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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DISTRICT**

SNAPRAYS, LLC dba SNAPPPOWER,

Plaintiff,

v.

ONTEL PRODUCTS CORPORATION, a
New Jersey corporation, AND ASHOK
“CHUCK” KHUBANI, an individual residing
in New Jersey,

Defendants.

**AMENDED COMPLAINT AND
JURY DEMAND**

Case No.: 2:16-cv-01198-CW

Judge Clark Waddoups

Plaintiff SnapRays, LLC, dba SnapPower, by and through its counsel, alleges and complains against Defendants Ontel Products Corporation and Ashok “Chuck” Khubani (collectively, “Defendants”) as follows:

PARTIES

1. Plaintiff SnapRays, LLC, is a Utah limited liability company doing business as SnapPower (“Plaintiff” or “SnapPower”), with its principal place of business in Utah County, Utah.
2. Defendant Ontel Products Corporation (“Ontel”) is a New Jersey corporation with its principal place of business in Essex County, New Jersey.
3. Upon information and belief, Defendant Ashok Khubani, who goes by the name of Chuck Khubani (“Chuck Khubani”), is the CEO of Ontel and a resident of Essex County, New Jersey.

JURISDICTION AND VENUE

4. This is a civil action for unfair competition under the Lanham Act and Utah law. Jurisdiction in this Court is founded upon 28 U.S.C. §§ 1331 and 1332.
5. With respect to 28 U.S.C. § 1332, diversity jurisdiction is present because, while SnapPower is a citizen of Utah, and Ontel is a New Jersey corporation headquartered in New Jersey. Similarly, Chuck Khubani is a resident of New Jersey. The amount in controversy is in excess of \$75,000.
6. This Court has personal jurisdiction over Defendants because they have conducted continuous and systematic business in the state of Utah, have numerous contacts with

the state of Utah, and have committed and continue to commit acts of false advertising, unfair competition, and related tortious acts in this district, as alleged herein.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c).

FACTUAL ALLEGATIONS

Background

8. SnapPower is the designer, manufacturer, marketer, and seller of two original and high quality products at issue in this case – the Guidelight, an electric outlet cover with built-in LED lighting and a light sensor; and the SnapPower Charger, an electric outlet cover with a built-in USB charger (the “Products”). These products essentially transform electric outlets into night lights or chargers in a safe, sleek, easy-to-install manner, while leaving the electrical outlets free for use with other devices.

9. The Products are directed at active electrical outlet covers with electrical loads that perform functions, such as LED lighting, light sensor, USB charger, speakers, and thermostats. The Products accomplish all of these functions while not impeding access to the electric outlets themselves.

10. SnapPower also has designed and developed a product known as the SwitchLight, which is a light switch cover with LED lighting similar to the Guidelight. Although SnapPower has not yet offered the SwitchLight product for sale on its website, www.snappower.com, it has shown the product at trade shows, has patent applications pending as to certain aspects of the product, and has sold a large number of units to a hospitality customer. This product is also included within the definition of “Products,” as used in this Complaint.

11. Ontel, which is a big player in what is known as the “direct-response” or “infomercial” industry and affiliated with and/or the originators of the “As Seen On TV” brand, recently created and broadcasted nationwide one minute, thirty-second-plus television commercials that unabashedly feature and offer for sale the original SnapPower Guidelight, using actual Guidelights they purchased from SnapPower in the video footage. The commercials are also displayed on the specific websites created to sell the products.

12. Ontel has dubbed its knock-off product the “Night Angel.” Despite these changes to the names of the product, however, there can be no doubt that the product actually being offered for sale in its commercial and on its website is the original Guidelight. Indeed, Defendants and/or their associates purchased Guidelights and SnapPower USB Chargers from SnapPower just months, if not weeks, before the website went live and the commercial was broadcast on television.

13. Defendants do not have the right to resell SnapPower’s products. Instead, Defendants have purchased limited numbers of SnapPower’s products for use in their marketing and presumably to create knock-off products. In other words, Defendants are offering to sell products that are not their own, and they do not even have the advertised product to sell.

14. Also troubling is that the Ontel-created website, www.buynightangel.com, features images and photographs lifted directly from the SnapPower website. Needless to say, SnapPower has not authorized the use of its website, images, or video marketing to any third party, nor has SnapPower licensed or otherwise permitted Ontel to sell its products.

15. In addition to misappropriating and infringing SnapPower’s intellectual property rights, Defendants are falsely advertising that they have unique products to sell and deliver, when

in fact it appears they have not made or sold anything. Despite providing toll-free numbers and online ordering options to consumers, orders are not fulfilled or processed and, upon information and belief, no product has been shipped.

16. Ontel – with the substantial assistance, guidance, and approval of its CEO – is knowingly and willfully engaging in a practice known as “testing the market,” in which it rapidly creates television commercials and websites to determine whether sufficient sales can be generated to justify manufacturing and marketing a knock-off product.

17. SnapPower has suffered and will continue to suffer irreparable harm and lost profits due to Defendants’ conduct, including damage to its goodwill and reputation, warranting immediate preliminary injunctive relief.

Ontel’s’ False Advertising, Theft, and Infringement

18. Ontel is a marketer and distributor of numerous consumer products, including Miracle Copper Socks, Slushy Magic, the Foot Angel, and the Slap Chop. Ontel markets its products through television commercials and a multitude of separate websites named after the individual products. Ontel sells its products via telephone, online orders, and at various retail stores, including “big box” stores like Walmart.

19. Ontel recently began aggressively marketing the Guidelight under the name Night Angel – using images and video footage of SnapPower’s Guidelight – through a one minute thirty-second-plus commercial broadcast on national television and through a newly launched website, www.buynightangel.com, where the commercial is also displayed.

20. Through the same website, Ontel is also offering for sale a product similar to the SnapPower USB Charger, which purports to have three USB ports for charging electric devices such as cell phones, tablets, and other similar products.

21. Ontel is also offering to sell a light switch cover that purports to have LED lighting.

22. Upon information and belief, Ontel is actively directing traffic to www.buynightangel.com and marketing its infringing Night Angel product by purchasing Google adwords.

23. Upon information and belief, Chuck Khubani is a moving and active force behind Ontel's purported Night Angel products, having reviewed, approved, and materially assisted in the advertising and associated misconduct.

24. The Ontel commercial not only falsely advertises the Guidelight for sale, but it is substantially similar to and incorporates many features of the Guidelight marketing video prepared by SnapPower and displayed on its website.

25. In addition, many of the images and photos on the www.buynightangel.com website are similar or identical to those on SnapPower's website, or are "photoshopped" or altered versions of SnapPower's photographs and images. The www.buynightangel.com website also utilizes portions of the layout, design features, and text from the SnapPower website, including certain text that is copied verbatim and design features that are exactly the same as those on SnapPower's website.

26. Parts of the commercial put out by Ontel also strongly resemble portions the SnapPower video highlighting the Guidelight.

27. Stated otherwise, Defendants have also copied and created knock-off versions of SnapPower's websites and video marketing.

28. Prior to creating their own alleged products and websites, and beginning roughly in September 2016, Defendants and/or persons affiliated with them purchased numerous Guidelights and SnapPower USB Chargers from SnapPower, presumably for purposes of examining and copying the product, as well as using it in their internet and commercial advertising.

29. For example, on August 29; September 2, 8 and 20; October 2, 11, 12, 24, and 28; and November 4, 2016, Ontel's CEO, Chuck Khubani, placed various orders for SnapPower products, including Guidelights and SnapPower USB Chargers. These orders were all shipped to an Ontel employee, Lisa Siervo, at Ontel's business address.

30. On September 6, 2016, an individual named Daniel Bora ordered a Guidelight, which was also shipped to Ms. Siervo at Ontel's business address.

31. On October 2, 2016, an individual named Neil Khubani purchased five Guidelights. Upon information and belief, Neil Khubani is related to Ontel.

Discovery of the Ontel Commercial and Resulting Customer Confusion

32. In early November 2016, SnapPower discovered that Ontel was running a commercial for the Night Angel, when an acquaintance and SnapPower customer alerted one of SnapPower's founders that he had seen a commercial for an "Angel light" on ESPN. At the same time or shortly thereafter, SnapPower discovered the www.buynightangel.com website.

33. On the same day, a relative of another SnapPower employee saw the Night Angel commercial on television twice. He was confused as to whether the Night Angel was the

SnapPower Guidelight or whether SnapPower had partnered with someone else to sell the Guidelight.

34. The customers who contacted SnapPower about the Night Angel were confused by the advertising for the alleged product, believing the product to be the Guidelight.

35. Since that time, a potential customer expressed confusion as to the source of SnapPower's products on SnapPower's Facebook page. The customer had attempted to purchase an outlet cover with LED lighting, but posted a complaint on the page when his purchase was unsuccessful, reporting that he was disappointed with the experience.

36. Another customer recently posted a snapshot from the Night Angel website on the SnapPower Facebook page, inquiring whether the product depicted was a SnapPower product.

37. On November 23, 2016, another individual sent an email to the SnapPower customer service department, asking why her order had not yet arrived. She attached a copy of the order to her email. The order clearly indicates that what she purchased was a Night Angel and a Night Angel USB charger.

38. Confusion among consumers is highly likely to continue and increase. Moreover, due to the poor customer service and inability to complete purchases on the Ontel website, SnapPower's reputation and goodwill, built up over years and through careful planning, will be tarnished and irreparably harmed if Defendants are allowed to continue their knock-off strategy.

Ontel's History and Pattern of Improper Business Practices

39. Ontel is a well-known marketer of "As Seen On TV" products.

40. Because of their superior size, market penetration, and retail connections, Defendants are able to quickly generate advertising and commercials to aggressively market

knock-off products. If justified by their “test marketing,” they are able to quickly manufacture knock-off products and get them into “big-box” stores.

41. Upon information and belief, Defendants specifically target potential competitors in an effort to eliminate them from the marketplace, thereby decreasing competition.

SnapPower’s Products and Marketing – the Details

42. SnapPower is the developer, manufacturer, and distributor of the Guidelight, which it first began selling and shipping in May 2014. SnapPower is a Utah company with approximately twenty employees.

43. SnapPower successfully raised substantial startup funds through a Kickstarter campaign in 2014, and its products have been favorably reviewed, awarded prizes, displayed in numerous publications, and featured on various television programs, including the Today Show.

44. The Guidelight is an outlet cover that provides LED lighting through three separate LED bulbs located on the bottom of the cover. The Guidelight is used in place of a traditional outlet cover and functions as a “night light,” providing light for comfort and safety:



45. The LED lights are turned on and off automatically by a sensor located in the lower left quadrant of the Guidelight, as shown in the image immediately above.

46. The Guidelight is easy to install and requires no wiring or batteries.

47. SnapPower offers for sale two versions of the Guidelight, the “Duplex” and the “Decor.”



Both the Duplex and the Decor versions of the Guidelight are offered in four different colors – white, light almond, ivory, and black.

48. In addition to the Guidelight, SnapPower offers for sale the SnapPower Charger, which is an electric outlet cover with a built-in USB port that can be used to charge phones, tablets, and similar devices, and which comes in white, light almond, and ivory:



49. SnapPower currently has one additional product, the Switchlight, that it has not yet offered for sale through its website. The Switchlight is a light switch cover that provides LED lighting similar to the Guidelight. SnapPower has shown the product at trade shows and has patent applications pending as to certain aspects of the product. SnapPower has manufactured hundreds of units of this product, received certification for the product from a Nationally Recognized Testing Laboratory (ETL), and sold a large order to a hospitality customer.

50. SnapPower developed its unique website, www.snappower.com, for purposes of marketing and selling its devices. SnapPower's website has copyright notices displayed on the bottom of each page. The website has yet not been registered for copyright protection.

51. SnapPower's website has a number of photographs, images, text, and that were prepared specifically for and belong to SnapPower.

52. As just one an example, the homepage features a photograph of a lighted Guideline at the bottom of a staircase in an otherwise dimly lit area. The photograph was taken in the home of SnapPower's CEO, Jesse Leishman:



53. SnapPower's website also includes a number of videos, one of which is a marketing video for the Guidelight.

54. SnapPower has spent considerable resources and time developing its products and its marketing materials, including the www.snappower.com website, the videos, and print marketing.

Ontel's Knock-Off Products and Marketing

55. Ontel is the owner and registrant of the domain name buynightangel.com, which was created on August 5, 2016.

56. Ontel markets, offers for sale, and purportedly sells the Night Angel product, an outlet cover with a USB charger, an outlet cover with LED lighting, and a light switch cover with LED lighting.

57. Upon information and belief, none of the products being offered for sale through the www.buynightangel.com website is actually available for purchase.

58. In fact, representatives of SnapPower and other third parties have attempted to purchase each of the products offered for sale on Ontel's Night Angel website, but none of the credit cards entered for the purchases have been processed and no product has shipped.

59. The Night Angel is or appears to be identical to the Guidelight, such that Ontel is literally advertising (and possibly manufacturing a duplicate of) the Guidelight for sale, i.e., *the same actual product* as SnapPower's Guidelight, although in some instances Ontel has doctored the photographs so that the light sensor appears on the lower right corner of the outlet cover, rather than on the lower left corner, or so that the sensor does not appear at all.

60. Upon information and belief, the photos of the purported Night Angel product are photos of the *actual* Guidelight. The following are depictions of the purported Night Angel captured from the online video appearing on the Night Angel website. In these images, Ontel did not bother to change the side on which the light sensor is located:








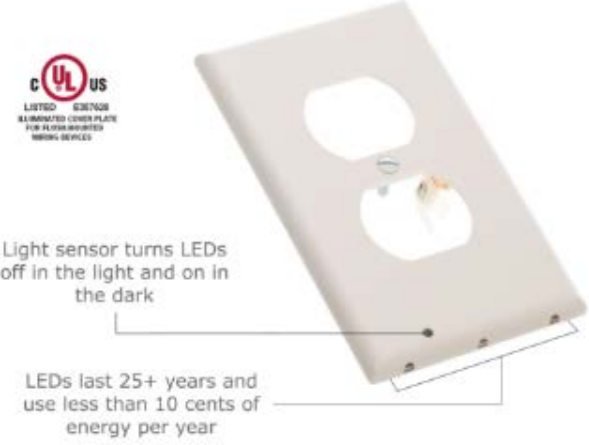
61. In another example of Ontel's blatant copying, the Night Angel lights, as with the Guidelights, are offered in "Duplex" and "Decor" styles:



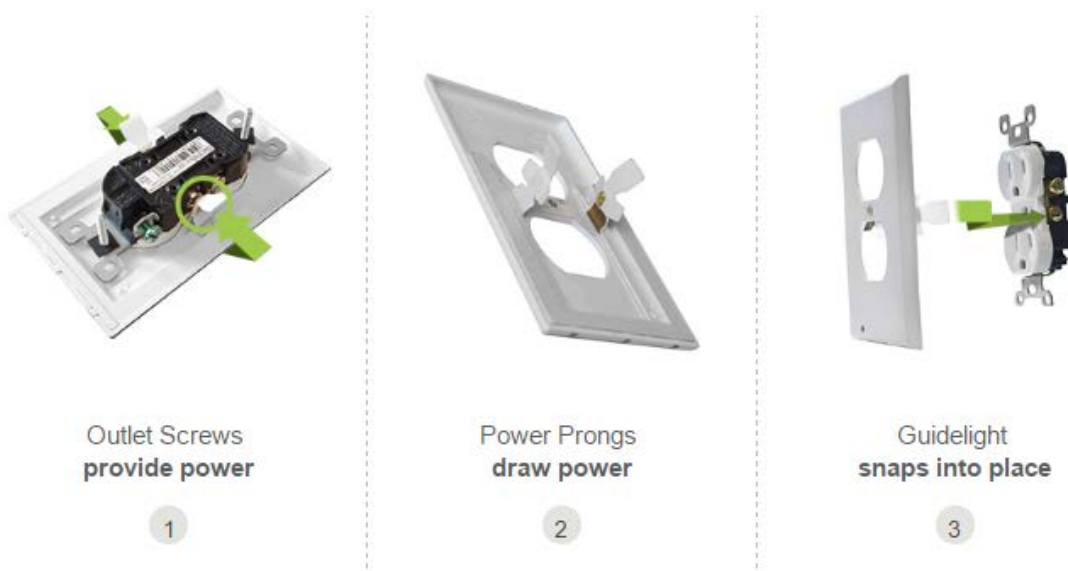
62. Ontel has also directly lifted images from the SnapPower website and published them on the Night Angel website. For instance, the photo taken inside the SnapPower CEO's home has been doctored and reprinted as follows:

Night Angel Website	SnapPower Website
	

63. The Night Angel website also incorporates an image from the SnapPower website, *with the exact same text* surrounding it:

Night Angel Website	SnapPower Website
	

64. Another portion of the Night Angel website likewise incorporates text and layout features nearly identical to a portion of the SnapPower website, including the exact same text and numbers in grey circles. The SnapPower website image is as follows:



65. The similar portion of the Night Angel website is as follows:



66. Ontel also purports to sell an outlet plate with USB charger ports, similar but not identical to the SnapPower USB charger.

11/15/2016 Night Angel

USB PORTS
TODAY ONLY

LIMITED TIME OFFER!

Get Our Night Angel With USB Ports!

We all have so many devices nowadays, and they always need charging. We can offer you a special edition Night Angel with built-in USB ports so you can charge two devices at once and still keep your outlets free. These are perfect for in the kitchen or office or anywhere you charge your devices.

We can add the Night Angel with built in USB ports to your order today for just \$12.99, with no additional processing & handling.

Qty: *Décor*


Qty: *Duplex*

How many Night Angels with USB Ports would you like to add to your order, and in which style?

67. However, the design offered by Ontel would be impossible to engineer and would not function as depicted.

68. Accordingly, the images of the “Night Angel With USB Ports” are “photoshopped” or doctored images of SnapPower’s product, and purport to offer a product for sale that literally does not exist.

69. In addition to offering the Night Angel and the Night Angel with USB ports, the Night Angel purports to offer a Night Angel “Switch Light,” like the newly released SnapPower SwitchLight. SnapPower has displayed its light switch product at trade shows and has begun selling it. The Night Angel Switch Light is depicted as follows:



Add The Night Angel Switch Light To Your Order!

In some rooms, you may prefer for your light switch to include the night light instead of your power outlet. That's why we are also offering the same features as Night Angel for your light switch, whether you have a skinny or wide switch opening

We can add Night Angel Switch Lights to your order today for just \$12.99 each, with no additional processing & handling?

Qty: [Toggle](#)

Qty: [Décor](#)

How many Switch Lights would you like to add to your order, and in which style?

YES, PLEASE

No

Litigation and Regulatory Action Against Ontel

70. Ontel is no stranger to litigation and regulatory action, with multiple lawsuits having been filed against it around the country, starting as far back as the 1990s.

71. Ontel has been subject to numerous lawsuits involving the knock-off business strategy, with fact patterns similar to those presented here, involving the poaching of products and intellectual property from their original creators without authority, attribution, or compensation.

72. It appears that Ontel views regulatory actions and litigation as a routine cost of doing business, which they simply offset by large profit margins.

73. Indeed, Ontel appears to be able to capitalize on the delays associated with litigation because, by the time a given case provides the injured manufacturer relief, Ontel has already profited handsomely from the knock-off strategy and their aggressive product sales and marketing, even accounting for the cost of litigation.

FIRST CLAIM FOR RELIEF
(LANHAM ACT FALSE ADVERTISING)

74. Plaintiff incorporates the preceding paragraphs by reference.

75. Ontel has made materially false and misleading misrepresentations of fact in connection with the commercial advertising for their purported Night Angel product, including that the product is available for sale, that the products is their own, and that the photographs of the product on its websites and in its video and television marketing materials are its own photographs of its own products.

76. Ontel's marketing and advertising is literally false because it is offering SnapPower's products for sale, without being in possession of such products, and without yet having manufactured any competing product.

77. Ontel's marketing and advertising likewise conveys a materially false impression that is highly likely to confuse consumers.

78. Ontel has made these misrepresentations in interstate commerce, including in television commercials and on the www.buynightangel.com website.

79. The misrepresentations of Ontel have caused and are likely to continue to cause both confusion as to the source and origin of the product and as to the characteristics of the product.

80. Plaintiff is suffering and is likely to continue to suffer both lost and diverted sales and harm to its goodwill, in which it has invested substantially and which it has worked over time to develop.

81. Plaintiff has suffered and will continue to suffer irreparable injury and damages as a result of Defendants' conduct.

82. Plaintiff is entitled to recover its damages, Defendants' profits, and the costs of suit. Because of the willful nature of Defendants' conduct and exceptional nature of this action, Plaintiff is also entitled to enhanced damages and attorney's fees.

SECOND CLAIM FOR RELIEF
(UTAH UNFAIR PRACTICES)

83. Plaintiff incorporates the preceding paragraphs by reference.

84. By, among other things, blatantly copying and advertising for sale SnapPower's products, which Ontel is not authorized or prepared to sell, Ontel has engaged in unfair methods of competition in commerce or trade.

85. Ontel's conduct amounts to unfair and discriminatory conduct that destroys and prevents honest competition.

86. Ontel has violated Section 13-5-8 of the Utah Unfair Practices Act by advertising for sale goods and merchandise that they are not prepared to supply.

87. Due to his direct and indirect assistance to Ontel in violating the Utah Unfair Practices Act, Chuck Khubani is liable as a director, officer, and/or agent of Ontel under Utah Code Ann. § 13-5-6.

88. As a result of Defendants' conduct, Plaintiff is entitled under Utah Code Ann. § 13-5-14 to immediate injunctive relief and damages, including but not limited to three times the amount of its actual damages, and court costs.

89. Plaintiff is entitled to attorney's fees and pre-and post-judgment interest as provided by law.

THIRD CLAIM FOR RELIEF
(UTAH UNFAIR COMPETITION)

90. Plaintiff incorporates the preceding paragraphs by reference.

91. Defendants are competitors of SnapPower and have engaged in unfair competition under Utah common law.

92. Defendants have intentionally engaged in unfair competition by committing business and acts and practices in commerce that are unlawful, unfair, and fraudulent, including without limitation by falsely representing SnapPower's products as their own and falsely representing they have product to sell, when in fact they do not.

93. Ontel's copying and advertising for sale SnapPower's products conveys a materially false impression that is highly likely to confuse consumers and that has actually confused SnapPower's customers.

94. As a result of Ontel's conduct, SnapPower has suffered and will continue to suffer irreparable harm for which there is no adequate remedy at law. SnapPower is entitled to immediate injunctive relief.

95. SnapPower is also entitled to recover its damages as a result of Ontel's conduct.

FOURTH CAUSE OF ACTION
(INJUNCTION – ALL DEFENDANTS)

96. Plaintiff incorporates the preceding paragraphs by reference.

97. Defendants have violated Plaintiff's rights and have otherwise acted in an unlawful manner, as set forth in the preceding causes of action. Plaintiff has a substantial likelihood of prevailing on the merits of these claims.

98. Unless an injunction issues, Plaintiff will suffer irreparable harm, including but not limited to permanent injury to its goodwill, ability to do business, and/or loss of business in an amount difficult or impossible to quantify.

99. An injunction would not be adverse to the public interest.

100. The threatened injury to Plaintiff outweighs whatever damage an injunction could cause to Defendants.

101. There is a substantial likelihood that Plaintiff will prevail on the merits of the claims for which injunctive relief is sought, or there are serious issues on the merits which should be the subject of further litigation.

102. Therefore, under Rule 65 of the Federal Rules of Civil Procedure and 15 U.S.C. § 1116(a), Plaintiff is entitled to a temporary restraining order and preliminary injunction that includes, at a minimum, the following relief:

(a) That Defendants be ordered immediately to discontinue making any and all false and misleading statements in connection with their advertising and marketing;

(b) That Defendants be ordered to cease offering for sale any product they do not have, including any and all products offered or sold by SnapPower;

(c) That Defendants immediately cease and desist from marketing and advertising for sale the Night Angel, including without limitation via television, through the internet, or in print;

(d) That the www.buynightangel.com website be immediately taken down and discontinued;

(e) That Defendants are disgorged of and precluded from utilizing the fraudulently obtained consumer information and market research; and

(f) Any additional relief warranted at law or necessary to protect Plaintiff's rights, to be determined by the facts and circumstances at the time of entry of the order.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court enter judgment against Defendants as follows:

1. For a temporary restraining order and preliminary and permanent injunction enjoining Defendants, their officers, agents, servants, employees and attorneys, successors and assigns, and all other persons acting in concert or participation with Defendants;
2. For damages sufficient to compensate Plaintiff for Defendants' wrongful conduct, including for Plaintiff's lost profits, lost sales, Defendants' sales, and/or for lost license fees and royalties;
3. An award of pre-judgment and post-judgment interest and costs;
4. An award of reasonable attorneys' fees pursuant to 15 U.S.C. § 1117 and Utah law; and
5. For such other further relief to which Plaintiff may be entitled in law and in equity.

DEMAND FOR JURY TRIAL

SnapPower demands a trial by jury on all matters herein so triable in accordance with Federal Rule of Civil Procedure 38(b).

DATED: February 3, 2017.

STOEL RIVES LLP

/s/ Timothy K. Conde

Timothy K. Conde

Jordan C. Bledsoe

PRINCE, YEATES & GELDZAHLER

Charles L. Perschon

James W. McConkie III

Alex B. Leeman

Attorneys for SnapRays, LLC dba SnapPower

CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2017, a full and correct copy of the foregoing **AMENDED COMPLAINT AND JURY DEMAND** was served upon counsel of record via electronic filing.

/s/ Jordan C. Bledsoe