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Attorneys for Plaintiff E & E Co., Ltd.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

E & E CO., LTD. a California corporation,

Plaintiff,

v.

LIGHT IN THE BOX LIMITED, a Hong Kong
corporation; and DOES 1-50 inclusive,

Defendants.

Case No. 3:15-CV-00069 EMC

Hon. Edward M. Chen
AMENDED ORDER RE:
STIPULATED INJUNCTION

Complaint filed: 1/7/2015

1 IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff E & E CO., LTD.
2 (“Plaintiff” or “E&E”), and Defendant LIGHT IN THE BOX LIMITED (“Light in the Box”) that the
3 accompanying [Proposed] Order Granting Stipulated Injunction may be entered by the Court to give
4 effect to the stipulations set forth below:

5 1. This Court has jurisdiction over E&E and Light in the Box and over the subject
6 matter at issue in this action. E&E and Light in the Box consent to jurisdiction of this Court for the
7 purpose of executing and enforcing this Stipulated Injunction.

8 2. This Stipulated Injunction and/or the Order granting it shall not be considered an
9 admission of liability of any Party, shall not have the effect of conferring “prevailing party” status on
10 any Party, and shall not otherwise entitle any Party to an award of attorney fees or costs. Neither
11 party shall seek an award of attorney fees or costs on the basis of the consummation of this
12 Stipulated Injunction.

13 3. E&E is the owner of U.S. Copyright Registration Nos. VA 1-909-082 and VA 1-877-
14 384.

15 4. Light in the Box, its officers, agents, employees, successors-in-interests, and assigns
16 will be bound by an Order of this Court to comply with the relevant provisions below for so long as
17 E&E, or its successors or assigns, is using its “E&E Co., Ltd.” registered trademark or owns rights
18 to the ‘082 and ‘384 Copyrights, respectively. During this period, Light in the Box is enjoined and
19 will refrain from directly or indirectly doing any of the following:

- 20 a. Manufacturing, importing, exporting, distributing, licensing, selling,
21 marketing, advertising, promoting, or offering for sale in the U.S. without the
22 express authorization or consent of E&E or its affiliates, any products using
23 any of the designs copyrighted in U.S. Copyright Registration Nos. VA 1-909-
24 082 and VA 1-877-384, for which E&E maintains a non-exhausted right to
25 exclusively manufacture, import, export, distribute, license, sell, market,
26 advertise, promote, or offer for sale;

- 1 b. Manufacturing, importing, exporting, distributing, licensing, selling,
2 marketing, advertising, promoting, or offering for sale in the U.S. without the
3 express authorization or consent of E&E or its affiliates, any product bearing
4 or using the “E&E Co., Ltd.” name or USPTO registered trademark, or a mark
5 confusingly similar in the household and home furnishings retail segment, in
6 any manner, including any product expressly identified as manufactured for
7 E&E within this segment as evident upon a physical inspection of the product,
8 and for which E&E maintains a non-exhausted right to exclusively
9 manufacture, import, export, distribute, license, sell, market, advertise,
10 promote, or offer for sale;
- 11 c. Challenging or assisting others in challenging, either directly or indirectly, the
12 validity, ownership, or enforceability of U.S. Copyright Registration Nos. VA
13 1-909-082 and VA 1-877-384 in any court or tribunal.
- 14 d. Light in the Box reserves all defenses cognizable under U.S. federal and
15 California state copyright, trademark and unfair competition law as
16 justification for the above listed activities. No violation of the Order entering
17 this Stipulated Injunction shall be found where any such defense is found to
18 apply.

19 5. The activity described above shall not be the basis for finding any violation of the
20 Order entering this Stipulated Injunction, unless E&E has first provided Proper Notice to Light in the
21 Box of any alleged activity pursuant to paragraph 6 of this Stipulation, and allowed Light in the Box
22 the opportunity to cure and/or respond to such allegations in accordance with the provisions and
23 timelines of this paragraph and paragraph 6. Absent an agreement of the parties, the alleged activity
24 is cured upon Light in the Box expeditiously recalling the involved product(s) and disgorging all
25 profits from the sale of the involved product(s).

- 26 a. For the purposes of this paragraph, “recalling” the involved product(s) shall
27 require that Light in the Box expeditiously issue a notice to the direct
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1 purchaser(s) of said product(s) expressing that E&E has disputed the origin of
2 the product(s), and offer a thirty (30) day window during which the product(s)
3 may be returned for a full refund.

4 b. Any disgorgement of profits will be measured after the thirty (30) day recall
5 window has closed for any and all direct purchaser(s), and shall not include
6 any receipts that were refunded for any purpose.

7 c. Notwithstanding the foregoing, any repetition of a previously Properly
8 Noticed paragraph 4 activity that Light in the Box failed to cure or sufficiently
9 justify, shall be considered a violation of the Order entering this Stipulated
10 Injunction and punishable for contempt of Court. A “repetition” shall consist
11 only of the sale of the same alleged product(s) that had previously been
12 Properly Noticed and uncured or unjustified by Light in the Box.

13 6. No motion or action to enforce this Stipulated Injunction shall be initiated until all
14 notice and response provisions are satisfied, or until the period for curing the alleged activity has
15 lapsed, if applicable. Premature motions or actions shall be denied.

16 a. Proper Notice of any alleged activity described in paragraph 4 shall be given
17 within a reasonable time after discovery of such activity. Any notice given
18 after the thirtieth day after E&E discovers the violation shall be ineffective.

19 b. Proper Notice shall include the following:

20 i. Identification of the alleged activity, including but not limited to the
21 date(s) such activity is alleged to have occurred, an identification of
22 the involved products, copyrights and/or trademarks and all other
23 materials in E&E’s possession giving evidence of such activity,
24 including for example, photos, screenshots or .url weblistings of the
25 alleged activity, when available;

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- ii. A written statement of the nature of the discovery of such activity, including the name(s), address(es), and brief factual account(s) of any witness(es) or investigator(s);
- iii. A statement of the basis for which E&E alleges the activity is not authorized; and
- iv. Any other information reasonably necessary for Light in the Box to verify the existence and scope of any alleged activity.

c. Proper Notice under this paragraph must be in writing and will be deemed given upon confirmed email delivery, or when actually received if delivered by courier with written proof of delivery, or 14 days after being sent by prepaid first class mail, with return receipt requested, to the individuals and addresses below:

Liu Shen
Wen Wen
Senior Legal Counsel
Light in the Box
Tower 2, Area D, Diantong Square
No. 7 Jiuxianqiao North Road
Chaoyang District, Beijing, China 100015
liushen@lightinthebox.com
wenwen@lightinthebox.com

With copy to:
Harrison Frahn
Simpson Thacher & Bartlett, LLP
2475 Hanover Street
Palo Alto, CA 94304
hfrahn@stblaw.com

d. Upon receipt of Proper Notice, Light in the Box shall be permitted fifteen (15) days to either state its intent to cure the alleged activity in accordance with the terms of paragraph 5 of this Stipulation or provide a Counter Notice denying the alleged activity and providing an explanation, justification, or defense for such activity. Counter Notice shall be given within fifteen (15) days after

1 receiving Proper Notice from E&E. Any Counter Notice given after the
2 fifteen (15) day period shall be ineffective. Counter Notice shall include a
3 description of the basis for which Light in the Box alleges the alleged activity
4 is authorized, if applicable.

5 Counter Notice under this paragraph must be in writing and will be deemed
6 given upon email delivery, or when actually received if delivered by courier
7 with written proof of delivery, or 14 days after being sent by prepaid first
8 class mail, with return receipt requested, to the individuals and addresses
9 below:

10
11 Jude Anthony
12 E & E Co., Ltd.
13 45875 Northport Loop E.
14 Fremont, CA 94538
15 jude.anthony@jlahome.com

16 With copy to:
17 John Shaeffer
18 Fox Rothschild LLP
19 1800 Century Park East, Suite 300
20 Los Angeles, CA 90067
21 jshaeffer@foxrothschild.com
22 apuri@foxrothschild.com

23 The activity described in paragraph 4 shall not be the basis for finding any violation
24 of the Order entering this Stipulated Injunction if any defense described in paragraph
25 4(d) applies. It shall also not be the basis for finding a violation if Light in the Box
26 cures the alleged activity in accordance with the terms of paragraph 5, unless the
27 alleged activity is a repeated violation of this Stipulated Injunction, as described in
28 paragraph 5(c).

7. This Stipulated Injunction shall inure to the benefit of E&E and its successors and
assigns and will be binding on Light in the Box's successors and assigns.

1 8. Although this Stipulated Injunction and the Order granting it will be a matter of
2 public record, no Party shall make any public or third-party disclosure, communication, press
3 release, statement, or announcement regarding the fact, content or terms of this Stipulated
4 Injunction, or the Order granting it, without the prior written consent of all other Parties, except for
5 disclosure necessary for compliance with or enforcement of the above provisions, or to the Parties’
6 counsel, accountants, financial advisors, tax professionals retained by them, any federal, state, or
7 local governmental taxing or regulatory authority, and the Parties’ management, officers and Board
8 of Directors, and except as required by law or order of court. Notwithstanding the foregoing, if any
9 Party is asked to publicly comment on the resolution of this matter, a statement that the parties “have
10 amicably resolved their dispute” shall not constitute a disclosure under this paragraph, provided,
11 however, the Parties shall not disclose the fact, terms or content of this Stipulated Injunction, or
12 Order granting it. If any subpoena, order or discovery request (the “Document Request”) is received
13 by any of the Parties hereto calling for the production or description of the Stipulated Injunction, or
14 Order granting it, such Party shall promptly notify all other Parties hereto prior to any disclosure of
15 same. In such case, the subpoenaed Party shall: (a) make available as soon as practicable (and in any
16 event prior to disclosure), for inspection and copying, a copy of or description of the Stipulated
17 Injunction, or Order granting it, it intends to produce pursuant to the Document Request unless such
18 disclosure is otherwise prohibited by law; and (b) and, to the extent possible, shall not produce
19 anything in response to the Document Request for at least ten (10) business days following such
20 notice. If necessary, the subpoenaed Party shall take appropriate actions to resist production, as
21 permitted by law, so as to allow the Parties to try to reach agreement on what shall be produced. The
22 Parties consider confidentiality of this matter to be of the highest importance. Failure to maintain
23 confidentiality in this manner shall result in sanctions, as deemed appropriate by the Court.

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SO STIPULATED BY:

Dated: April 19, 2016

FOX ROTHSCHILD LLP

By /s/ Ashe Puri
John Shaeffer
Ashe Puri
Attorneys for Plaintiff,
E & E CO., LTD.

Dated: April 19, 2016

SIMPSON THACHER & BARTLETT LLP

By /s/ Harrison Frahn
Harrison Frahn
Attorney for Defendant,
LIGHT IN THE BOX LIMITED

Attestation: Pursuant to Civil Local Rule 5-1(i)(3), the filer attests that concurrence in the filing of this document has been obtained from the signatories to this document.

IT IS SO ORDERED.

Dated: April 20, 2016

