

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TELEBRANDS CORP.,	:	
	:	
Plaintiff,	:	Civil Action No. 1:16-cv-09015-DLC
	:	
v.	:	JURY TRIAL DEMANDED
	:	
TEKNO PRODUCTS INC. and	:	
OLLIE'S BARGAIN OUTLET, INC.,	:	
	:	
Defendants.	:	
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FIRST AMENDED COMPLAINT

Plaintiff Telebrands Corp. ("Telebrands"), for its First Amended Complaint against Defendants Tekno Products Inc. ("Tekno") and Ollie's Bargain Outlet, Inc. ("Ollie's") (collectively "Defendants"), alleges as follows:

THE PARTIES

1. Telebrands is a corporation organized and existing under the laws of the State of New Jersey, having a place of business at 79 Two Bridges Road, Fairfield, New Jersey 07004.
2. On information and belief, Defendant Tekno is a New Jersey corporation organized and existing under the laws of the State of New Jersey and having a principal place of business at 301 State Route 17, Suite 800, Rutherford, New Jersey 07070.
3. On information and belief, Defendant Ollie's is a Pennsylvania corporation and existing under the laws of the Commonwealth of Pennsylvania and having a principal place of business at 6295 Allentown Boulevard, Harrisburg, Pennsylvania 17112.

NATURE OF CLAIMS, JURISDICTION AND VENUE

4. This action arises under the Patent Laws of the United States (35 U.S.C. §1 *et seq.*).

5. Jurisdiction of this Court is founded upon 28 U.S.C. §§ 1331 and 1338.

6. On information and belief, Tekno regularly transacts and/or solicits business within this Judicial District and has purposefully availed itself of the privilege of conducting business in this Judicial District. Accordingly, this Court has personal jurisdiction over Tekno.

7. On information and belief, Ollie's regularly transacts and/or solicits business within this Judicial District and has purposefully availed itself of the privilege of conducting business in this Judicial District. Accordingly, this Court has personal jurisdiction over Ollie's.

8. Venue is proper within this Judicial District under 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

BACKGROUND

9. Telebrands is a direct marketing company and, since 1983, has been engaged in the business of marketing and selling a wide variety of consumer products in this Judicial District and elsewhere, principally through direct response advertising and through national retail stores. Telebrands is one of the recognized leaders in the direct response television marketing industry. Telebrands' success is based in part by expending a large amount of money advertising products on television for direct response orders. The television advertising creates a heightened brand awareness and recognition of the product among consumers who then purchase the product in retail stores.

10. Telebrands conceived and developed a novel and innovative line of decorative lighting products, which it markets and sells under the trademark STAR SHOWER. Telebrands

introduced the original STAR SHOWER product for the 2015-2016 holiday season, and it was an instant success. In view of the original STAR SHOWER product's success, Telebrands subsequently introduced the STAR SHOWER MOTION product and the STAR SHWOER PATRIOT products. STAR SHOWER PATRIOT expanded on the original STAR SHOWER by introducing new colored lights, and STAR SHOWER MOTION introduced the ability to move the "stars" in patterns.

11. Telebrands' innovative STAR SHOWER products provide a convenient and safe alternative to setting up string lights as decorative lighting for a house or other building. A user can simply plug in the STAR SHOWER product to produce thousands of discrete points of lights (i.e., "stars") in a matter of seconds, thereby allowing the user to avoid the danger, hassles, and time of hanging and setting up strands of string lights on a house.

12. Telebrands has invested significant resources into the sale and marketing of the STAR SHOWER line of products. Since its introduction, the STAR SHOWER line of products have been successful. During the 2015-2016 holiday season, Telebrands sold millions of units of the product. In view of the success of the STAR SHOWER line of products, knock-off and imitation products have flooded the market.

13. The STAR SHOWER product includes many unique and innovative features, including its unique and distinctive ornamental design. In addition to the distinctive ornamental design of the STAR SHOWER product as a whole, various features of the STAR SHOWER product also have a unique and distinctive ornamental design. For example, the leg of the STAR SHOWER product has its own distinctive and unique new, non-obvious ornamental design, which is the subject of U.S. Design Patent No. D765,906 ("the '906 Patent"), which was duly and legally issued on

September 6, 2016. Telebrands is the assignee and the owner of all right, title, and interest in and to the '906 Patent. A true and correct copy of the '906 Patent is attached as Exhibit A. The '906 Patent is valid and subsisting.

14. The STAR SHOWER product is also covered by U.S. Patent No. 9,546,775 ("the '775 Patent"), entitled "Decorative Lighting Apparatus Having Two Laser Light Sources", which was duly and legally issued on January 17, 2017. Telebrands is the assignee and the owner of all right, title, and interest in and to the '775 Patent. A true and correct copy of the '775 Patent is attached as Exhibit B. The '775 Patent is valid and subsisting.

15. The '775 Patent generally relates to a decorative lighting apparatus. Representative claim 15 of the '775 Patent recites:

A laser light decorative lighting apparatus, comprising:
a first laser light source generating a first light having a first color;
a second laser light source generating a second light having a second color;
a switch including a first setting corresponding to the first light source and the second light source being in an off condition, and a second setting corresponding to the first light source and the second light source being in an on condition; and
an attenuation assembly including:
at least one attenuator; and
a first member coupled to a second member, the first member and the second member forming at least one recess designed and dimensioned to receive and hold the at least one attenuator in at least one of a first path of the first light being generated by the first laser light source and a second path of the second light being generated by the second light source, such that the at least one attenuator scatters the at least one of the first light and the second light passing through the at least one attenuator when projected onto a surface.

Defendant's Acts Of Infringement

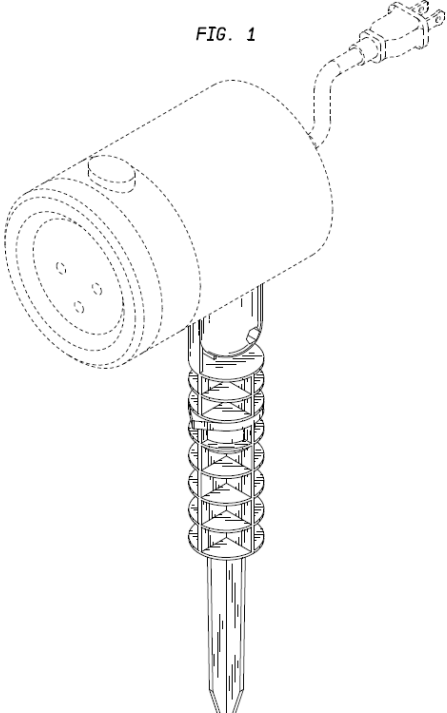

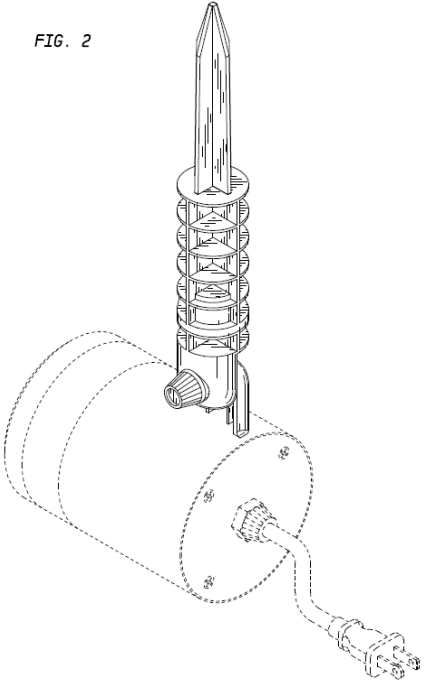

16. On information and belief, without Telebrands' authorization, Tekno and Ollie's have made, used, sold, offered for sale, and/or imported into the United States and continue to make, use, sell, offer for sale, and/or import into the United States an infringing decorative lighting product

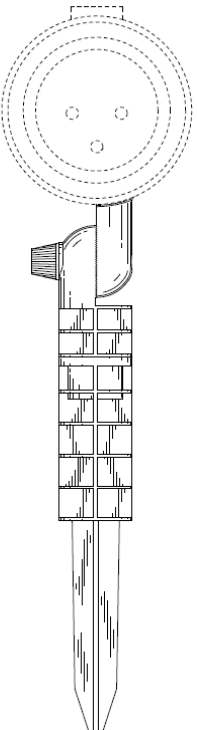

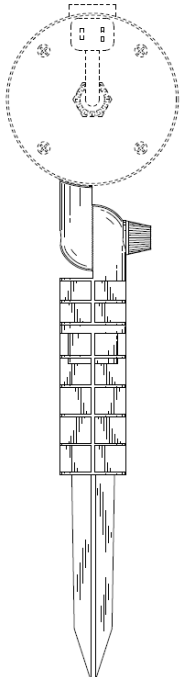

under the name SPARKLE LASER LIGHTS throughout the United States and within this Judicial District. The SPARKLE LASER LIGHTS product infringes at least one claim of the ‘775 Patent and has a design that is covered by the ‘906 Patent (hereinafter “the Infringing Product” or “Tekno’s SPARKLE LASER LIGHTS product”).

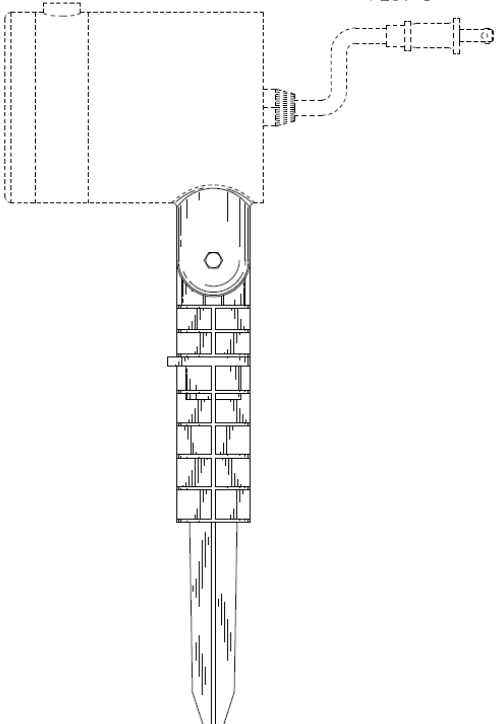

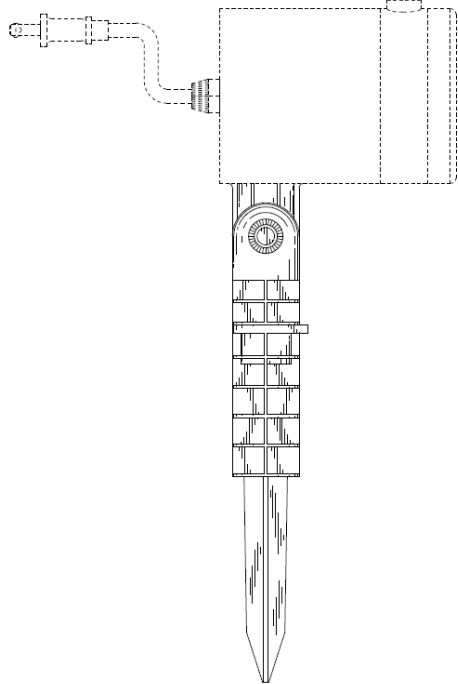

17. On information and belief, Tekno offers its infringing SPARKLE LASER LIGHTS product for sale throughout the United States and within this Judicial District through retailers such as Ollie’s at Ollie’s Middletown Store.

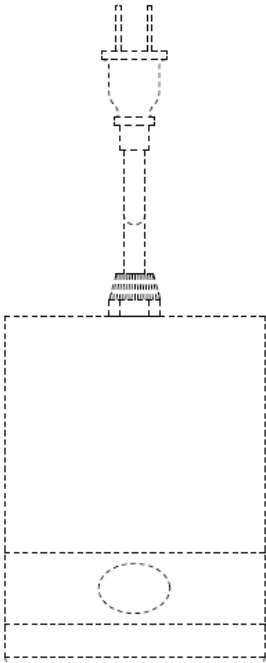

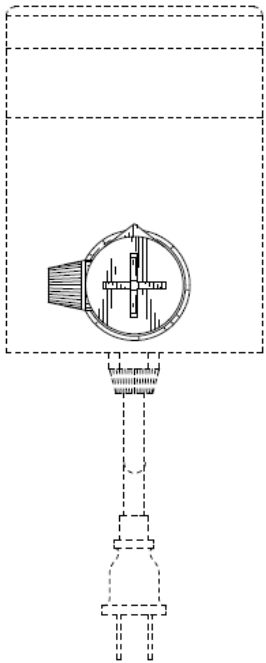

18. On information and belief, Ollie’s offers Tekno’s infringing SPARKLE LASER LIGHTS product for sale throughout the United States and within this Judicial District at least at its retail location at 88 Dunning Road, Middletown, New York 10940 (“the Ollie’s Middletown Store”), which is within this Judicial District. Attached as Exhibit C is a true and correct copy of a flyer advertisement for Ollie’s Middletown Store advertising Tekno’s infringing SPARKLE LASER LIGHTS product.

19. The SPARKLE LASER LIGHTS product embodies the invention of the ‘906 Patent, as shown in the comparison table below.

<u>'906 Patent</u>	<u>Infringing Product</u>
<p data-bbox="470 359 534 392">FIG. 1</p> 	
<p data-bbox="324 1140 388 1171">FIG. 2</p> 	

<u>'906 Patent</u>	<u>Infringing Product</u>
<p data-bbox="321 304 386 331">FIG. 3</p> 	
<p data-bbox="321 1060 386 1087">FIG. 4</p> 	

<u>'906 Patent</u>	<u>Infringing Product</u>
<p data-bbox="613 289 678 315">FIG. 5</p>  <p>The diagram shows a battery pack at the top, connected by a cable to a central component. Below this is a series of rectangular segments, and at the bottom is a pointed, blade-like structure.</p>	 <p>The photograph shows a black handheld device with a battery pack at the top. A cable is connected to the side of the device. The battery pack has a label that reads "Sparkle User's Guide".</p>
<p data-bbox="313 1054 378 1079">FIG. 6</p>  <p>The diagram shows a battery pack at the top, connected by a cable to a central component. Below this is a series of rectangular segments, and at the bottom is a pointed, blade-like structure.</p>	 <p>The photograph shows a black handheld device with a battery pack at the top. A cable is connected to the side of the device. The battery pack has a label that reads "Sparkle User's Guide".</p>

<u>'906 Patent</u>	<u>Infringing Product</u>
<p data-bbox="451 296 537 327"><i>FIG. 7</i></p> 	
<p data-bbox="451 1056 537 1087"><i>FIG. 8</i></p> 	

20. The ornamental design of the relevant portions (e.g., the leg) of Tekno's SPARKLE LASER LIGHTS product has substantially the same design as the claimed design of the '906 Patent. As shown in the table above, an ordinary observer would find that the ornamental design of the leg of Tekno's infringing SPARKLE LASER LIGHTS product is substantially the same as the claimed design of the '906 Patent.

21. Tekno's infringing SPARKLE LASER LIGHTS product also infringes at least claim 15 of the '775 Patent. For example, Tekno's infringing SPARKLE LASER LIGHTS product includes, *inter alia*, first and second laser light sources, a switch, and an attenuation assembly. The attenuation assembly includes first and second members coupled together, forming recesses that are designed and dimensioned to hold the attenuators in the paths of the light generated by the first and second laser light sources, such that the attenuators scatter the light passing through the attenuators as it is projected onto a surface.

22. Tekno's infringing SPARKLE LASER LIGHTS product directly competes with Telebrands' STAR SHOWER line of products. On information and belief, Tekno's adoption of the inventions claimed in the '906 Patent and the '775 Patent, as well as Ollie's sale and offer for sale of Tekno's infringing SPARKLE LASER LIGHTS, is deliberate and intentional and with full knowledge of Telebrands' rights.

COUNT 1 – PATENT INFRINGEMENT OF U.S. PAT. NO. D765,906

23. Telebrands repeats and realleges the allegations set forth in paragraphs 1-22 above, as though fully set forth herein.

24. This cause of action arises under Section 35 of the Patent Laws of the United States, 35 U.S.C. § 271.

25. The '906 Patent is valid and enforceable.

26. By the acts alleged above, Tekno and Ollie's have each committed acts of infringement of the '906 Patent, and continues to commit such acts of infringement, by making, using, selling, offering for sale, and/or importing into the United States, products having a design that infringes directly or indirectly, the claim of the '906 Patent without Telebrands' authorization or consent.

27. On information and belief, Tekno and Ollie's have contributed to the infringement of the '906 Patent and/or actively induced others to infringe the '906 Patent by encouraging, marketing, and promoting the use, manufacture, importation, offer for sale, and sale of the Infringing Product.

28. Tekno and Ollie's have been put on notice of the '906 Patent at least as early as the filing of the Complaint in this Action.

29. As a direct and proximate cause of Tekno's and Ollie's direct and/or indirect infringement, as alleged above, Plaintiff has suffered damages. Tekno and Ollie's are liable to Plaintiff for the amount of any such damages.

30. Tekno and Ollie's will, on information and belief, continue to infringe upon Telebrands' rights under § 271 of the Patent Act, unless and until it is enjoined by this Court. Telebrands has been and is likely to continue to be irreparably injured unless Tekno and Ollie's are enjoined. Telebrands has no adequate remedy at law.

COUNT 2 – PATENT INFRINGEMENT OF U.S. PAT. NO. 9,546,775

31. Telebrands repeats and realleges the allegations set forth in paragraphs 1-30 above, as though fully set forth herein.

32. This cause of action arises under Section 35 of the Patent Laws of the United States,

35 U.S.C. § 271.

33. The '775 Patent is valid and enforceable.

34. By the acts alleged above, Tekno and Ollie's have each committed acts of infringement of the '775 Patent, and continue to commit such acts of infringement, by making, using, selling, offering for sale, and/or importing into the United States, products that infringe, directly or indirectly, one or more claims of the '775 Patent without Telebrands' authorization or consent.

35. On information and belief, Tekno and Ollie's have contributed to the infringement of the '775 Patent and/or actively induced others to infringe the '775 Patent by encouraging, marketing, and promoting the use, manufacture, importation, offer for sale, and sale of the Infringing Product.

36. Tekno and Ollie's have been put on notice of the '775 Patent at least as early as the filing of this First Amended Complaint in this Action.

37. As a direct and proximate cause of Tekno's and Ollie's direct and/or indirect infringement, as alleged above, Plaintiff has suffered damages. Tekno and Ollie's are liable to Plaintiff for the amount of any such damages.

38. Tekno and Ollie's will, on information and belief, continue to infringe upon Telebrands' rights under § 271 of the Patent Act, unless and until it is enjoined by this Court. Telebrands has been and is likely to continue to be irreparably injured unless Tekno and Ollie's are enjoined. Telebrands has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment:

a. Entering judgment in Telebrands' favor and against Tekno and Ollie's on all claims;

b. Adjudging and decreeing that Tekno and Ollie's have unlawfully infringed, contributorily infringed and/or induced infringement of the '906 Patent and the '775 Patent;

c. Preliminarily and permanently enjoining Tekno and Ollie's, its officers, agents, servants, employees and attorneys and all those in active concert or participation with any of them:

1. from infringing the '906 Patent and the '775 Patent; and
2. from making, using, importing, distributing, advertising, promoting, selling, or offering for sale the infringing Product, or any other decorative lighting product substantially similar to the design claimed in the '906 Patent and/or infringing any claim of the '775 Patent.

d. Requiring Tekno and Ollie's to pay Telebrands any damages Telebrands have suffered arising out of and/or as a result of Tekno's and Ollie's patent infringement, including Telebrands' lost profits, Tekno's and Ollie's profits, and/or reasonable royalties for Tekno's and Ollie's patent infringement, and any other relief provided for in 35 U.S.C. §§ 284 and 289;

e. Awarding Telebrands its reasonable attorneys' fees because of the exceptional nature of this case, pursuant to 35 U.S.C. § 285;

f. Requiring Tekno and Ollie's to pay to Telebrands enhanced damages due to the exceptional nature of this case; and

g. Granting such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiff Telebrands Corp. requests a trial by jury in this matter.

Dated: January 17, 2017

Respectfully submitted,

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Attorneys for Plaintiff
TELEBRANDS CORP.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the attached FIRST AMENDED COMPLAINT was served via First Class mail, postage prepaid, on January 17, 2017, on all counsel listed below:

Counsel for Tekno Products Inc. and Ollie's Bargain Outlet, Inc.

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/Ashwat Rishi/
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