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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

FANIMATION, INC. )  
)  
Plaintiff, )  
)  
v. )  
)  
DECOR SELECTIONS, LLC )  
D/B/A LIGHTING MERCHANT )  
)  
Defendant )

Civil Action No. 1:19-cv-3648

**DEMAND FOR JURY TRIAL**

**COMPLAINT**

Plaintiff, Fanimation, Inc. (“Fanimation”), for its Complaint against Décor Selections, LLC d/b/a Lighting Merchant (“Lighting Merchant”), states that this is an action for trademark infringement under the Lanham Act, 15 U.S.C. §§ 1114 and 1125. Fanimation seeks, among other things, a permanent injunction enjoining Lighting Merchant from continuing to infringe Fanimation’s trademark. Fanimation also seeks Lighting Merchant’s profits from its infringing sales and/or, as appropriate, any damages sustained by Fanimation for Defendants’ infringement of Fanimation’s trademark, as well as recovery of the costs of this action and Fanimation’s reasonable attorneys’ fees it has incurred and will incur in prosecuting this action.

**THE PARTIES**

1. Fanimation is a corporation organized and existing under the laws of the State of Indiana, with its principal place of business at 10983 Bennett Parkway, Zionsville, Indiana, 46077.
2. On information and belief, defendant Lighting Merchant is a corporation organized and existing under the laws of the State of New Jersey, with its principal place of business at 1750 Brielle Ave., #A5, Ocean, New Jersey, 07712.

**JURISDICTION AND VENUE**

3. This Court has original jurisdiction over this matter pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1131 and 1338.

4. This Court has supplemental jurisdiction over Fanimation's pendent state law claims pursuant to 28 U.S.C. § 1367 in that the state law claims are integrally interrelated with Fanimations's federal claims and arise from a common nucleus of operative facts such that the administration of Fanimation's state law claims with its federal claims furthers the interest of judicial economy.

5. On information and belief, Lighting Merchant has committed acts of infringement in this judicial district and; therefore, this Court has personal jurisdiction over Defendant and venue is proper in this Court under 28 U.S.C. §§ 1391(b).

**BACKGROUND**

6. Plaintiff Fanimation is the owner of the famous trademark FANIMATION®, registration number 2,318,516 in International Class 11 for electric wall mounted fans, electric free-standing floor pedestal fans and electric ceiling fans for non-industrial use. FANIMATION has been using the famous FANIMATION® trademark in commerce since at least 1984.

7. Pursuant to 15 U.S.C. §§ 1057(b) and 1115(a), Fanimation's certificate of registration for the FANIMATION® mark on the principal register is prima facie evidence of the validity of the mark, of the registration of the mark, of Fanimation's ownership of the mark and of Fanimation's exclusive right to use the mark in commerce on or in connection with the goods specified in the certificate.

8. Because the FANIMATION® mark has been registered for more than five years, and Fanimation has filed all the proper and relevant paperwork, the FANIMATION® mark is now considered “incontestable” under the law pursuant to 15 U.S.C. §1065.

9. Fanimation sells its fans, either directly to consumers via its website, showrooms or through its Authorized Dealers. An Authorized Dealer is a dealer that has been approved by Fanimation to sell and service its fans and that has entered into a written agreement with Fanimation agreeing to become an Authorized Dealer pursuant to the terms of the Authorized Dealer Agreement (“ADA”).

10. Fanimation has continually and consistently used the FANIMATION® mark in connection with the sale of goods identified in its federal registration certificate. Fanimation products, including fans, bearing the FANIMATION® mark are sold by Authorized Dealers and by Fanimation in hundreds of show rooms across the United States.

11. Moreover, over the last 35 years, Fanimation has spent millions of dollars in developing and actively promoting the FANIMATION® mark and advertising products bearing the FANIMATION® mark. Fanimation fans and other products bearing the FANIMATION® mark are advertised and sold across the entire United States. Tens of millions of dollars of fans and other related products have been sold by Fanimation and its Authorized Dealers to consumers across the United States over the last 35 years.

12. Thus, Fanimation has expended significant resources in both time and money in developing and actively promoting the FANIMATION® mark since 1984 such that the FANIMATION® mark has acquired secondary meaning and is now a famous mark widely known by consumers throughout the United States as a source identifier for high quality fans.

13. Pursuant to the ADA and in addition to other terms and conditions, Authorized Dealers must provide an adequate sales staff and customer relations organization trained to instruct customers in the use of Fanimation's products, including FANIMATION® fans.

14. FANIMATION® fans carry a warranty that only extends to the "Original Purchaser" of the fan. An Original Purchaser of a FANIMATION® fan is a purchaser that has either purchased the fan directly from Fanimation or from an Authorized Dealer. Any warranty claim must include proof of purchase.

15. Moreover, Authorized Dealers must also have a proof of purchase, invoice number or purchase order number prior to contacting Fanimation for a warranty return.

16. Defendant has not entered into an ADA with Fanimation, is not an Authorized Dealer of genuine FANIMATION® fans, and has not been authorized or approved in any way by Fanimation to sell genuine FANIMATION® fans.

17. Defendant, without authorization by or affiliation with Fanimation has sold and continues to sell products, including fans, that bear the famous FANIMATION® trademark.

18. Defendant sells the fans bearing the FANIMATION® trademark online at [www.lightingmerchant.com](http://www.lightingmerchant.com) and possibly other websites. Defendant is essentially holding itself out as a source of genuine FANIMATION® fans, when in fact, it is neither an Authorized Dealer nor affiliated with Fanimation in any manner.

19. Moreover, the fans that Defendant is selling are materially different from genuine FANIMATION® fans. For example, because Lighting Merchant is not an Authorized Dealer, any customer who purchases a fan from Lighting Merchant is not an "Original Purchaser," as required under Fanimation's warranty. Thus, a customer who purchases a fan from Lighting Merchant purchases a product that does not include the warranty offered by Fanimation on the

purchase of genuine FANIMATION® fans. Essentially, such customers are purchasing a fan that they likely believe includes a warranty, when in fact, it does not.

20. Additionally, Lighting Merchant is not an Authorized Dealer and therefore does not have the sales staff and customer relations organization specifically trained to instruct customers in the use of Fanimation's products, including FANIMATION® fans.

21. The failure to include the warranty offered by Fanimation on its fans and/or the failure to provide the service of a sales staff and customer relations organization specifically trained to instruct customers in the use of Fanimation's products renders the fans sold by Lighting Merchant materially different from the genuine FANIMATION® fans offered by Fanimation and its Authorized Dealers.

22. Because a materially different product is not genuine, consumers purchasing fans from Lighting Merchant are likely to be confused about the source and quality of the fans they are purchasing.

23. Fanimation, by letter dated January 19, 2019, informed Defendant that it was selling products that infringed the FANIMATION® trademark and demanded that Defendant cease and desist in such infringement. Notwithstanding the notice provided, Defendant continues to sell fans and other products that infringe the FANIMATION® trademark.

24. On information and belief, Defendant purchases the products from one or more Authorized Dealers and then sells the products to retail customers.

25. Upon information and belief, the Authorized Dealers from whom Defendant purchases the products are bound by the terms and conditions of the ADA.

26. Upon information and belief, Defendant induced the Authorized Dealers to sell the FANIMATION® fans to Defendant in breach of one or more material terms of the ADA.

27. Upon information and belief, as of the date of this filing, Defendants continue to interfere with and violate Fanimation's contractual and intellectual property rights.

**COUNT I**

**Declaratory Judgment/Injunctive Relief**

28. Fanimation re-alleges and incorporates by reference the allegations set forth in paragraphs 1-27 above.

29. An actual and justiciable controversy exists between Fanimation and Lighting Merchant related to whether Defendants have the right to sell Fanimation products bearing the famous FANIMATION® trademark without the consent of Fanimation and in violation of Fanimation's trademark.

30. The Court pursuant to 28 U.S.C. § 2201 and Fed. R. Civ. P. 57, should declare that Defendants have no right or authorization to sell products bearing the FANIMATION® trademark, as such selling by Defendant has harmed and continues to harm Fanimation in an amount to be determined at trial.

31. The Court should enjoin Defendant from any further infringement of the famous FANIMATION® trademark including but not limited to further infringing sales of the Fanimation products.

**COUNT II**

**Lanham Act – Trademark Infringement (15 U.S.C. § 1114)**

32. Fanimation re-alleges and incorporates by reference the allegations set forth in paragraphs 1-31 above.

33. Fanimation has the sole and exclusive right to use the FANIMATION® trademark in connection with the sale of fans and related products and services by virtue of Fanimation's United States trademark registration for the FANIMATION® trademark.

34. Lighting Merchant's aforementioned acts constitute trademark infringement of the FANIMATION® trademark in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

35. Lighting Merchant's unauthorized and wrongful use of the federally registered FANIMATION® trademark is likely to cause confusion, mistake, and/or deception as to Fanimation's sponsorship and/or authorization of Lighting Merchants website and Fanimation's affiliation (where no such affiliation exists) with Lighting Merchant as the seller of the products bearing the FANIMATION® trademark. Lighting Merchant is thereby in violation of Section 32(a) of the Lanham Act, 15 U.S.C. § 1114.

36. Lighting Merchant's aforementioned acts have been conducted willfully and intentionally, with deceptive intent, thereby making this an exceptional case under 15 U.S.C. §1117.

37. Lighting Merchant's unlawful conduct has caused and will continue to cause immediate and irreparable harm to Fanimation, including but not limited to immediate and irreparable harm to Fanimation's business reputation, injury to its goodwill and pecuniary damages.

### **COUNT III**

#### **Lanham Act – False Designation of Origin (15 U.S.C. §1125(a))**

38. Fanimation re-alleges and incorporates by reference the allegations set forth in paragraphs 1-37 above.

39. By virtue of its ownership of the FANIMATION® trademark, Fanimation has the sole and exclusive right to use the FANIMATION® trademark in connection with the sale of goods related to electrical fans and related products.

40. Lighting Merchant's wrongful use of the FANIMATION® trademark is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Lighting Merchant with Fanimation, or as to the origin, sponsorship, or approval of Lighting Merchant's goods and commercial activities, including consumers' belief that through its website, Lighting Merchant is an Authorized Dealer of FANIMATION® trademarked products, with the same quality service and return policies, including warranty offerings.

41. Lighting Merchant's wrongful use of the FANIMATION® trademark could destroy the source-identifying function and goodwill that Fanimation has cultivated in the FANIMATION® trademark over the last 35+ years.

42. Lighting Merchant's aforementioned acts violate Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

43. Lighting Merchant's aforementioned acts have been conducted willfully and intentionally, with deceptive intent, thereby making this an exceptional case under 15 U.S.C. §1117.

44. Lighting Merchant's unlawful conduct has caused and will continue to cause immediate and irreparable harm to Fanimation, including but not limited to immediate and irreparable harm to Fanimation's business reputation, injury to its goodwill and pecuniary damages.



**COUNT IV**

**Lanham Act – Dilution (15 U.S.C. §1125(c))**

45. Fanimation re-alleges and incorporates by reference the allegations set forth in paragraphs 1-44 above.

46. Due to Fanimation’s long-standing and continuous use of the FANIMATION® trademark over the last 35+ years, the millions of dollars Fanimation has spent developing the mark and the national public’s widespread association with the FANIMATION® trademark as an identifier for Fanimation, the FANIMATION® trademark is now famous under the law.

47. Lighting Merchant’s wrongful use of the FANIMATION® trademark is likely to dilute the famous FANIMATION® trademark, both through blurring and tarnishment.

48. Lighting Merchant’s wrongful use of the FANIMATION® trademark could destroy the source-identifying function and goodwill that Fanimation has cultivated in the FANIMATION® trademark over the last 35+ years.

49. Lighting Merchant’s aforementioned acts violate Section 43(c) of the Lanham Act, 15 U.S.C. §1125(c).

50. Lighting Merchant’s aforementioned acts have been conducted willfully and intentionally, with deceptive intent, thereby making this an exceptional case under 15 U.S.C. §1117.

51. Lighting Merchant’s unlawful conduct has caused and will continue to cause immediate and irreparable harm to Fanimation, including but not limited to immediate and irreparable harm to Fanimation’s business reputation, injury to its goodwill and pecuniary damages.

**COUNT V**

**Lanham Act and State and Common Law – Unfair Competition**

52. Fanimation re-alleges and incorporates by reference the allegations set forth in paragraphs 1-51 above.

53. Fanimation owns the sole and exclusive right to use the FANIMATION® trademark by virtue of its original and ongoing use of the FANIMATION® trademark in connection with the sale of electrical fans and related products.

54. Lighting Merchant's wrongful use of the FANIMATION® trademark for the same types of goods constitutes unfair competition under federal law, Indiana state law and common law.

55. Lighting Merchant's actions constituting unfair competition have been undertaken by Lighting Merchant with willful and deceptive intent, thereby making this an exceptional case.

56. Lighting Merchant's unlawful conduct has caused and will continue to cause immediate and irreparable harm to Fanimation, including but not limited to immediate and irreparable harm to Fanimation's business reputation, injury to its goodwill and pecuniary damages.

**COUNT VI**

**Unjust Enrichment**

57. Fanimation re-alleges and incorporates by reference the allegations set forth in paragraphs 1-56 above.

58. Lighting Merchant's wrongful actions have resulted in Lighting Merchant's profiting at Fanimation's expense without any authorization from Fanimation, or any payment by Lighting Merchant to Fanimation for such benefit. it would be unconscionable to allow Lighting Merchant to keep the profits that it has obtained at Fanimation's expense.

59. The acts complained of in this Complaint constitute unjust enrichment by Lighting Merchant at Fanimation's expense under Indiana law and common law.

**PRAYER FOR RELIEF**

WHEREFORE, Fanimation requests entry of judgment in its favor and against Defendant Lighting Merchant as follows:

A. Lighting Merchant, its officers, agents and employees, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, be permanently enjoined from using or displaying the word FANIMATION and/or any confusingly similar word in connection with the sale of fans and related products.

B. Lighting Merchant, its officers, agents and employees, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, be permanently enjoined from using any language on its website or otherwise that would suggest affiliation with Fanimation or the impression that Lighting Merchant or its website is an authorized or official distributor of Fanimation products.

C. Lighting Merchant, its officers, agents and employees, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, be permanently enjoined and required to deliver to the Court for destruction all labels, advertisements and other written materials in their possession bearing the word FANIMATION and all means of making the same.

D. Lighting Merchant, its officers, agents and employees, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, be permanently enjoined and required to remove all uses or displays of the word

FANIMATION and all official photos of Fanimation products from its website [www.lightingmerchant.com](http://www.lightingmerchant.com) and/or any other website it uses to sell Fanimation products.

E. Lighting Merchant, its officers, agents and employees, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, be permanently enjoined and required to file with the Court and serve on Fanimation's counsel, within 30 days after service of any injunction issued herein a written report and under oath, setting forth in detail the manner and form in which Lighting Merchant has complied with any injunction issued in this case.

F. A declaration that Lighting Merchant has violated 28 U.S.C. §§ 1114, 1117 and 1125 of the Lanham Act.

G. An order requiring Lighting Merchant to pay damages in an amount adequate to compensate Fanimation for Lighting Merchant's unlawful conduct, including but not limited to the profits unjustly obtained by Lighting Merchant from using the FANIMATION® trademark.

H. A finding that this is an exceptional case under 15 U.S.C. § 1117, and an order requiring Lighting Merchant to reimburse Fanimation for its reasonable attorneys' fee.

I. An award of exemplary and/or treble damages to Fanimation resulting from Lighting Merchant's willful and intentional conduct.

J. An award of pre-judgment and post-judgment interest and costs to Fanimation.

K. That Fanimation recover its costs in pursuing this action.

L. An order granting such other and further relief as the Court may deem just, proper, and equitable under the circumstances.

**DEMAND FOR JURY TRIAL**

Plaintiff Fanimation respectfully demands a trial by jury on all claims and issues so triable.

Date: August 27, 2019

Respectfully submitted,  
MAGINOT, MOORE & BECK, LLP

*s/ Harold C. Moore*

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