

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

_____)	
EPSON AMERICA, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 23-cv-11395-LTS
)	
SHENZHEN DAOSAN INTELLIGENT)	
TECHNOLOGY CO., LTD d/b/a YOWHICK;)	
HUIZHOU MIWO TECHNOLOGY CO., LTD,)	
)	
Defendants.)	
_____)	

AMENDED COMPLAINT AND JURY DEMAND

Plaintiff Epson America, Inc. (“Epson”) by and through its undersigned counsel, complains of defendant SHENZHEN DAOSAN INTELLIGENT TECHNOLOGY CO., LTD d/b/a YOWHICK and defendant HUIZHOU MIWO TECHNOLOGY CO., LTD’s (“Defendants” or “Yowhick”) misconduct and alleges as follows:

NATURE OF THIS ACTION

1. This is an action for false advertising arising under the Lanham Act, 15 U.S.C. § 1051, *et seq.* Defendants’ conduct has produced and, unless enjoined by this Court, will continue to produce a likelihood of consumer confusion and deception, to the irreparable injury of Epson.

JURISDICTION AND VENUE

2. This action arises under 15 U.S.C. § 1125(a). This Court has jurisdiction over the subject matter of this Complaint pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338(a) and (b), as the primary claim arises under the trademark laws of the United States.

3. Defendants are subject to personal jurisdiction in this forum because they sell products within the United States, the Commonwealth of Massachusetts, and this District; because Defendants misrepresented the nature of products to residents of the United States, the Commonwealth of Massachusetts, and this District; because Defendants have caused injury to Epson in the United States, the Commonwealth of Massachusetts, and this District; because Defendants practice the unlawful conduct complained of herein, in part, within the United States, the Commonwealth of Massachusetts, and this District; because Defendants regularly conduct or solicit business within the United States, the Commonwealth of Massachusetts, and this District; because Defendants regularly and systematically direct electronic activity into the United States, the Commonwealth of Massachusetts, and this District with the manifest intent of engaging in business within the United States, the Commonwealth of Massachusetts, and this District, including the sale and/or offer for sale of products to Internet users within the United States, the Commonwealth of Massachusetts, and this District, and because, upon information and belief, Defendants have entered into contracts with residents of the United States, the Commonwealth of Massachusetts, and this District for the sale of items through various online retail platforms. Moreover, for each of the reasons stated above, personal jurisdiction is also proper pursuant to Fed. R. Civ. P. 4(k)(2).

4. Venue is proper in this judicial district under 28 U.S.C. § 1391.

PARTIES

5. Plaintiff Epson America, Inc. is a California corporation having its principal place of business in Los Alamitos, California. It is a principal subsidiary of Seiko Epson Corporation, a Japanese corporation headquartered in Suwa, Nagano. Epson is a leading manufacturer in the

printer, professional imaging, projector, scanner, systems devices, and factory automation categories. Epson has been a leading innovator in its field since it was founded in 1942.

6. Upon information and belief, Yowhick sells, *inter alia*, projector products through its own webpage and other online platforms such as Amazon.com.

7. Defendant HUIZHOU MIWO TECHNOLOGY CO., LTD has been assigned seller ID A3BN2VD7QD3FXA by Amazon.com. It named this seller ID “YOWHICH Official.”

8. This action seeks redress for Defendants’ deliberate and unlawful misleading representations regarding the light output of their projectors. Defendants use false claims regarding the light output of their projectors in their product descriptions and advertising.

FACTS GIVING RISE TO THIS ACTION

Portable Consumer Projectors

9. While traditionally associated with movie theaters, projectors have become an increasingly common video display product for consumers used in home, business, and educational settings.

10. Today, consumers use digital projectors in the same way as television or computer screens. Digital projectors receive video signals from external devices, such as computers, and “project” those signals onto a screen.

11. Consumers can purchase projectors in a variety of sizes ranging from the size of a cell phone to larger, permanently-mounted projectors for home theaters.

12. Within a particular projector category, such as portable consumer projectors, the quality and corresponding price of a specific projector is largely determined by its resolution and light output.

13. Projector light output is measured and described in lumens. The higher the lumen rating, the brighter the projector, and, all else being equal, the more it will likely cost.

14. The lumen rating for a projector is one of the most important and immediately recognizable projector features for consumers, and one that necessarily impacts consumer choice.

Epson Projectors

15. Epson is recognized throughout the world and the United States as a leading projector manufacturer.

16. As a market leader, Epson continues to set standards for image quality, performance, and innovation with its line of multimedia projectors. Epson's commitment to delivering quality products is recognized by the industry through various product awards and industry recognition.

17. Epson prides itself on achieving the highest customer satisfaction ratings, accomplished in large part by using the most precise testing equipment and procedures available.

Defendant's False Advertising of its Projectors

18. Defendants are direct competitors of Epson in the portable consumer projector market. Defendants sell and offer for sale projectors to consumers throughout the United States via various online commerce sites including, but not limited to, Amazon.com.

19. Defendants sell their projectors under various models including, but not limited to, its DP02W projector.

20. Defendants maintains a "Yowhick Store" product page on Amazon.com in which a customer can find the full assortment of various projectors falsely advertised and sold by

Defendants.¹ Each of these projectors falsely advertises its brightness in a manner similar to the below example.

21. On Defendants' Amazon.com product page, Defendants advertise the following brightness values for its DP02W projector model:

Native 1080P Mini Projector, YOWHICK Upgrade 9000 Lux Portable Projector, Movie Projector with Remote Control Suitable for Indoor/Outdoor, HDMI, USB, AC and Aux Ports

Visit the YOWHICK Store
4.0 ★★★★★ 35 ratings

-33% \$59.99
Was: \$89.99

Style: 9000L
Brand: YOWHICK
Recommended Uses For Product: Tabletop Mount
Special Feature: *Native 1080P Full HD resolution. *9000 Lumens. *100%-75% zoom function. *Auto sleep timer. *Dual Stereo Built-in Speakers. *Supports Table, Tripod, and Ceiling Mounting. *Easy to use for indoor and Outdoor...
Mounting Type: Tabletop Mount
Included Components: Remote Control, Adapter, HDMI Cable, 3-in-1 AV Cable

2 VIDEOS

Roll over image to zoom in

prime
Enjoy fast, FREE delivery, exclusive deals and award-winning movies & TV shows with Prime
Try Prime and start saving today with Fast, FREE Delivery

Delivery Pickup

\$59.99
FREE Returns
FREE delivery Wednesday, May 17
Or fastest delivery Saturday, May 13. Order within 13 hrs 30 mins
Select delivery location
Only 19 left in stock - order soon
Qty: 1
Add to Cart

¹ The Yowhich Store can be found at https://www.amazon.com/stores/YOWHICKmakesyourlifebetter/page/936AB7C2-66A5-4FBC-812C-9D12DC71E144?ref_ast_bln&store_ref=bl_ast_dp_brandLogo_sto



Native 1080P Resolution & 9000Lux

YOWHICK DP02W Native 1080P Projector with a true 1920 x 1080 resolution, delivers bright large-screen with fantastic image clarity, outstanding color accuracy and incredibly sharp image detail. The image is way much brighter and clearer than the similar projectors on the market. Real native 1080P and 9000Lux.

22. In other similar pages, Defendants advertise their projectors as having 12,000 lumens.

23. Each of the above brightness values are prominently displayed in both the projectors' listing page titles as well as throughout the projectors' listing pages.

24. As shown above, Defendants use the terms "lux" and "lumens" interchangeably within its advertisements. "Lux" is not an established standard for the measurement of projector brightness and is not synonymous with lumens. Indeed, the only reason "lux" would be used in a projector advertisement is to confuse customers into believing that a projector's brightness specification is higher than its actual brightness specification.

25. Defendants make these statements, recognizing the importance of brightness to a consumer.

26. In order to gain initial traction in the United States projector marketplace, Yowhick is purposefully and deceptively inflating the brightness specification of its projectors.

27. Epson tested the brightness of several of Defendants' projectors. Of the Yowhick projectors tested by Epson, each projector tested significantly below its advertised brightness value. Indeed, Epson's testing showed a value of less than 1% of the claimed lumens in each of the projectors that it tested.

28. Defendants' purposeful inflation of the brightness specification of its line of projectors has caused significant confusion in the marketplace.

29. As can be seen from the limited feedback already received, there is already actual confusion with customers in the marketplace:



Tampa Bay Casey

★☆☆☆☆ **Disappointing performance**

Reviewed in the United States on June 8, 2023

[Color: Grey](#)

I tried this based off reviews on a couple of different sites. This was a bad idea.

The lumens must be a lie. Brightness was hardly there. Simply put, this was not a good projector. Returning

Helpful

Report

30. As a result, purchasers of any of Yowhick's projectors are likely to be, and have actually been, misled and deceived by Yowhick's literally false product labeling, descriptions, and advertisements.

31. Consumers expect the represented product specifications to be accurate for Yowhick's projectors, as they base their purchasing decisions in large part on these

representations. In fact, consumers that purchase Defendants' projectors receive projectors with drastically lower performance outputs.

32. Yowhick's literally false and misleading product labeling, descriptions, and advertisements are damaging to Epson and are also damaging to the consuming public. These false and misleading representations are designed to entice consumers to purchase Defendants' products over Epson's products.

33. The natural, probable, and foreseeable result of Yowhick's wrongful conduct has been to cause confusion, deception, and mistake in the consumer projector market as a whole, to deprive Epson of business and goodwill, to injure Epson's relationship with existing and prospective customers, and to divert sales of Epson projectors.

34. By means of example, after having a poor experience with Yowhick's projector with an improperly inflated lumen value of "9000" lumen, the consuming public is less likely to purchase a projector with a lumen rating of 9000 lumens as consumers will be unaware that Yowhick's "9000" lumen projector is not representative of the performance of a true 9000 lumen projector. This causes irreparable harm to Epson as well as to the entire portable projector marketplace.

35. Epson is informed and believes that Yowhick's wrongful conduct has resulted in increased sales and market share of Yowhick's projectors while hindering the sales and market share of Epson's projectors and damaging Epson's goodwill.

36. Epson has sustained and will continue to sustain irreparable damages as a result of Yowhick's wrongful conduct, unless enjoined.

COUNT I

False Advertising / Unfair Competition - Lanham Act

37. Epson hereby realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

38. Defendants have made and distributed, in interstate commerce and in this District, product listings and advertisements that contain false or misleading statements of fact regarding their products. These advertisements contain actual misstatements and/or misleading statements, including the light outputs of their projectors - attributes important to a consumer's purchasing decision. These literally false statements and product performance attributes actually deceive, or have a tendency to deceive, a substantial segment of Epson's customers and potential customers. This deception is material in that it is likely to influence the purchasing decisions of Epson's customers.

39. Defendants' false and misleading advertisements constitute unfair competition and injure both consumers and Epson.

40. Defendants' false and misleading advertisements violate Section 43 of the Lanham Act, 15 U.S.C. § 1125(a).

41. Defendants, as described more fully above, have caused, and will continue to cause, immediate and irreparable injury to Epson for which there is no adequate remedy at law. As such, Epson is entitled to an injunction under 15 U.S.C. § 1116 restraining Defendants, its distributors, retailers, agents, employees, representatives, and all persons acting in concert with it, from engaging in further acts of false advertising, and ordering removal of all Defendants' false advertisements.

42. Defendants' actions are willful and done solely to improperly gain market share.

43. Pursuant to 15 U.S.C. § 1117, Epson is entitled to recover from Defendants the damages sustained by Epson as a result of Defendants' acts in violation of Section 43 of the Lanham Act.

44. Pursuant to 15 U.S.C. § 1117, Epson is also entitled to recover from Defendants the gains, profits, and advantages that they have obtained as a result of its unlawful acts. Epson is presently unable to ascertain the full amount of the gains, profits, and advantages Defendants have obtained by reason of its unlawful acts.

45. Pursuant to 15 U.S.C. § 1117, Epson is further entitled to recover the costs of this action. Moreover, Epson is informed and believes that Defendants' conduct was undertaken willfully and with the intention of causing confusion, mistake, or deception, making this an exceptional case entitling Epson to recover additional damages and reasonable attorneys' fees.

PRAYER FOR RELIEF

46. WHEREFORE, Epson prays for judgment against Yowhick as follows:

47. For temporary, preliminary, and permanent injunctive relief prohibiting Yowhick, its distributors, retailers, agents, or anyone working for, in concert with, or on behalf of Yowhick to sell its products, from engaging in false or misleading advertising with respect to its projector products, and/or violating Section 43 of the Lanham Act, 15 U.S.C. § 1125(a), which relief includes but is not limited to removal of all Yowhick's products from online commerce sites, such as, but not limited to, Amazon.com, as well as retail stores, until such a time as Yowhick can correct its false or misleading advertisements;

48. For an order requiring Yowhick to correct any erroneous impression consumers may have derived concerning the nature, characteristics, or qualities of Yowhick's projectors,

including without limitation, the placement of corrective advertising and providing written notice to the public and its prior customers;

49. That Yowhick be adjudged to have violated 15 U.S.C. § 1125(a) by unfairly competing against Epson by using false, deceptive or misleading statements of fact that misrepresent the nature, quality, and characteristics of Defendants' projectors;

50. That Epson be awarded damages it has sustained in consequence of Defendants' conduct including, but not limited to, its loss of market share;

51. That Epson be awarded Defendants' profits obtained by Defendants as a consequence of its conduct;

52. That such damages and profits be trebled and awarded to Epson as a result of Defendants' willful, intentional, and deliberate acts in violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125(a);

53. That Epson be awarded exemplary and punitive damages;

54. That Epson recover its costs and reasonable attorneys' fees;

55. That all of Defendants' misleading and deceptive materials and products be destroyed as allowed under 15 U.S.C. § 1118;

56. That Epson be granted prejudgment and post judgment interest; and

57. That Epson be awarded such further relief as the Court deems just and proper.

JURY TRIAL CLAIM

Epson claims a trial by jury on all issues so triable.

Boston, Massachusetts
Dated: March 6, 2024

/s/ Morgan T. Nickerson

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