

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

| | |
|----------------------------------|------------------------|
| _____) | |
| AFTERGLOW, LLC) | |
| 9105-B Owes Drive, Suite 201) | |
| Manassas Park, Virginia 20111,) | Civil Action No. _____ |
|) | |
| Plaintiff,) | |
| v.) | |
|) | |
| JESSUP MANUFACTURING COMPANY) | |
| 2815 West Route 120) | |
| McHenry, Illinois 60050,) | |
|) | |
| Defendant) | |
| _____) | |

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff AfterGlow, LLC (“AfterGlow”), by its undersigned counsel, alleges as follows for its Complaint against defendant Jessup Manufacturing Company (“Jessup”).

THE NATURE OF THIS ACTION

1. AfterGlow brings this action against Jessup pursuant to 35 U.S.C. §101 et. seq. and §§ 271, 281, 283, 284, & 285 inclusive, for infringement of one or more claims of U.S. Patent No. 8,286,378 (“the ’378 Patent) Entitled Advanced Photoluminescent Components and Formulation / Fabrication Methods for Production Thereof and for infringement of one or more claims of U.S. Patent No. 8,479,423 (“the ’423 Patent”) entitled Advanced Photoluminescent Components and Formulation / Fabrication Methods for Production Thereof. Both patents list Richard James Martin, Gregory Louis Bender, Thomas Wells Brignall, Jr., and Herbert George Jones as inventors and are referred to as the "Martin et al. Patents." The Martin et al. Patents are

directed to photoluminescent devices including photoluminescent exit signs such as those manufactured and sold by Plaintiff AfterGlow and sold by Defendant Jessup. Jessup has and continues to infringe the '378 and '423 Martin et al. Patents, and has refused to cease its infringing actions, thereby necessitating this lawsuit.

THE PARTIES

2. Plaintiff AfterGlow is a limited liability company organized and existing under the laws of the Commonwealth of Virginia, having its headquarters in Front Royal and a principal place of business at 9105-B Owes Drive, Suite 201, Manassas Park, Virginia 20111. AfterGlow is a Service-Disabled, Veteran-Owned, Small Business (SDVOSB) that provides its customers with cost effective photoluminescent safety solutions including exit and other signs.

3. Defendant Jessup is a domestic Illinois company, having its headquarters and principal place of business at 2815 West Route 120, McHenry, Illinois 60050. Jessup sells and distributes its products including its infringing exit signs throughout the United States and has a significant sales presence in Virginia, including sales to the U.S. Government including the Department of Defense.

JURISDICTION AND VENUE

4. This is an action for patent infringement arising under the laws of the United States, 35 U.S.C. §271 *et seq.*

5. This Court has subject matter jurisdiction over this action pursuant to 35 U.S.C. §§271, 281 and 28 U.S.C. §§ 1331 and 1338(a), federal question, and 28 U.S.C. § 1332 diversity

jurisdiction.

6. This Court has personal jurisdiction over Jessup because of sales of the infringing products into Virginia and among other things, directly and through intermediaries, because of committed tortious acts within Virginia and in this District giving rise to this action and/or Jessup regularly does business, derives substantial revenues, and has established minimum contacts with Virginia such that the exercise of jurisdiction would not offend traditional notions of fair play and substantial justice.

7. Venue is proper in the Eastern District of Virginia pursuant to 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b). Upon information and belief, Jessup is doing business in this judicial district, and has committed acts of infringement and is causing injury to AfterGlow in this judicial district.

BACKGROUND AND GENERAL ALLEGATIONS

8. AfterGlow has been in business since February 11, 2011 and provides a range of photoluminescent (PL) – non-electrical, nonradioactive, glow-in-the-dark – products used as safety markings in structures and air, land and sea vehicles. AfterGlow's products include EXIT signs, entrance signs, and other signage as well as tapes, paints, appliques. AfterGlow's EXIT signs are listed to the Underwriters Laboratory standard "UL924" and provide lighting without electricity, batteries, LEDs or radioactive materials. Plaintiff AfterGlow's PL Exit signs are protected by the two Martin et al. Patents.

9. As PL materials absorb ultraviolet light from ambient light, they simultaneously begin storing energy and releasing some portion of it as visible light. Upon removal of the light

source, the stored energy release continues, producing a highly visible, surface illumination that fades over a period of time. PL materials glow in the dark if power is lost or in reduced lighting scenarios, such as if smoke obscures overhead lighting. Unlike electrically powered systems, which rely on back up batteries or emergency generators and their finite fuel supplies, PL emergency egress marking systems are virtually fail safe, reduce green house gases and, because no electricity is needed, do not require bulb replacement or monthly/annual testing or maintenance.

10. PL materials prior to the introduction of the AfterGlow products had limitations in brightness, readability and distance visibility. The engineering team at AfterGlow was able to invent a new and unobvious PL material that enhanced performance in critical areas for emergency lighting. AfterGlow tested, reworked and refined its products and filed patents which issued and protect the materials invented at AfterGlow and protect the products which utilize the unique PL materials created at AfterGlow.

11. The Martin et al. Patents, copies of which are attached as Exhibits A and B to the Complaint, are each directed to PL devices including, but not limited to, PL EXIT signs. The Martin et al. Patents have each been assigned to, and are currently owned by, Plaintiff AfterGlow.

12. The '423 Patent was legally issued by The United States Patent and Trademark Office on July 9, 2013, the inventors of which were Richard James Martin, Gregory Louis Bender, Thomas Wells Brignall, Jr., and Herbert George Jones.

13. The '378 Patent was legally issued by The United States Patent and Trademark Office on October 16, 2012, the inventors of which were Richard James Martin, Gregory Louis

Bender, Thomas Wells Brignall, Jr., and Herbert George Jones.

14. The Martin et al. Patents' claims are directed to various embodiments of PL devices having, among other things, a weight and volumetric concentration of phosphor particles in a polymer matrix that is greater in a first region than a second region. Advantageously, the first region having the greater concentration may be disposed adjacent or near a light-emitting surface of the device, thereby allowing enhanced photoluminescent properties.

Jessup's Infringement

15. Jessup is a direct competitor of AfterGlow. Jessup sells PL products, including EXIT signs (the "Accused Products"). The sales of Jessup compete directly with the sales of AfterGlow and the two companies compete in the same markets for the same customers. Sales of Jessup products have directly replaced potential sales of AfterGlow products, and AfterGlow contracts for the sale and/or installation of products have been lost to contract bids from Jessup.

16. Among other products, Jessup sells certain PL EXIT signs rated for 100 ft. 75 ft. and 50 ft. visibility, generally designated as UL924 Listed, including products variously identified as:

- Glo Brite UL924 listed Exit Sign PF100
- Acrylic Frame Glo Brite Exit sign, UL924 listed 50 ft
- Indoor/Outdoor 100 Ft viewing distance Exit Sign PM100 Glo Brite UL 924 listed
- Aluminum Frame Glo Brite Exit sign, UL924 listed 50 ft
- Glo Brite UL924 listed 50 ft Exit Sign PF50
- Glo Brite UL 924 listed, screen printed/reflective tape Exit Sign P50
- Frameless, UL 924 listed, screen printed Exit Sign Red Letters P50 (7280)
- Indoor/Outdoor 100 Ft Exit Sign PM100 Glo Brite UL 924 Listed
- Indoor/Outdoor 75 Ft Exit Sign PM75 Glo Brite UL 924 Listed

Upon investigation, testing, information and belief, all and/or substantially all of the UL924

Listed Glo Brite Exit Signs infringe one or more of the claims of both of the Martin et al.

Patents. The Jessup UL924 listed Glo Brite EXIT signs are the Accused products. Material from the investigation and testing of the accused products is attached as Exhibit C to the Complaint.

17. Afterglow sent a letter to Jessup on April 26, 2018 citing the Martin et al. Patents. Jessup and AfterGlow's principle officers have had ongoing conversations to resolve this issue of infringement since 2018, however, Jessup has refused to respect the patent rights of AfterGlow despite offers of license and despite AfterGlow's successful enforcement of the Martin et al. Patents against another competitor, Bright Path Lighting, which concluded in 2021.

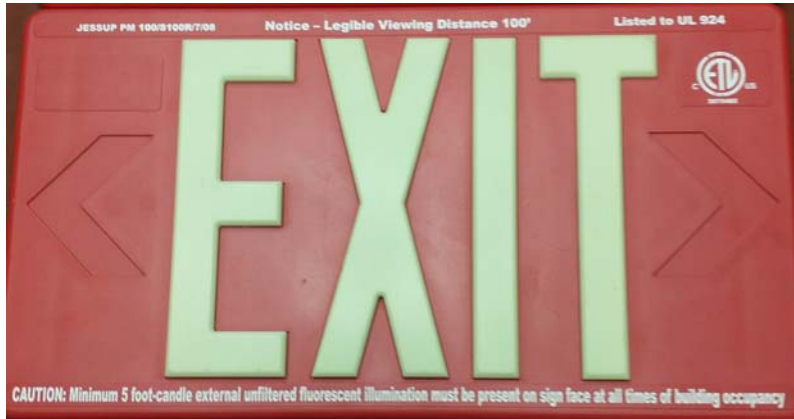
18. AfterGlow purchased several Jessup products and conducted a detailed analysis, which confirmed that Jessup's Glo Brite EXIT signs infringe claims of both the '423 Patent and the '378 Patent.

19. Attached as an Exhibit D to the Complaint is a photograph of one of Jessup's accused Glo Brite EXIT signs that was tested by AfterGlow.

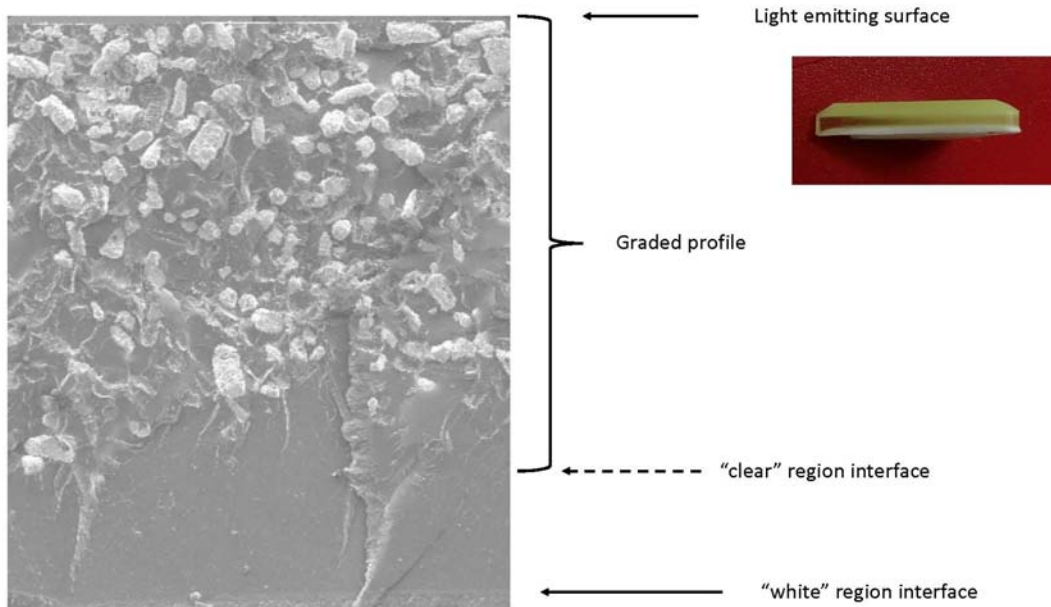
20. Exhibit C to the Complaint are includes florescent and SCM photographs of the portion of the PL material removed from a Jessup Glo Brite Exit Sign product. The material includes the patented "polymer matrix" claimed in the Martin et al. Patents. The material was examined under both a scanning electron microscope and one or more optical microscopes. This testing demonstrated that the letters in Jessup's signs include "a plurality of UV or visible-light excited phosphor particles included in the polymer matrix," and that "the phosphor particles have a concentration greater in an exterior region of the polymer matrix . . . than in an interior region of the polymer matrix," as demonstrated below:

423 Patent Claim 1:

1. A photoluminescent sign comprising:
a base plate; and an object shaped as a symbol and disposed on the base plate,

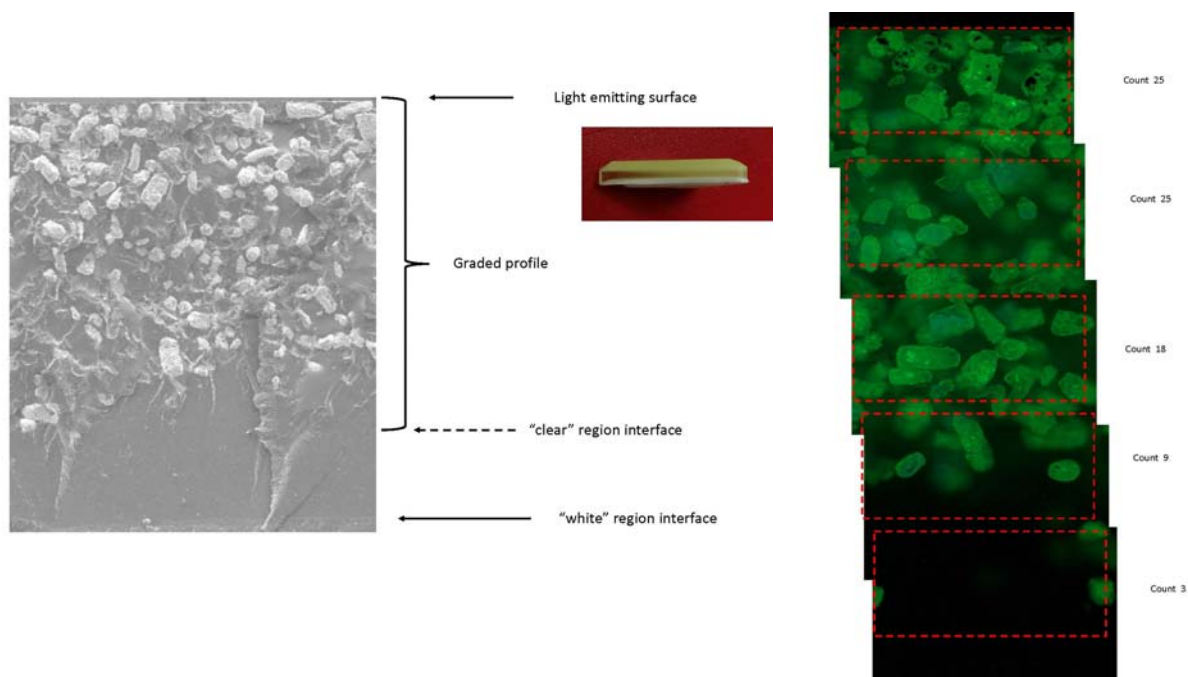


said object having, a polymer matrix having a light-emitting exterior surface for emission of photoluminescent light therefrom and an opposite surface facing the base plate,
a plurality of UV or visible-light excitable phosphor particles included in the polymer matrix, and a weight concentration of the phosphor particles in the polymer matrix being greater in a first region of the polymer matrix than in a second region of the polymer matrix.



'378 Patent Claim 1:

1. A photoluminescent device comprising:
a polymer matrix having a light-emitting exterior surface for emission of photoluminescent light therefrom; and a plurality of UV or visible-light excited phosphor particles included in the polymer matrix; and the phosphor particles having a concentration greater in an exterior region of the polymer matrix proximate the light-emitting exterior surface than in an interior region of the polymer matrix.



21. Jessup was notified of AfterGlow’s assertions of infringement and AfterGlow attempted to further engage Jessup in discussions regarding the discontinuation of further infringement.

22. Jessup has not ceased infringement.

COUNT I
Infringement of U.S. Patent No. 8,479,423

23. The allegations of paragraphs 1-22 above are hereby re-alleged and incorporated

herein by reference.

24. AfterGlow is the current assignee and owner of the '423 Patent.

25. Jessup has infringed, and continues to infringe, at least claims 1-5, 9, 12, and 17 of the '423 Patent, under 35 U.S.C. § 271(a), by making and selling the Accused Products in the United States. Jessup continues to make its Glo Brite EXIT signs which infringe claims of the '423 Patent.

26. Jessup does not have a license or permission to use the '423 Patent.

27. Jessup has been willfully infringing the '423 Patent since at least April, 2018 when it received communications from AfterGlow regarding the Martin et al. Patents, and no later than its receipt of AfterGlow's April 26, 2018 letter. Upon information and belief, Jessup has no good faith defense to AfterGlow's infringement allegations and has refused to cease selling products or to engage in further attempts to reach a business resolution. Instead, Jessup has intentionally continued its infringement.

28. As a result of Jessup's willful infringement of the '423 Patent, AfterGlow has suffered and will continue to suffer damages in an amount not yet determined, of at least a reasonable royalty and lost profits on at least a portion of the sales of Jessup.

COUNT II
Infringement of U.S. Patent No. 8,286,378

29. The allegations of paragraphs 1-28 above are hereby re-alleged and incorporated herein by reference.

30. AfterGlow is the owner of the '378 Patent.

31. Jessup has infringed, and continues to infringe, at least claims 1, 5, 11, 19-21, and 29-30 of the '378 Patent, under 35 U.S.C. § 271(a), by making and selling the Accused Products in the United States. Jessup continues to make its Glo Brite EXIT signs.

32. Jessup does not have a license or permission to the use the '378 Patent.

33. Jessup has been willfully infringing the '378 Patent since at least April, 2018 when it received communication from AfterGlow regarding the Martin et al. Patents, and no later than its receipt of AfterGlow's April 26, 2018 letter. Upon information and belief, Jessup has no good faith defense to AfterGlow's infringement allegations and has refused to cease selling products or to engage in further attempts to reach a business resolution. Instead, Jessup has intentionally continued its infringement.

34. As a result of Jessup's willful infringement of the '378 Patent, AfterGlow has suffered and will continue to suffer damages in an amount not yet determined, of at least a reasonable royalty and lost profits on at least a portion of Jessup's sales of accused products.

PRAYER FOR RELIEF

A. For a Judgment declaring that Defendant has infringed the Martin et al. Patents.

B. For a judgment declaring that Jessup's infringement of the Martin et al. Patents has been willful;

C. For a grant of a permanent injunction pursuant to 35 U.S.C. §283, enjoining Jessup from further acts of infringement;

D. For a judgment awarding AfterGlow compensatory damages as a result of Jessup's infringement sufficient to reasonably and entirely compensate AfterGlow for said

infringement of the Martin et al. Patents in an amount to be determined at trial;

E. For a judgment declaring that this case is exceptional and awarding AfterGlow its expenses, costs and attorneys' fees in accordance with 35 U.S.C. § 285 and Rule 54(d) of the Federal Rules of Civil Procedure;

F. For a judgment awarding AfterGlow prejudgment interest pursuant to 35 U.S.C. § 284, and a further award of post judgment interest, pursuant to 28 U.S.C. § 1961, continuing until such judgment is paid.

G. For a judgment awarding AfterGlow enhanced damages under 35 U.S.C. § 284; and

H. For such other relief to which AfterGlow is entitled under the applicable United States laws and regulations or as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure Rule 38(b), Plaintiff hereby demands trial by jury as to all claims in this litigation.

DATED: January 7, 2022

Respectfully submitted,
SHEETS LAW PLLC

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