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5 UNITED STATES DISTRICT COURT
6 FOR THE EASTERN DISTRICT OF NEW YORK

7 EVRIHOLDER PRODUCTS, LLC

8 Plaintiff,

9 v.

10 ART AND COOK, INC.

11 Defendant.

Case No.:

COMPLAINT FOR PATENT INFRINGEMENT

JURY TRIAL DEMANDED

12 **COMPLAINT**

13 EVRIHOLDER PRODUCTS, LLC complains and alleges against ART AND COOK, INC. as follows:

14 **The Parties**

15 1. Evriholder Products, LLC (“Plaintiff” or “Evriholder”) is an Indiana limited liability company, having its
16 principal place of business at 1500 South Lewis Street, Anaheim California 92805. As described further
17 hereinbelow, Evriholder is the exclusive licensee of U.S. Design Patent No. D524,612 (“the ’612 Patent”), and has
18 the right to bring an action for enforcement and damages due to the infringement of the ’612 Patent.

19 2. Upon information and belief, Art and Cook Inc. (“Art+Cook” or “Defendant”) is a New York corporation
20 and has an address at 14C 53rd Street, 2nd Floor, Brooklyn, New York, 11232.

21 **Jurisdiction and Venue**

22 3. This is an action for patent infringement in violation of the Patent Act of the United States, 35 U.S.C.
23 §§ 1 et seq.

24 4. This Court has original and exclusive subject matter jurisdiction over the patent infringement claims for
25 relief under 28 U.S.C. §§ 1331 and 1338(a).

26 5. This Court has personal jurisdiction over Defendant. Upon information and belief, Art+Cook has its
27 principal place of business in Brooklyn, within the Eastern District of New York. Art+Cook has transacted and
28 continues to transact business in this judicial district through the marketing and sale of a jar and bottle opener that

1 infringed the '612 Patent. Defendant has sufficient contacts with this judicial district to subject itself to the
2 jurisdiction of this Court.

3 6. Venue is proper in this district under 28 U.S.C. §1391(b-c) and 1400(b) because a substantial part of the
4 events or omissions giving rise to the claims occurred in this District, where Defendant has done, and is doing
5 business, and has committed infringing acts.

6 **FACTUAL BACKGROUND**

7 **Evriholder's EASI-TWIST Jar Opener**

8 7. U.S. Design Patent No. D524,612 ("the '612 Patent") for a Jar Opener was issued to, and is owned by,
9 Mulberry Imports, Ltd. ("Mulberry"). A true and correct copy of the '612 Patent is attached as Exhibit A.

10 8. Mulberry has granted an exclusive license to Evriholder to make, have made, import, offer to sell and sell
11 the Jar Opener claimed in the '612 Patent. This exclusive license grants Evriholder the right to enforce the patent,
12 including the right to file suit to enjoin infringement thereof, and recover damages for infringement of the '612
13 Patent. The exclusive license provides, in relevant part, that: "MI [MULBERRY IMPORTS] hereby grants
14 EVRI[HOLDER], and EVRI hereby accepts, the exclusive USA rights to Commercialize the Product under the
15 Licensed IP." A true and correct redacted copy of the agreement between Mulberry and Evriholder granting the
16 exclusive license is attached as Exhibit B.

17 **Unauthorized Sale and Marketing of Cook Works Jar & Bottle Opener**

18 9. Art+Cook. imported into the United States, marketed and sold Cook Works Jar & Bottle Opener
19 (Model CSC789) (the "Infringing Product"). A true and correct photograph of Cook Works Jar & Bottle Opener
20 (Model CSC789) is attached as Exhibit C.

21 10. At no time was Art+Cook authorized to import, offer to sell or sell a jar opener as claimed in the '612
22 Patent.

23 11. Cook Works Jar & Bottle Opener (Model CSC789) as sold by Art+Cook is identical (or substantially
24 indistinguishable) in design (i.e., shape) to the protected design claimed in, and protected by, the '612 Patent and
25 embodied in Evriholder's EASI-TWIST jar openers, which are sold by Evriholder as the exclusive licensee of
26 the '612 Patent.

27 12. On December 19, 2017, and again on January 4, 2018, Evriholder, through counsel, sent letters notifying
28 Art+Cook of Evriholder's rights under the '612 Patent and of Art+Cook's infringement of the '612 Patent. The

1 December 19th letter, requested that Art+Cook (a) immediately cease all sales, advertising, distribution, and
2 marketing of Cook Works Jar & Bottle Opener (Model CSC789) and (b) agree, on a going forward basis, unless and
3 until a written license is entered, not to import, manufacture, have manufactured, sell or offer for sale of Cook
4 Works Jar & Bottle Opener (Model CSC789), or any other jar opener as claimed in the '612 Patent.

5 13. On January 18, 2018, Art+Cook, through its counsel, admitted and acknowledged infringement of the '612
6 Patent by Art+Cook and replied that Art+Cook (i) “[had imported and] sold a total of 26,472 units” of Cook Works
7 Jar & Bottle Opener (Model CSC789) (ii) “had ceased the sale of [Cook Works Jar & Bottle Opener (Model
8 CSC789)]”, and (iii) “[would] not import or sell any more products of that design, or any design that would be
9 deemed to fall within the scope of the '612 patent.”

10 **CAUSE OF ACTION**
11 **Patent Infringement Under 35 U.S.C. §§ 271(a) and (b)**

12 14. Evriholder realleges and incorporates by reference the allegations set forth in Paragraphs 1-13.

13 15. On July 11, 2006, U.S. Design Patent No. D524,612 (“the '612 Patent”) was duly and legally issued.
14 The '612 Patent is entitled to a presumption of validity.

15 16. Art+Cook has infringed the '612 patent. Specifically, Art+Cook’s importing of its Cook Works Jar & Bottle
16 Opener (Model CSC789) into the United States and offering for sale and selling its Cook Works Jar & Bottle
17 Opener (Model CSC789) directly infringes the '612 Patent. Further, by offering for sale, selling, importing,
18 marketing, supporting and advertising said jar opener, Art+Cook contributed to the infringement of the '612 Patent
19 by its customers (retailers). Art+Cook, through its counsel, has admitted and acknowledged infringement of
20 the '612 Patent.

21 17. As a result of Art+Cook’s acts of infringement and contributory infringement, Evriholder has suffered
22 damages in an amount to be proven at trial.

23 18. Pursuant to 35 U.S.C. § 289, Evriholder is entitled to Art+Cook’s total profit for selling jar openers
24 employing the design covered in the '612 Patent.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Evriholder prays that this Court enter judgment against Defendants as follows:

- 3 A. An injunction prohibiting Art+Cook from selling and offering to sell jar openers claimed in the '612 Patent.
- 4 B. An accounting for, and an award of, damages in an amount to be determined, but no less than all of
- 5 Art+Cook's profit from the sale of the infringing jar openers;
- 6 C. Pre- and post-judgment interest and costs;
- 7 D. Attorneys' fees in that this is an extraordinary case inasmuch as Art+Cook has conceded infringement by
- 8 ceasing the importation of its Cook Works Jar & Bottle Opener (Model CSC789) into the United States, but
- 9 has refused to pay damages and has forced Plaintiff to initiate this action; and,
- 10 E. Such other and further relief as this Court deems proper under all of the circumstances

11 **JURY DEMAND**

12 Pursuant to Fed. R. Civ. P. 38(b), Evriholder demands a trial by jury for all claims so triable.

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14 Respectfully submitted,

15 Dated: March 20, 2018

LOUIS C. PAUL & ASSOCIATES, PLLC

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