

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

WARMING TRENDS, LLC

Plaintiff,

v.

FLAME DESIGNZ, LLC

Defendant.

CIVIL ACTION NO. 1:22-CV-00252

**JURY TRIAL DEMANDED**

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**COMPLAINT**

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Plaintiff Warming Trends, LLC (“Warming Trends” or “Plaintiff”) files this Complaint against Defendant Flame DesignZ, LLC (“Flame DesignZ” or “Defendant”) alleging, based on its own knowledge as to itself and its own actions, and based on information and belief as to all other matters, as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. Warming Trends is a Delaware limited liability corporation, duly authorized to do business in Colorado, with its principal place of business at 1050 West Hampden Avenue, Suite 200, Englewood, Colorado 80110. Warming Trends is a leading manufacturer of burners and other fire feature accessories for outdoor and other fire pits.

2. Defendant is a limited liability company organized under laws of the State of Colorado with its primary place of business at 8890 Federal Blvd., Unit 58D, Denver, Colorado 80260.

3. This is an action for, among other causes of action, infringement of a United States patent arising under 35 U.S.C. §§ 271, 281, and 284–85 and false advertising in violation of the Lanham Act, 15 U.S.C. § 1125. This Court therefore has subject matter jurisdiction of the action under 28 U.S.C. § 1331 and § 1338(a).

4. Venue is proper in this district pursuant to 28 U.S.C. § 1400(b) and 28 U.S.C. § 1391, since Defendant is a resident of the State of Colorado, resides within this District, and has conducted infringing activities from within this District.

5. Specifically, Defendant intends to do and does business in, has committed acts of patent infringement and other in, and continues to commit acts of infringement in the District of Colorado directly and through intermediaries by contributing to and through its inducement of third parties, and offers its products or services, including those accused of infringement here, to customers and potential customers located in Colorado, including in the District of Colorado.

6. An actual case or controversy has arisen between the parties.

7. Plaintiff has been injured by Defendant’s misconduct and has suffered significant damage resulting therefrom.

### **FACTUAL BACKGROUND**

8. Warming Trends repeats and re-alleges the allegations in Paragraphs 1-7 as though fully set forth in their entirety.

9. Warming Trends owns all substantial rights, interest, and title in and to U.S. Patent No. 10,571,117 (the “’117 patent”), including the sole and exclusive right to prosecute this action and enforce the ’117 patent against infringers and to collect damages for all relevant times.

10. The United States Patent and Trademark Office duly issued the '117 patent on February 25, 2020. A true and correct copy of the '117 patent is attached as Exhibit A.

11. The '117 patent is titled "System and Method for Building Ornamental Flame Displays."

12. On information and belief, Defendant sells, uses, causes to be used, provides, supplies, or distributes various burners and fire pit systems that infringe at least claim 1 of the '117 patent.

13. Warming Trends' members are Timothy and Voni Flaherty, both of whom are residents of the State of Colorado.

14. On December 19, 2018, Warming Trends and Defendant executed a Settlement and Release Agreement intended to resolve certain disputes between the parties. Exhibit B.

15. The Settlement and Release Agreement included, among other things, a non-competition agreement.

16. By virtue of the non-competition agreement, Defendant agreed that it would not
- a. "directly or indirectly, engage in, consult with, participate in; hold a position as shareholder, director, officer, consultant, employee, partner or investor in; or otherwise assist any business entity that is engaged in any activities which are competitive with the business of manufacturing, selling or fabricating Jetted Flame burners in any State of the United States of America or in any other country in which Warming Trends has business activities..." *Id.*
  - b. For five (5) years from Execution Date, it will not sell, manufacture or fabricate Jetted Flame Burners. *Id.* at 3(a)(ii).

- c. For a period of twenty-one (21) years from Effective Date, it will not sell, manufacture or fabricate, directly or indirectly, any jets to be used in Jetted Flame Burners. Ex. B at 3(a)(iii).

17. Essentially, the Settlement Agreement provides that any Jetted Flame Burners sold by Defendant would be Warming Trends' burners, which Defendant agreed to acquire on the open-market from an authorized Warming Trends distributor. *Id.* at 3.

18. A narrow exception for Defendant to sell a limited number of Jetted Flame Burners procured from third parties was agreed to provided that Defendant received confirmation in writing that Warming Trends did not offer or could not manufacture a burner meeting Defendant's requested specifications ("an Exception"). Such written confirmation was required to be received by an authorized Warming Trends distributor. *Id.* at 3(b).

19. In early 2019, Warming Trends discovered that Defendant was selling and offering for sale various burners, including Jetted Flame Burners, in violation of the non-competition agreement.

20. No Exception was requested and none was granted.

21. Warming Trends also discovered that Defendant was advertising certain burners for sale on its website that, on information and belief, it did not actually have available for sale or that it was not permitted to sell pursuant to the Settlement and Release Agreement.

22. Defendant's website included an unauthorized copy of a Warming Trends' video demonstrating a Warming Trends product that Defendant was not permitted to feature on their website.

23. On February 7, 2019, Warming Trends notified Defendant by letter that it was in breach of the Settlement and Release Agreement, including extensive detail of the alleged breaches. *See* Exhibit C.

24. Warming Trends sent several additional communications attempting to resolve Defendant's continuing breaches from 2019 through 2020, including a second letter sent to Defendant on March 11, 2019 (*see* Exhibit D), and an email on February 23, 2020 (*see* Exhibit E).

**COUNT I**  
**PATENT INFRINGEMENT**

25. Warming Trends repeats and re-alleges the allegations in Paragraphs 1-24 as though fully set forth in their entirety.

26. The '117 patent is valid and enforceable.

27. Defendant has infringed and continues to infringe at least claim 1 of the '117 patent under 35 U.S.C. § 271(a), either literally or under the doctrine of equivalents.

28. Specifically, Defendant has manufactured, sold, offered for sale, used, caused to be used, provided, supplied, or distributed, and, on information and belief, continues to manufacture, sell, offer for sale, use, cause to be used, provide, supply, or distribute one or more burners including, but not limited to, the Eco Burner 2.0 burner (the "Accused Instrumentalities").

29. Defendant has had knowledge and notice of the '117 patent, as well as of its own infringement of the '117 patent.

30. The Accused Instrumentalities include a modular burner system comprising a plurality of burners, at least two of the burners including a nipple that is brass and a jet that is brass; in each of the at least two of the burners: the nipple has a first end that is threaded and a second end that is closed; the nipple has a side wall between the first end and the second end, the

side wall defining a bore, the bore extends through the first end to the second end; the first end, second end, and side wall of the nipple are of integral, one piece, construction free of joints; the nipple has a threaded hole extending through the side wall of the nipple to the bore; and the jet has a threaded end threadedly engaged with the threaded hole.

31. The written description of the '117 patent describes in technical detail each limitation of the claims, allowing a skilled artisan to understand the scope of the claims and how the non-conventional and non-generic combination of claim limitations is patently distinct from and improved upon what may have been considered conventional or generic in the art at the time of the invention.

32. Warming Trends has been damaged as a result of the infringing conduct by Defendant alleged above. Defendant is liable to Warming Trends in an amount that compensates it for such infringements, which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

33. Warming Trends or its predecessors-in-interest have satisfied all statutory obligations required to collect pre-filing damages for the full period allowed by law for infringement of the '117 patent.

34. Defendant had knowledge of the '117 patent at least as of the date when they were notified of the filing of this action.

35. Furthermore, on information and belief, Defendant has a policy or practice of not reviewing the patents of others, including instructing its employees to not review the patents of others, and thus have been willfully blind of Warming Trends' patent rights.

36. Defendant's actions are at least objectively reckless as to the risk of infringing a valid patent and this objective risk was either known or should have been known by Defendant.

37. Warming Trends has suffered irreparable harm, through its loss of market share and goodwill, for which there is no adequate remedy at law. Warming Trends has and will continue to suffer this harm by virtue of Defendant's infringement of the '117 patent. Defendant's actions have interfered with and will interfere with Warming Trends' ability to license technology. The balance of hardships favors Warming Trends' ability to commercialize its own ideas and technology. The public interest in allowing Warming Trends to enforce its right to exclude outweighs other public interests, which supports injunctive relief in this case.

**COUNT II**  
**BREACH OF CONTRACT**

38. Warming Trends repeats and re-alleges the allegations in Paragraphs 1-37 as though fully set forth in their entirety.

39. Warming Trends entered into one or more agreements with Defendant that obligated Defendant to refrain from directly or indirectly engaging in, consulting with, or participating in any activities competitive with the business of manufacturing, selling or fabricating Jetted Flame Burners in any state of the United States of America or any other country in which Warming Trends has business activities.

40. Plaintiff has fully performed all its contractual duties to Defendant.

41. As set forth above, Defendant has breached its agreement with Warming Trends.

42. Defendant's breach has caused Warming Trends to incur damages and threatens to cause Warming Trends imminent and irreparable harm if Defendant is not enjoined from continuing its wrongful conduct.

**COUNT III**  
**LANHAM ACT**

43. Warming Trends repeats and re-alleges the allegations in Paragraphs 1-42 as though fully set forth in their entirety.

44. As set forth above, Defendant has made false statements of fact in commercial advertisements about their products.

45. Warming Trends and Defendants are competitors as it relates to burner sales and firepit accessories.

46. The statements have actually deceived, or have a tendency to deceive, a substantial segment of those reading or hearing the statements.

47. Defendant's deception is material in that it is likely to influence purchasing decisions.

48. Defendant caused its false statements to enter interstate commerce.

49. Defendant's deception has caused Warming Trends to incur damages and threatens to cause Warming Trends imminent and irreparable harm if Defendant is not enjoined from continuing its wrongful conduct.

**JURY DEMAND**

Warming Trends hereby requests a trial by jury on all issues so triable by right.



**PRAYER FOR RELIEF**

Warming Trends requests that the Court find in its favor and against Defendant, and that the Court grant Warming Trends the following relief:

- a. Judgment in Warming Trends' favor and against Defendant on all causes of action;
- b. A permanent injunction enjoining Defendant and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in concert therewith from infringement of the '117 patent; or, in the alternative, an award of a reasonable ongoing royalty for future infringement of the '117 patent by such entities;
- c. A preliminary injunction and a permanent injunction enjoining Defendant from competing with Plaintiff and from fabricating or manufacturing firepit burners;
- d. Judgment that Defendant accounts for and pays to Warming Trends all damages to and costs incurred by Warming Trends because of Defendant's infringing activities and other conduct complained of herein;
- e. Judgment that Defendant's infringements be found willful, and that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284;
- f. Pre-judgment and post-judgment interest on the damages caused by Defendant's infringing activities and other conduct complained of herein;
- g. That this Court declare this an exceptional case and award Warming Trends its reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285; and
- h. All other and further relief as the Court may deem just and proper under the circumstances.

Dated: January 28, 2022

Respectfully submitted,

By: /s/ C. Matthew Rozier

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