

44. Defendants' sales of LED King knock-off canopy luminaires, which make use of Cree's CPY250[®] luminaire's trade dress, falsely and misleadingly describe and suggest that the product they are selling and offering for sale emanates from Cree, cause confusion and mistake, deceive and mislead the purchasing public, trade upon Cree's high quality reputation, and improperly appropriate to Defendants the valuable rights of Cree.

45. Defendants' wrongful acts constitute trade dress infringement in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

46. Upon information and belief, Defendants have actual knowledge that the sales of LED King knock-off canopy luminaires, which make use of Cree's CPY250[®] luminaire's trade dress, willfully, falsely, and misleadingly describe and suggest that the products they are selling and offering for sale emanates from Cree; willfully causes confusion and mistake; willfully deceive and mislead the purchasing public; willfully trade upon Cree's high quality reputation, and willfully and improperly appropriate to Defendants the valuable rights of Cree.

47. Defendants' wrongful acts have and will continue to cause irreparable injury to Cree and infringe upon Cree's trade dress in the future unless and until they are enjoined by this Court. Cree has no adequate remedy at law and is thus damaged in an amount that is yet to be determined.

**COUNT V – FRAUDULENT REPRESENTATIONS UNDER THE
WISCONSIN DECEPTIVE TRADE PRACTICES ACT, WIS. STAT. § 100.18**

48. Cree repeats and re-alleges each and every allegation of the foregoing paragraphs as though fully set forth herein.

49. Wis. Stat. § 100.18 provides that no “firm, corporation or association ... with intent to sell, distribute, increase the consumption of ... any ... merchandise ... directly or indirectly, to the public for sale ... shall make, publish, disseminate, circulate, or place before the public ... in this state, in a ... label ... or in any other way similar or dissimilar to the foregoing, an advertisement, announcement, statement or representation of any kind to the public ... which ... contains any assertion, representation or statement of fact which is untrue, deceptive or misleading.”

50. As alleged throughout this Complaint, Defendants deliberately engaged in deceptive and unlawful marketing in violation of Wisconsin law, by misrepresenting to the public,

such as potential customers viewing the products on LEDKing.us, that they are selling Cree products, when they do not have such authorization or consent from Cree.

51. Cree has suffered damages as a direct and proximate result of Defendants' misrepresentations to the public and to the Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, Cree prays for entry of judgment against each Defendant (and its subsidiaries, successors, parents, affiliates, officers, directors, agents, servants, and employees) as follows:

- A. An entry of judgment in favor of Cree and against Defendants of all claims alleged herein;
- B. Pursuant to 35 U.S.C. § 283, 17 U.S.C. § 1116, 17 U.S.C. § 502, 15 U.S.C. § 1125(c)(1), and Defendants' engaging in unfair competition, a preliminary and permanent injunction from directly or indirectly making, having made, using, selling or importing LED King knock-off canopy luminaires;
- C. An award of all profits incurred by Defendants due to the unfair competition and unauthorized sale or use of the products infringing the '844 and the '084 Patents, or in the alternative, at least a reasonable royalty;
- D. An award for all damages suffered by Cree and profits earned by Defendants from Defendants' acts of trade dress infringement;
- E. An award for all damages, including costs and reasonable attorney fees, suffered by Cree from Defendants' fraudulent representations and deceptive trade practices;
- F. Pursuant to 15 U.S.C. § 1117(a), 35 U.S.C. § 285, 17 U.S.C. § 505, and Defendant's fraudulent representations, a declaration finding this case to be exceptional, and

- providing reasonable attorney's fees and costs, and interests on those fees and costs in favor of Cree;
- G. Punitive and exemplary damages against Defendants and in favor of Cree in an amount sufficient to deter and punish Defendants for their willful and wrongful acts;
- H. Cree be awarded all actual and compensatory damages; and
- I. Such other and further relief as this Court deems just and proper.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Cree demands a trial by jury on all issues triable by jury.

Dated: December 28, 2017

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