

AO 120 (Rev. 2/99)

TO: Mail Stop 8 Director of the U.S. Patent & Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Northern District of California on the following Patents or Trademarks:

DOCKET NO. CV 12-04222 MEJ	DATE FILED 8/10/12	U.S. DISTRICT COURT Northern District of California, 450 Golden Gate Avenue, San Francisco, CA
PLAINTIFF STRONGCO TRADING COMPANY, LTD.		DEFENDANT PULSE SHOWER SPAS, INC., ET AL.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 7,043,776		
2		
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4		
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In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK Richard W. Wiekling	(BY) DEPUTY CLERK Gloria Acevedo	DATE August 16, 2012
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1 OSUNA & DOTSON
2 Juan Dotson, Esq. SBN 232438
3 2067 W. Whittier Blvd.
4 La Habra, CA. 90631
5 Tel.: (888) 657-5648
6 Fax: (866) 598-2429
7 juandotson@gmail.com

8 Attorney for Plaintiff: STRONGCO TRADING COMPANY, LTD.

9
10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 STRONGCO TRADING COMPANY, LTD.,

13 Plaintiff,

14 vs.

15 PULSE SHOWER SPAS, INC., a California
16 Corporation, J. R. HERZOG, JR. an individual
17 and BRIAN R. EDWARDS, an individual; and
18 DOES 1 through 100, inclusive;

19 Defendants.

20) Case No.: 12-4222 MJ

21)
22) COMPLAINT FOR DAMAGES
23) JURY TRIAL DEMANDED

24 Plaintiff alleges:

25 **PARTIES**

- 26 1. Plaintiff, STRONGCO TRADING COMPANY, LTD, (hereinafter referred to as
27 STRONGCO) is now, and at all times mentioned in this complaint was and is a
28 Corporation with its principal place of business in Tai Chung, Taiwan.
- 29 2. Plaintiff is informed and believes and on that basis alleges that Defendant, PULSE
30 SHOWER SPAS, INC, hereinafter referred to as PULSE, is, and at all times herein

1 mentioned was, a California Corporation, with its principal place of business in
2 Watsonville, Santa Cruz County, California.

3 3. Plaintiff is informed and believes and on that basis alleges that Defendant, J. R.
4 HERZOG, JR. hereinafter referred to as HERZOG, is, and at all times herein mentioned
5 was, an individual doing business in Watsonville, Santa Cruz County, California.
6

7 4. Plaintiff is informed and believes and on that basis alleges that Defendant, BRIAN R.
8 EDWARDS, hereinafter referred to as EDWARDS, is, and at all times herein
9 mentioned was, an individual doing business in Watsonville,, Santa Cruz County,
10 California.
11

12 5. The true names and capacities of defendants whether individual corporate, associate or
13 otherwise sued herein as DOES 1 through 100, inclusive, are unknown to the Plaintiff
14 and therefore sues these defendants by such fictitious names. Plaintiff will seek leave
15 of the court to amend this complaint to allege their true names and capacities when
16 ascertained. Plaintiff is informed and believes and thereon alleges that each of these
17 defendants is responsible in some manner for the occurrences herein alleged, and that
18 plaintiff's damages as herein alleged were proximately caused by their conduct.
19

20 **JURISDICTION AND VENUE**

21 6. This court has subject matter jurisdiction under 28 U.S.C. § 1338 (original and
22 exclusive jurisdiction in patent cases), 28 U.S.C. § 1331 (federal question), 28 U.S.C. §
23 1332 (amount in controversy), and 35 U.S.C. §§ 271 and 281 (patent infringement).
24

25 7. Venue in this district is proper under 28 U.S.C. §§ 1391 and 1400.
26

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28 ///

INTRODUCTION

- 1
2 8. At all times herein mentioned, and in particular on or about August 5, 2009,
3 STRONGCO was and is a manufacturer of Kauai Shower Systems in Tai Chung,
4 Taiwan.
- 5
6 9. Plaintiff entered into a Licensing Agreement with the Defendants to sell Plaintiff's
7 patented product in retail stores.
- 8
9 10. Defendants on May 18, 2009, Defendants purchased 3,100 Kauai Shower System at the
10 rate of \$53.00 per unit for a total of One Hundred and Sixty Four Thousand Three
11 Hundred Dollars (\$164,300.00) pursuant to Purchase Order 1090. This order was
12 shipped to Defendants Warehouse in Etobicoke, Ontario, Canada. (A Copy of Purchase
13 Order 1090 hereinafter referred to as P.O. 1090 is attached hereto as EXHIBIT "1" and
14 made a part hereof).
- 15
16 11. On June 23, 2009, Defendants paid a 30% deposit on P.O. 1090 in the amount of Forty
17 Nine Thousand Two Hundred and Ninety Dollars (\$49,290.00). One Hundred and
18 Fifteen Thousand and Ten Dollars (\$115,010.00) remains outstanding on P.O. 1090.
- 19
20 12. On June 22, 2009, Defendants placed 3 separate Purchase Orders (P.O. 1095, P.O. 1096
21 and P.O. 1097) of the same Kauai Shower Systems at the rate of \$53.00 per unit.
- 22
23 13. P. O. 1095 was shipped to Defendant, PULSE, care of Nickels Cartage Company LTD.,
24 in British Columbia. The shipment's value totaled Eighty One Thousand Four Hundred
25 and Eight Dollars (\$81,408.00). (A copy of P.O. 1095 is attached hereto and EXHIBIT
26 2 and made a part hereof).
- 27
28 14. On July 2, 2009 Defendants paid a 30% deposit on P.O. 1095 in the amount of Twenty
Four Thousand Four Hundred and Twenty Two Dollars and Forty cents (\$24,422.40).

1 A balance of Fifty Six Thousand Nine Hundred and Eighty Five Dollars and Sixty cents
2 (\$56,985.60) remains outstanding on P. O. 1095.

3 15. P. O. 1096, dated June 22, 2009, was shipped to Defendant, PULSE, in Etobicoke,
4 Ontario, Canada. This shipment's value totaled Eighty One Thousand Four Hundred
5 Dollars, (\$81,408.00). (A copy of P.O. 1096 is attached hereto and EXHIBIT 3 and
6 made a part hereof)
7

8 16. Defendants paid a 30% deposit on Purchase Order 1096 in the amount of Twenty Four
9 Thousand Four Hundred and Twenty Two Dollars and Forty cents (\$24,422.40). A
10 balance of Fifty Six Thousand Nine Hundred and Eighty Five Dollars and Sixty cents
11 (\$56,985.60) remains outstanding on P. O. 1096.
12

13 17. P. O. 1097, dated June 22, 2009, was shipped to Defendant, PULSE, in Etobicoke,
14 Ontario, Canada. This shipment's value totaled Eighty One Thousand Four Hundred
15 Dollars, (\$81,408.00). (A copy of P.O. 1097 is attached hereto and EXHIBIT 4 and
16 made a part hereof).
17

18 18. Defendants paid a 30% deposit on P. O. 1097 in the amount of Twenty Four Thousand
19 Four Hundred and Twenty Two Dollars and Forty cents (\$24,422.40). A balance of
20 Fifty Six Thousand Nine Hundred and Eighty Five Dollars and Sixty cents (\$56,985.60)
21 remains outstanding on P. O. 1097.
22

23 19. P. O. 1098, dated July 21, 2009, was shipped to Defendant, PULSE, c/o BarthcoDart
24 Canada Inc. in Mississauga, Ontario, Canada. The shipment's value totaled Fifty Three
25 Thousand Four Hundred and Twenty Four Dollars, (\$53,424.00). (A copy of invoice
26 1098 is attached hereto as EXHIBIT "5" and made a part hereof).
27
28

1 20. Defendants paid a 30% deposit on Purchase Order 1098 in the amount of Sixteen
2 Thousand Twenty Seven Dollars and Twenty cents (\$16,027.20). A balance in the
3 amount of Thirty Seven Thousand Three Hundred and Ninety Six Dollars and Eighty
4 cents (\$37,396.80) remains outstanding on P. O.1098.

5
6 21. P. O. 1099, dated August 3, 2009, was shipped to Defendant, PULSE, in Etobicoke,
7 Ontario, Canada. The shipment's value totaled Eighty One Thousand Four Hundred
8 Dollars, (\$81,408.00). (A copy of invoice 1099 is attached hereto as EXHIBIT "6" and
9 made a part hereof).

10
11 22. Defendants paid a 30% deposit on P. O. 1099 in the amount of Twenty Four Thousand
12 Four Hundred and Twenty Two Dollars and Forty cents (\$24,422.40). A balance of
13 Fifty Six Thousand Nine Hundred and Eighty Five Dollars and Sixty cents (\$56,985.60)
14 remains outstanding on P. O. 1099.

15
16 23. P. O. 1101 dated August 5, 2009, was shipped to Defendant, PULSE, care of Nickels
17 Cartage Company LTD., in British Columbia. The shipment's value totaled Eighty One
18 Thousand Four Hundred and Eight Dollars (\$81,408.00). (A copy of invoice 1101 is
19 attached hereto as EXHIBIT "7" and made a part hereof).

20
21 24. On August 11, 2009 Defendants paid a 30% deposit on P. O. 1101 in the amount of
22 Twenty Four Thousand Four Hundred and Twenty Two Dollars and Forty cents
23 (\$24,422.40). A balance of Fifty Six Thousand Nine Hundred and Eighty Five Dollars
24 and Sixty cents (\$56,985.60) remains outstanding on P. O. 1101.

25
26 25. On or about November 10, 2009, Defendants made a payment in the amount of One
27 Hundred Thousand Dollars (\$100,000.00) leaving a balance due and payable in the
28

1 amount of Three Hundred and Twenty Seven Thousand Eight Hundred and Thirty Eight
2 Dollars and Eighty Cents (\$327,838.80).

3 26. On or about November 16, 2009, Defendants made a payment in the amount of One
4 Hundred Thousand Dollars (\$100,000.00) leaving a balance due and payable in the
5 amount of Two Hundred and Twenty Seven Thousand Eight Hundred and Thirty Eight
6 Dollars and Eighty Cents (\$227,838.80).

7
8 27. Plaintiff has demanded payment but Defendant has failed to pay despite several emails
9 from Defendants promising to pay the Plaintiff the outstanding balance.

10 28. Defendants terminated the relationship with the Plaintiff with the intent to sell an
11 infringing device based on their prior knowledge of this device.
12

13 **COUNT ONE**
14 **ACCOUNT STATED**
15 **AS AGAINST ALL DEFENDANTS**

16 29. Plaintiff re-alleges and incorporates by reference as is fully set forth herein the
17 allegations contained in Paragraph 1 through 28 above.

18 30. Within the last three years defendants and each of them became indebted to Plaintiff in
19 the sum of Two Hundred and Twenty Seven Thousand Eight Hundred and Thirty Eight
20 Dollars and Eighty Cents (\$227,838.80) on a mutual open book account, which sum
21 being the balance due and owing to Plaintiff for the manufacture, packaging and
22 shipping of United States Patent 7,043,776.
23

24 31. All of the work so done by Plaintiff and merchandise advanced by Plaintiff, as shown
25 by the account, were at the special request of defendants and each of them. The amount
26 charged for such products and services rendered, as shown by the account, is the
27 reasonable value of the products and services rendered.
28

1 32. On or about August 5, 2009, at Watsonville, California, an account was stated in writing
2 by and between plaintiff and defendant and on such statement a balance of Two
3 Hundred and Twenty Seven Thousand Eight Hundred and Thirty Eight Dollars and
4 Eighty cents (\$227,838.80) was found due to plaintiff from Defendants. Defendants
5 agreed to pay to plaintiff said balance. (A copy of the account is attached hereto as
6 EXHIBIT "8" and made a part hereof).
7

8 33. Although demanded by Plaintiff from Defendants, and each of them, neither all nor any
9 part of the agreed outstanding balance has been paid and has gone unpaid since
10 November, 2009.
11

12 34. There is now due, owing and unpaid from defendant to plaintiff the sum of Two
13 Hundred and Twenty Seven Thousand Eight Hundred and Thirty Eight Dollars and
14 Eighty cents (\$227,838.80), together with interest thereon at the rate of 10% per year
15 from and after August 5, 2009.
16

17 **COUNT TWO**
18 **PATENT INFRINGEMENT**
19 **AS AGAINST ALL DEFENDANTS**

20 35. Plaintiff re-alleges and incorporates by reference as is fully set forth herein the
21 allegations contained in Paragraph 1 – 34 above.
22

23 36. United States Letter Patent Number 7,043,776 (hereinafter referred to as PATENT-IN-
24 SUIT) was duly and legally issued to Plaintiff. A copy of the Patent is attached hereto
25 as EXHIBIT "9" and made a part hereof). Plaintiff is the owner of rights in the
26 PATENT-IN-SUIT sufficient to bring this action.
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37. Plaintiff entered into a License Agreement for their Patent Number 7,043,775 with the Defendants and each of them. (A copy of the License Agreement is attached hereto as EXHIBIT "10" and made a part hereof).

38. The device being sold by the Defendants is described as a shower assembly comprising a patented standing pipe having a top, a bottom and a central passage defined through the standing pipe; a connector attached to the top of the standing pipe and having a three-way passage defined through the connector and having an inner surface, an inlet, a secondary outlet communicating with the central passage in the standing pipe and a primary outlet; an overhead pipe connected to the connector and having a proximal end attached to the connector; a distal end; and a channel defined through the overhead pipe and communicating with the primary outlet of the passage in the connector; a fixed overhead showerhead attached to the distal end of the overhead pipe; a control valve being hollow and attached to the bottom of the standing pipe; a handheld showerhead bracket mounted on the standing pipe to hold the handheld showerhead; and a directional valve mounted inside the passage in the connector to direct water to flow selectively into either the channel in the overhead pipe or the central passage in the standing pipe and comprising a tubular valve body mounted inside the passage and having an inner surface; a top; a bottom; a top opening defined in the top of the valve body and communicating with the primary outlet of the passage; a bottom opening defined in the bottom of the valve body, communicating with the secondary outlet of the passage and having an inner surface; and a side opening radially defined through the valve body and communicating with the inlet of the passage; a valve rod moveably mounted in the valve body and having a top; a bottom; and a head formed on the top of

1 the valve rod; a primary disk mounted around the top of the valve rod to selectively
2 close the top opening in the valve body; and a secondary disk mounted around the
3 bottom of the valve rod to selectively close the bottom opening in the valve body and
4 having a bottom and an annular recess defined in the bottom to form a resilient annular
5 flange abutting the inner surface of the bottom opening to close the bottom opening.
6

7 39. On information and belief, Defendants, and each of them, have infringed the patent after
8 the revocation of their license of use by making, issuing and/or selling showerheads
9 covered by the claims of said PATENT-IN-SUIT in the United States and specifically
10 in the Northern District of California and will continue such infringement unless
11 enjoined by this Court.
12

13 40. On December 17, 2009, Plaintiff sent Defendants a Termination of License notice
14 which was received and acknowledged by their attorney yet Defendants continue to use
15 said license in spite of their rights being terminated. (A copy of the Termination of
16 License is attached hereto as EXHIBIT "11" and EXHIBIT "12" a copy of Defendant's
17 Acknowledgement of the Termination of the License both made a part hereof).
18

19 41. As a result of Defendant's acts and continued infringement of Plaintiff's Patent rights
20 Plaintiff has been damaged.

21 42. Plaintiff further alleges that the device sold by Defendants and described in paragraph
22 34 is different only in minor and unimportant ways from the device for which Letters
23 Patent No.7,043,776 were issued to the Plaintiff.
24

25 43. Both devices do the same work in substantially the same way and accomplish
26 substantially the same result. The only difference between them is that the device sold
27 by the Defendants has a secondary disk mounted around the bottom of the valve rod to
28

1 selectively close the bottom opening in the valve body and having a bottom and an
2 annular recess defined in the bottom to form a resilient annular flange abutting the inner
3 surface of the bottom opening to close the bottom opening.

4 44. Defendants knew that Plaintiff was going to make this minor change to its patent and
5 even if they didn't have direct knowledge that Plaintiff was going to make this minor
6 change, they knew the possibility of changing Plaintiff's device in these minor ways
7 while retaining its essential function, means, and result, would have been obvious to
8 persons reasonably skilled in this area.

9
10 45. In addition Plaintiff's patent was marketed under the name of Kauai Shower Systems
11 and the Defendants' are selling their infringing product under the name Kauai II Rain
12 Shower System.

13
14 46. Therefore, Defendants' sale of the device described in paragraph 34 and being sold
15 under the name Kauai II Rain Shower System infringes on Plaintiff's patent.

16 **COUNT THREE**
17 **FRAUD**
18 **AS AGAINST ALL DEFENDANTS**

19 47. Plaintiff re-alleges and incorporates by reference as is fully set forth herein the
20 allegations contained in Paragraph 1 – 46 above.

21 48. On or about June 23, 2009, Defendants established an account with Plaintiff for the
22 purchase of Plaintiff's patented showerheads. Defendants' made a thirty per cent (30%)
23 deposit on each order with the promise to pay the balance in full upon receipt of the
24 merchandise.

25
26 49. At the time the Defendants made the promise to pay the Plaintiff, the Defendants had no
27 intention of performing their promise to pay for the products they ordered.

1 50. The promise was made by the Defendants with the intent to induce the Plaintiff to send
2 the products without ever fully paying for them.

3 51. The Plaintiff, at the time, this promise was made and at the time the Plaintiff took the
4 action herein alleged, was ignorant of the Defendants' secret intention of not
5 performing and paying them. Plaintiff could not, in the exercise of reasonable
6 diligence, have discovered the Defendants' secret intention. In reliance on the promise
7 of the Defendants, the Plaintiff shipped hundreds of thousands of dollars of product to
8 the Defendants without ever receiving full payment on their product. If Plaintiff had
9 known of the actual intention of the Defendants, the Plaintiff would not have taken such
10 action.
11

12 52. Plaintiff was further unaware of Defendants secret intention to use Plaintiff's expertise,
13 knowledge and improvements on their patented product to sell an infringing device,
14

15 53. The Defendants failed to abide by their promise to pay and terminated their relationship
16 with Plaintiff to keep from paying.
17

18 54. Even after terminating their relationship with the Plaintiff, Defendants continued to sell
19 the patented product without a license despite receiving and acknowledging Plaintiff's
20 Cease and Desist letter.
21

22 WHEREAS Plaintiffs prays judgment against the Defendants as follows:

- 23 1. For the sum of Two Hundred and Twenty Seven Thousand Eight Hundred and Thirty
24 Eight dollars and Eighty cents (\$227,838.80)
25
26 2. For interest in the amount of 10% per annum from May, 2009 until paid in full;
27
28 3. A finding by this Court that Defendants and each of them have infringed United States
Patent Number 7,043,776;

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4. An award against Defendants and each of them for damages suffered by Plaintiff as a result of Defendants acts of infringement with prejudgment interest thereon;
5. An order enjoining Defendants and each of them and their agents, servants, employees and attorneys and all other persons acting in concert or in participation with Defendants from infringing on Plaintiff's United States Letters Patent Number 7,043,776;
6. An award to Plaintiff of attorney fees, costs and expenses incurred in this action;
7. Demand for Jury Trial; and
8. For such other and further relief as the court deems just and proper.

Dated this 27th day of July, 2012

OSUNA & DOTSON LAW FIRM



Juan F. Dotson, Esq.
For Plaintiff
Strongco Trading Co. LTD

EXHIBIT "1"