

IN THE UNITED STATE DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

INTERACTIVE LIFE FORMS LLC,
a Texas Limited Liability Corporation,

Plaintiff,

VS.

NARONGYOS SANTADSIN, an Individual;
FANTASY HOLDINGS LLC, an Arizona LLC;
KODI DISTRIBUTING LLC, an Arizona LLC;
IMPORT EXPORT OF USA LLC, an Arizona LLC;
LELUV OF EBAY LLC, an Arizona LLC;
LELUV HOME PARTY GROUP LLC, an Arizona LLC;
LELUV OF AMAZON LLC, an Arizona LLC;
LELUV OF WWW LLC, an Arizona LLC; and
MITCH DISTRIBUTING, LLC, an Arizona LLC

Defendants.

CIVIL ACTION NO. 1:14-cv-00897
JURY TRIAL DEMANDED

**PLAINTIFF'S ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT,
TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION**

Comes now Plaintiff Interactive Life Forms, LLC (hereafter “ILF”) by and through the undersigned counsel, and files this complaint against Defendants, and alleges the following:

NATURE OF THE ACTION

1. This action arises under federal statutes, 35 U.S.C. §§ 271 *et seq.* (the patent laws of the United States) and 15 U.S.C. §§ 1051, *et seq.* (the Lanham act – *i.e.* trademark laws of the United States) for trademark infringement and unfair competition.
2. This lawsuit is brought to stop Defendants from infringing valuable intellectual property rights, including trademarks and a patent relating to the Plaintiff's Fleshlight products.

3. Plaintiff has invested significantly in terms of money and time for nearly two decades in the development and design of Fleshlight products and enjoys widespread consumer success.
4. Defendants' nearly exact copies of Fleshlight products and Fleshlight related branding, constitute an apparent intentional and willful effort to imitate and/or cause confusion with respect to Plaintiff's successful Fleshlight products and the related trademarks.
5. Defendants' infringement of Plaintiff's intellectual property rights harms Plaintiff, as well as Plaintiff's customers who may be confused and deceived by Defendants' products and/or Defendants' unauthorized imitation of the FLESHLIGHT trademark.
6. Plaintiff respectfully seeks intervention of this Court to stop Defendants from continuing their present activities and for monetary damages.

THE PARTIES

7. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though fully set forth herein.
8. Plaintiff ILF is a Texas Limited Liability Corporation having a principal place of business at 7000 Burleson Road, Building C, Suite 300, Austin, Texas 78744.
9. Steven Shubin owns all rights, titles, and interests in the '360 patent, as well as the FLESHLIGHT trademark, and has exclusively licensed the foregoing to Plaintiff ILF. Exhibit S.
10. On information and belief, Defendant Narongyos Santadsin is an individual residing in Phoenix, Arizona.
11. On information and belief, Defendant Narongyos Santadsin is also the sole manager and member of Defendant Fantasy Holdings LLC.

12. On information and belief, Defendant Narongyos Santadsin is also the sole manager and member of Defendant Kodi Distributing LLC.
13. On information and belief, Defendant Narongyos Santadsin is also the sole manager and member of Defendant Import Export of USA LLC.
14. On information and belief, Defendant Narongyos Santadsin is also the sole manager and member of Defendant LeLuv of Ebay LLC.
15. On information and belief, Defendant Narongyos Santadsin is also the sole manager and member of Defendant LeLuv Home Party Group LLC.
16. On information and belief, Defendant Narongyos Santadsin is also the sole manager and member of Defendant LeLuv of Amazon LLC.
17. On information and belief, Defendant Narongyos Santadsin is also the sole manager and member of Defendant LeLuv of WWW LLC.
18. On information and belief, Defendant Narongyos Santadsin is also the sole manager and member of Defendant Mitch Distributing, LLC.
19. On information and belief, Defendant Narongyos Santadsin as the sole manager and member of the above entities, directs and controls the activities of all the above entities.
20. On information and belief, Defendant Narongyos Santadsin and/or one or more of the above entities act in concert with, and as the alter ego of, Defendant Narongyos Santadsin.
21. On information and belief, Defendant Fantasy Holdings LLC is an Arizona LLC that may be served by serving its registered agent for service, Perkins Coie Brown and Bain, P.A., 2901 N. Central Avenue, #2000, Phoenix, Arizona, 85012-2788.

22. On information and belief, Defendant Kodi Distributing LLC is an Arizona LLC that may be served by serving its registered agent for service, Perkins Coie Brown and Bain, P.A., 2901 N. Central Avenue, #2000, Phoenix, Arizona, 85012-2788.
23. On information and belief, Defendant LeLuv of Ebay LLC is an Arizona LLC that may be served by serving its registered agent for service, Perkins Coie Brown and Bain, P.A., 2901 N. Central Avenue, #2000, Phoenix, Arizona, 85012-2788.
24. On information and belief, Defendant Import Export of USA LLC is an Arizona LLC that may be served by serving its registered agent for service, Perkins Coie Brown and Bain, P.A., 2901 N. Central Avenue, #2000, Phoenix, Arizona, 85012-2788.
25. On information and belief, Defendant LeLuv of Amazon LLC is an Arizona LLC that may be served by serving its registered agent for service, Perkins Coie Brown and Bain, P.A., 2901 N. Central Avenue, #2000, Phoenix, Arizona, 85012-2788.
26. On information and belief, Defendant Mitch Distributing, LLC is an Arizona LLC that may be served by serving its registered agent for service, Perkins Coie Brown and Bain, P.A., 2901 N. Central Avenue, #2000, Phoenix, Arizona, 85012-2788.
27. On information and belief, Defendant LeLuv of WWW LLC is an Arizona LLC that may be served by serving its registered agent for service, Perkins Coie Brown and Bain, P.A., 2901 N. Central Avenue, #2000, Phoenix, Arizona, 85012-2788.
28. On information and belief, Defendant LeLuv Home Party Group LLC is an Arizona LLC that may be served by serving its registered agent for service, Perkins Coie Brown and Bain, P.A., 2901 N. Central Avenue, #2000, Phoenix, Arizona, 85012-2788.
29. On information and belief, Defendant Kodi Distributing LLC shipped infringing goods into this judicial district as evidenced by the return address on the packaging.

30. On information and belief, Defendant LeLuv of Ebay LLC has sold infringing goods in this judicial district and uses the website at <http://stores.ebay.com/LeLuv-Shop>.
31. On information and belief, Defendant Import Export of USA LLC has imported goods to 1444 North 26th Avenue, Phoenix, AZ 85009 from Chinese companies who make products that counterfeit and infringe the ILF intellectual property rights as complained of herein, including goods made by Lemei Technology Co., Ltd. and Baiaile Hongkong Limited.
32. On information and belief, Defendant LeLuv of Amazon LLC has sold infringing goods in this judicial district.
33. On information and belief, Defendant Mitch Distributing, LLC is involved with the website at www.leluv.com that has sold infringing goods in this judicial district.
34. On information and belief, Defendant LeLuv of WWW LLC is involved with the website at www.leluv.com that has sold infringing goods in this judicial district.
35. On information and belief, Defendant LeLuv Home Party Group LLC is liable as an alter ego of Defendant Narongyos Santadsin.

JURISDICTION AND VENUE

36. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though fully set forth herein.
37. This Court has subject matter Jurisdiction over the parties and subject matter of this action is proper in this Court under 35 U.S.C. § 271 *et seq.* and 28 U.S.C. § 1331 (actions arising under the laws of the United States), 28 U.S.C. § 1338(a) (actions relating to patents and trademarks), and 28 U.S.C. § 1338(b) (claims of unfair competition when joined with a substantial and related claim under patent or trademark laws).

38. This Court has personal jurisdiction over Defendants under the laws of the State of Texas, including the Texas long-arm statute, TEX. CIV. PRAC. & REM. CODE §17.042, due at least to its substantial business in this State and judicial district, including: (a) its false advertising activities alleged herein; and (b) regularly doing or soliciting business, engaging in other persistent conduct, and/or deriving substantial revenue from goods sold and services provided to Texas residents.
39. On information and belief, Defendants conduct, or assist in the conduction of, business within the State of Texas by way of, at a minimum, an Internet business.
40. On information and belief, Defendants, directly or through intermediaries or other relationships (including but not limited to distributors, retailers, agents, alter-egos and/or others) ship, distribute, offer for sale, sell, and advertise infringing products in the United States, the State of Texas, and the Western District of Texas.
41. Since no later than 2007, ILF has marked its products with the '360 patent.
42. On information and belief, Defendants have purposefully and voluntarily placed infringing products in the stream of commerce with the expectation that its products will be purchased by end users in the Western District of Texas.
43. Venue is proper under 28 U.S.C. § 1391 and 28 U.S.C. § 1400.

FACTS

44. Plaintiff ILF is a privately-held, family-owned and operated, Texas limited liability company with its worldwide headquarters located at 7000 Burleson Rd, Building C, Suite 300, Austin, TX 78744.
45. Steven Shubin is the inventor of U.S. Patent No. 5,807,360 (the '360 patent). *See* Exhibit A. The application was filed on September 27, 1996 and issued on September 15, 1998.

46. The Fleshlight product, and the FLESHLIGHT mark, were conceived and designed by inventor Steve Shubin almost two decades ago, after a flash of inspiration, and at enormous financial investment, and was the inventor's unique vision of how to successfully address the most basic of male urges in a safe and sanitary manner. The Fleshlight was first commercialized in 1997 and literally created demand for a product that had not previously existed, a discrete but extremely realistic sexual device for males. The Fleshlight has been extremely successful and popular in the marketplace. By 2011, ILF had sold four million Fleshlights and to date over 8 million products have been sold. The Fleshlights are available for sale in the United States. They are also available for sale and have been sold all over the world.
47. The company and its predecessors have been designing, developing, manufacturing and marketing Fleshlight products since it was founded in 1996 by sole-inventor, Steven A. Shubin, and his wife, Kathleen Shubin.
48. ILF operates two U.S. facilities: a 70,000 square feet factory for manufacturing and production in Austin, Texas, and a research and development facility in Santa Fe, New Mexico. ILF has invested millions of dollars in manufacturing and production equipment and hundreds of thousands of dollars in research and development for products that embody the '360 patent.
49. ILF employs around 120 people in the United States, and more on a global basis.
50. ILF's products lead the male adult device market with over 8 million products sold to date. While Plaintiff has invested substantial funds in designing, developing, and marketing different models of Fleshlights, all of these products incorporate proprietary elastomeric gel compounds and utilize the technology that is covered by the '360 patent.

ILF's advanced technology, capital investment, and broad employment base make it an important component of the United States economy.

51. On September 15, 1998, United States Letters Patent No. 5,807,360 (the '360 patent) was issued to Steven Shubin, the sole inventor, for an invention for a "Device for Discreet Sperm Collection." A true and correct copy of the '360 patent is attached as Exhibit A.
52. Plaintiff ILF is the exclusive licensee of the '360 patent and was granted the exclusive right to enforce the '360 patent. A true and correct copy of the Confirmation of Exclusive License Agreement for the '360 patent is attached as Exhibit S.
53. The products associated with the FLESHLIGHT trademark are covered by the claims of the '360 patent.
54. Plaintiff ILF is also the exclusive licensee of the FLESHLIGHT trademark and has an exclusive right to enforce the FLESHLIGHT trademark. A copy of the FLESHLIGHT trademark registration is attached as Exhibit R.
55. The FLESHLIGHT trademark is inherently distinctive and serves to identify and indicate the source of ILF's products and services to the consuming public. Registration Certificate Nos. 2225503 and 3479109. Exhibit R.
56. From at least June 1997 until the present, Plaintiff ILF, or its legal predecessor in interest, has continually used the FLESHLIGHT trademark, as well as variations of the FLESHLIGHT trademark in commerce, throughout Texas and elsewhere.
57. Since 1997, the FLESHLIGHT trademark has established substantial goodwill. ILF's products using the FLESHLIGHT trademark have developed a reputation of excellence throughout the United States, as well as internationally. That is based primarily on the

lifelike sensation that ILF is able to provide using its proprietary elastomeric gel interior, but also because of the teachings of the '360 patent.

58. Plaintiff ILF has invested significantly in advertising the FLESHLIGHT trademark in association with Plaintiff ILF's products. In fact, ILF has spent in excess of \$5 million in advertising and promoting the Fleshlight products since 1996. In addition, there are thousands of affiliates who promote the Fleshlight products and are paid a commission for every sale. The FLESHLIGHT trademark is prominently featured on all of ILF's products and accessories.
59. The Plaintiff extensively advertises and promotes its FLESHLIGHT trademark and the products on the internet, radio and in magazines. For example, Fleshlight girls routinely appear on the Howard Stern Show.
60. On information and belief, Defendant Narongyos Santadsin and the other Defendants individually and/or collectively, as directed by Defendant Narongyos Santadsin, do now and/or have in the past operated or participated in operating the Amazon, eBay, and www.LeLuv.com storefronts that sell infringing products. In addition to marking its products with the '360 patent, ILF gave formal notice of the FLESHLIGHT trademark and infringement of the '360 patent prior to the commencement of this action, demanding a halt to further infringement of the trademark and '360 patent. The first letter was sent on October 9, 2013. *See* Exhibit K. A second letter was sent on June 20, 2014. Exhibit Q. In an undated letter, Mitch Distributing LLC promised to stop distributing products using the mark "Flashlight" by the end of July 2014. Exhibit O.

61. The Plaintiff has complied with the statutory requirement of placing a notice of the Letters Patent on relevant products manufactured and sold, in addition to giving written notice of the infringement.

COUNT ONE

PATENT INFRINGEMENT

62. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though fully set forth herein.
63. Plaintiff ILF is the exclusive licensee of the '360 patent, entitled "Device for Discreet Sperm Collection," duly and properly issued by the U.S. Patent and Trademark Office on September 15, 1998. A true and correct copy of the '360 patent is attached as Exhibit A.
64. Defendants have been and/or are directly infringing and/or inducing infringement of and/or contributorily infringing the '360 patent by, among other things, making, using, offering to sell or selling in the United States, or importing into the United States, products and/or services that are covered by the claims of the '360 patent, including, by way of example and not limitation, the Defendants' "Flashlight" and LeLuv "FleshPal" products.
65. Defendants have directly and indirectly profited through the infringement of Plaintiff ILF's patents. As a result of Defendants' unlawful infringement of the '360 patent, Plaintiff ILF has suffered and will continue to suffer damage. Plaintiff ILF is entitled to recover from Defendants the damages suffered by Plaintiff ILF as a result of Defendants' unlawful acts.
66. On information and belief, given that they have been formally requested to terminate sales of their infringing products but have refused to do so, Defendants' infringement of the '360 patent is willful and deliberate, entitling Plaintiff ILF to enhanced damages and

reasonable attorney fees and costs and any other remedies available under 35 U.S.C. §§ 284 and 285.

67. On information and belief, Defendants intend to continue their unlawful infringing activity, and Plaintiff ILF continues to and will continue to suffer irreparable harm from such unlawful infringing activity unless Defendants are enjoined by this Court from the continued importing, offering for sale, and sale of the infringing LeLuv products.

COUNT TWO

TRADEMARK INFRINGEMENT UNDER 15 U.S.C. § 1114 AND UNFAIR COMPETITION UNDER 15 U.S.C. § 1125

68. Plaintiff ILF re-alleges and incorporates by reference the foregoing allegations as though fully set forth herein.
69. Plaintiff ILF is the exclusive licensee of the FLESHLIGHT trademark. The FLESHLIGHT trademark issued on February 23, 1999 as U.S. Registration No. 2225503 (the ‘503 Registration) on the principal register. A copy of the FLESHLIGHT trademark registration is attached as Exhibit R.
70. The ‘503 Registration for the FLESHLIGHT trademark is in full force and effect.
71. Plaintiff first used the FLESHLIGHT trademark in the United States at least as early as June 1997.
72. As a result of Plaintiff’s longstanding and continuous use, substantial sales, and widespread distribution of such products in commerce throughout the United States, the FLESHLIGHT trademark has become well known and accepted by the public, and serves to distinguish Plaintiff ILF’s goods from those of others.
73. Defendants’ prior use of the FLESHLIGHT trademark, and the confusingly similar term “FLASHLIGHT” in connection with product offerings, and the confusingly similar term

“FLESHPAL” in connection with product offerings is likely to cause confusion, to cause mistake, or to deceive the public into believing that the adult toys sold by Defendants originate with Plaintiff ILF, are associated with Plaintiff ILF, are sponsored by Plaintiff ILF, are offered with the approval of Plaintiff ILF, and/or are offered under Plaintiff ILF’s supervision and control.

74. Defendants’ use of the identical FLESHLIGHT trademark was expressly intended or designed to cause such actual confusion and/or likely further any future confusion.
75. Defendants’ use of the “FLESHPAL” mark and the confusingly similar term “FLASHLIGHT” in association with its male masturbation products was and is expressly intended or designed to cause such actual confusion and/or likely further any future confusion.
76. Defendants’ unlawful activities have lessened and diluted and, unless restrained by the Court, will continue to lessen and dilute the distinctiveness of the FLESHLIGHT trademark and brand.
77. Defendants use the mark “FLESHPAL” and “FLASHLIGHT” in commerce by featuring the mark on its website in relation to the sale or advertising of many of its male masturbatory products, all without ILF’s consent. Defendants have combined the use of “FleshPal” with other product identifiers that have long been used by ILF with respect to its products. For example, Plaintiff ILF has used the identifiers “Ice” and “Stealth” to different degrees for many years. In a clear effort to imitate the authentic ILF products, Defendants have used and is currently using the words “Ice” and “Stealth.” The opening at the top of the elastomeric gel used in the LeLuv stealth products have been designed

and manufactured to look identical to the elastomeric gel interiors of the Fleshlight Stealth, rather than being anatomically correct.

78. Given the prominence of the FLESHLIGHT mark in connection with this line of products, and given that the Defendants designed their product to be identical in shape and configuration to the legitimate ILF products, it is reasonable to believe that the Defendants knew or should have known that ILF had been using this mark in connection with its business at the time it began offering its infringing products for sale.
79. Defendants' actions constitute trademark infringement in violation of 15 U.S.C. § 1114 and unfair competition under 15 U.S.C. § 1125(a)(1).
80. On information and belief, Defendants acts have been and are being committed with the deliberate purpose and willful intent of appropriating and trading upon Plaintiff ILF's goodwill and reputation.
81. Defendants' activities entitle Plaintiff ILF to damages, including but not limited to enhanced damages and attorneys' fees, under 15 U.S.C. § 1117.
82. On information and belief, Defendants intend to continue its unlawful infringing activity, and Plaintiff ILF continues to and will continue to suffer irreparable harm from such unlawful infringing activity unless Defendants are enjoined by this Court.

COUNT THREE

INJURY TO BUSINESS REPUTATION AND TRADEMARK DILUTION UNDER TEX. BUS. & COM. CODE § 16.29

83. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though fully set forth herein.
84. Defendants' false, misleading and deceptive statements on the LeLuv website, as identified above, have resulted in dilution of the distinctive quality of ILF's

FLESHLIGHT authentic masturbatory devices and have likely tarnished or misappropriated the goodwill and reputation associated with the FLESHLIGHT brand.

85. Defendants' acts constitute a violation of Texas Business and Commercial Code § 16.29 for injury to ILF's business reputation and trademark dilution.
86. Defendants' acts have been willful and deliberate justifying an award of attorney fees.

COUNT FOUR

COMMON LAW UNFAIR COMPETITION

87. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though fully set forth herein.
88. Upon information and belief, Defendants' willful, intentional and illegal acts, as alleged in this Complaint, have interfered and will interfere with ILF's ability to conduct its business, and constitutes unfair competition at common law.
89. As a result of Defendants' willful, intentional and illegal acts, ILF has suffered commercial damage for which ILF may recover. In addition, ILF's actions warrant the imposition of exemplary damages because, upon information and belief, they were willful, intentional and performed with malice.

COUNT V

FEDERAL TRADEMARK DILUTION UNDER § 43(A) OF THE LANHAM ACT, 15 U.S.C. § 1125

90. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though fully set forth herein.
91. The FLESHLIGHT trademark is strong, highly distinctive, and famous, and achieved such fame before Defendants' unauthorized use of the FLESHLIGHT and "Flashlight" and "FleshPal" mark.

92. Defendants' use and alteration of such marks are likely to dilute the distinctive quality of the FLESHLIGHT trademark.
93. Plaintiff ILF's use of the FLESHLIGHT trademark and Defendants' use and alteration of "Flashlight" and "FleshPal" constitutes commercial use in interstate commerce.
94. Defendants' actions constitute willful dilution in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).
95. Defendants' unlawful acts have caused ILF irreparable harm and will continue to irreparably harm ILF unless enjoined.
96. Defendants have profited from their unlawful actions and has been unjustly enriched to the detriment of ILF. Defendants unlawful actions have caused ILF monetary damage in an amount presently unknown, but in an amount to be determined at trial.

DEMAND FOR A JURY TRIAL

97. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, PLAINTIFF ILF respectfully requests a trial by jury of all issues properly triable by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff INTERACTIVE LIFE FORMS LLC requests entry of judgment in its favor and against Defendants including the following:

- a) A judgment declaring that Defendants have infringed Plaintiff ILF's '360 patent.
- b) A judgment awarding Plaintiff ILF damages as a result of Defendants' infringement of the '360 patent, together with interest and costs;
- c) A judgment declaring that Defendants' infringement of Plaintiff ILF's patents has been willful and deliberate;

- d) A judgment awarding Plaintiff ILF treble damages and pre-judgment interest under 35 U.S.C. § 284 due to Defendants' willful and deliberate infringement of Plaintiff ILF's patents;
- e) A judgment against that this case is exceptional under 35 U.S.C. § 285.
- f) A judgment declaring that the sale and offer for sale of products by Defendants under the FLESHLIGHT marks, in competition with Plaintiff ILF, constitute trademark infringement under 15 U.S.C. § 1114 and unfair competition under 15 U.S.C. § 1125 and also that Defendants' acts constitute willful infringement under 15 U.S.C. § 1117;
- g) A judgment ordering that Defendants pay any and all damages available under 15 U.S.C. § 1117, including court costs, expenses, enhanced damages, and attorney's fees;
- h) A grant of permanent injunction pursuant to 35 U.S.C. § 283, enjoining the Defendants from further acts of patent infringement;
- i) A grant of permanent injunction enjoining the Defendants from further acts of trademark infringement and unfair competition;
- j) A preliminary injunction against any and all continuing infringement before trial;
- k) Any other accounting for damages;
- l) Any other appropriate interest and costs; and
- m) For such other and further relief as the Court deems just and proper.

Dated: September 25, 2014.

Respectfully submitted,

/s/ Alan D Albright

Alan D Albright

Texas Bar No. 00973650

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