

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BOX: TTAB – No Fee
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

TTAB

Re: Our File: 6183.4.1 Office:
Opp. No.: 91162142
Petitioner: Gamasonic Ltd.
Respondent: Octopus, LLC Examiner:

Sir:

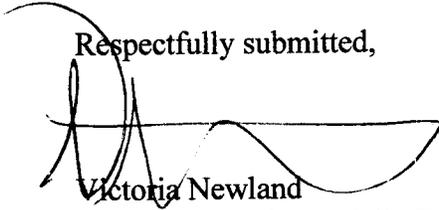
Enclosed for filing in the United States Patent and Trademark Office is the following:

1. Motion to Suspend Pending Inter Partes Proceeding
2. Certificate of Service
3. Transmittal Sheet
4. Postcard Receipt

CONDITIONAL PETITION

If any extension of time is required for the submission of the above-identified items, Applicant requests that this be considered a petition therefore. A duplicate copy of this letter is enclosed.

Respectfully submitted,


Victoria Newland
McColloch & Campitiello LLP
5900 La Place Court, Suite 100
Carlsbad, CA 92008
Tel: (760) 804-0153
Fax: (760) 931-9086

10/21/04
Date

Enclosures

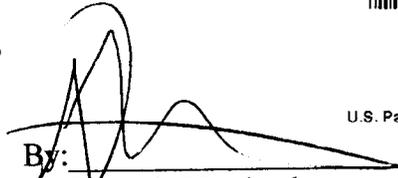
I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451

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10-25-2004

U.S. Patent & TMOtc/TM Mail Rcpt Dt. #51

By: 
Victoria Newland

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

GAMASONIC LTD.,

Opposer

v.

OCTOPUS, LLC,

Applicant

Opposition No.: 91162142

BOX: TTAB NO FEE
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

MOTION TO SUSPEND PENDING INTER PARTES PROCEEDING

Sirs:

Applicant moves to suspend the above-captioned proceeding pending disposition of Civil Action '04-CV1199 W (NLS) filed by Opposer against Applicant in the U.S. District Court for the Southern District of California.

Applicant has applied for federal registration of its trademark LIGHT MY TABLE for a solar table-top light fixture, Application Serial No. 76/561564 in Class 11.

Opposer has filed a Notice of Opposition to application Serial No. 76/561564, alleging that it is the rightful owner of the LIGHT MY TABLE mark, and of all the LIGHT MY _____ marks filed by Applicant. Furthermore, Opposer has filed the above listed Civil Action charging Applicant with Trade Secret Misappropriation; Breach of Confidence; Unfair Competition; Statutory Unfair Competition; and Conversion. In the Civil Action, Opposer alleges that it is the rightful owner of the LIGHT MY TABLE mark,

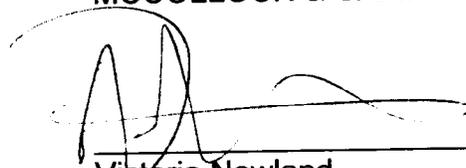
Civil Action, Opposer alleges that it is the rightful owner of the LIGHT MY TABLE mark, and of all the LIGHT MY _____ marks, and requests that the court enter an order declaring that Opponent is the true and lawful owner of the LIGHT MY TABLE mark, and of all the LIGHT MY _____ marks for which Applicant has applied for federal trademark registrations. The Opposer's complaint in this Civil Action is attached hereto as Exhibit A.

Applicant asserts that it is in fact the rightful owner of the LIGHT MY TABLE mark and the other LIGHT MY _____ marks for which it has applied for federal trademark registration. Applicant has filed an answer to the Civil Action denying Opposer's allegations that it is the rightful owner of such marks in the above listed Civil Action. The Applicant's answer in this Civil Action is attached hereto as Exhibit B.

Disposition of the Civil Action will determine who is the rightful owner of the mark LIGHT MY TABLE and whether Applicant is entitled to register the same. Accordingly, it is respectfully submitted that all further proceedings in Opposition No. 91162142 be suspended pending disposition of Civil Action '04-CV1199 W (NLS).

Respectfully submitted,

MCCOLLOCH & CAMPITIELLO, LLP



Victoria Newland
5900 La Place Court, Suite 100
Carlsbad, CA 92008

October 21, 2004

Exhibit A

ORIGINAL

FILED

04 JUN 15 PM 3:19

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

1 Frederick S. Berretta (State Bar No. 144,757)
2 Gregory A. Hermanson (State Bar No. 220,094)
3 KNOBBE, MARTENS, OLSON & BEAR, LLP
4 550 West C Street
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BY: *SD*

DEPUTY

Attorneys for Plaintiffs
Gamasonic Ltd. and Gama Sonic Industries (HK) Ltd.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

'04 CV 1190 W

(NLS)

GAMASONIC LTD., an Israeli)
corporation, and GAMA SONIC)
INDUSTRIES (HK) LTD., a Hong Kong)
corporation,)
Plaintiffs,)
v.)
OCTOPUS, LLC, a California limited)
liability company, AVRAHAM RAZ, an)
individual, and PACIFIC IMAGE, an)
unknown entity,)
Defendants.)

Case No.

- COMPLAINT FOR:**
(1) **TRADE SECRET MISAPPROPRIATION;**
(2) **BREACH OF CONFIDENCE;**
(3) **UNFAIR COMPETITION;**
(4) **STATUTORY UNFAIR COMPETITION;**
(5) **CONVERSION; AND**
(6) **DECLARATORY RELIEF**

Plaintiffs Gamasonic Ltd. and Gama Sonic Industries (HK) Ltd., for their Complaint against Defendants Octopus, LLC, Avraham Raz, and Pacific Image, allege as follows:

1. This is a civil action for Misappropriation of Trade Secrets under Cal. Civ. Code § 3426, *et seq.*, Breach of Confidence under California common law, Unfair Competition under California common law and Cal. Bus. & Prof. Code § 17200, *et seq.*, Conversion under California common law and Cal. Civ. Code § 3336, and Declaratory relief.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction under 28 U.S.C. § 1332 because Plaintiffs seek damages in excess of \$75,000, exclusive of interest and costs, and because

1 Plaintiffs are citizens of foreign states and Defendants are citizens of California. Venue is
2 proper in this judicial district under 28 U.S.C. § 1391(a) and (c) because Defendants reside and
3 are doing business in the County of San Diego, California, and because a substantial part of the
4 events giving rise to the asserted causes of action occurred in San Diego County.

5 **THE PARTIES**

6 3. Plaintiff Gamasonic Ltd. is an Israeli corporation with a place of business
7 located at 27 Allenby Street, Tel-Aviv 63322 Israel.

8 4. Plaintiff Gama Sonic Industries (HK) Ltd. is a Hong Kong corporation with a
9 place of business located at Room 2105 CMG, Asia Tower, Harbour City 15 Canton Rd.,
10 Tsimshatsui, Konwloon, Hong Kong.

11 5. Defendant Octopus LLC is a California corporation with a place of business
12 located at 16776 Bernardo Center Drive, Suite 203, in San Diego, California, 92128.

13 6. Defendant Avraham Raz ("Raz") is an individual residing in San Diego County,
14 California, and is the owner and an agent of Defendant Octopus ("Octopus").

15 7. Defendant Pacific Image ("Pacific") is an unknown entity operated by Defendant
16 Raz with a place of business located at 16776 Bernardo Center Drive, Suite 203, in San Diego,
17 California, 92128.

18 8. Each of the Defendants was, on Plaintiffs' information and belief, the agent,
19 employee or joint venturer of each of the remaining Defendants and in doing the things
20 hereinafter alleged, each was acting within the course and scope of said agency, employment
21 and joint venture with the advanced knowledge, acquiescence or subsequent ratification of each
22 and every remaining Defendant.

23 **STATEMENT OF FACTS AND ALLEGATIONS**

24 **COMMON TO ALL CAUSES OF ACTION**

25 9. Plaintiffs design, manufacture and sell a variety of electrical products, including
26 lighting products that utilize rechargeable battery technology. Prior to December 2002, Lazar
27 Izardel ("Lazar"), the owner of Plaintiffs Gamasonic Ltd. and Gama Sonic Industries (HK) Ltd.,
28 independently conceived of the idea of a new line of products combining available solar-power

1 technology with Plaintiffs' proprietary rechargeable battery technology and he began exploring
2 new business opportunities for solar-powered rechargeable lighting products. In pursuit of such
3 business opportunities, Lazar traveled to Hong Kong and China where he bought a large
4 number of solar panels and met with companies regarding solar cell technology. Thereafter,
5 Plaintiffs began developing a line of solar-powered rechargeable lighting products and invested
6 significant resources in the development of such products.

7 10. In or around December 25, 2002, Plaintiffs first met with Defendant Raz. The
8 purpose of this initial meeting was for Lazar and Defendant Raz to become acquainted and
9 explore a possible business relationship for Defendant Raz to market Plaintiffs' solar-powered
10 products. In this meeting, Defendant Raz expressed his interest in marketing solar products,
11 represented to Lazar that he had a background for marketing products in the United States and
12 expressed his interest in marketing the Plaintiffs' products in the United States. As a result of
13 their discussions, Lazar and Defendant Raz scheduled another meeting to continue discussing
14 the formation of a business relationship.

15 11. In or around December 29, 2002, Lazar met with Defendant Raz in Plaintiff
16 Gamasonics' offices. During this meeting, Lazar and Defendant Raz discussed forming a
17 marketing cooperation for Defendant Raz to market Plaintiffs' solar-powered products. In
18 furtherance of these discussions, and with the understanding of proceeding in a business
19 relationship with Defendant Raz, Plaintiffs disclosed their solar-powered products, including
20 products under development, to Defendant Raz. Among the products shown to Defendant Raz
21 was their main product, the Solar Kit model SK-20, which is a solar-powered light kit that
22 includes a solar panel for use on a roof and a 20W light fixture with a rechargeable battery for
23 use in a cabin or exterior building that may not have electricity. After seeing Plaintiffs'
24 products, Lazar and Defendant Raz discussed whether Plaintiffs' products could be used for
25 sheds, as Defendant Raz believed there was a demand for such a product. Lazar told Defendant
26 Raz it was possible to develop a solar powered shed light, which would be a modification of the
27 existing SK20 model. Defendant Raz again expressed his desire to market Plaintiffs' products
28 and represented that he had business relations with west coast branches of Home Depot stores in

1 the United States. After further discussions, Plaintiffs agreed to try and develop a solar-
2 powered light based on the SK20, but intended for sheds. Plaintiffs believed Defendant Raz's
3 representations and would not have disclosed their products to Defendant Raz if he had not
4 represented that he desired to form a business relationship to market Plaintiffs' products.

5 12. Subsequent to the December 29, 2002, meeting with Defendant Raz, Plaintiffs
6 began developing a solar-powered shed light product which Plaintiffs called "LIGHT MY
7 SHED" a name conceived by Plaintiffs. Plaintiffs also developed other solar-powered lighting
8 products and created a family of names for their lighting products called "LIGHT MY ____."
9 For example, Plaintiffs also developed a house number light called "LIGHT MY NUMBER," a
10 walkway light called "LIGHT MY PATH," and a step light called "LIGHT MY STEP," as well
11 as several other "LIGHT MY ____" products. All of these products were developed and funded
12 solely by the Plaintiffs.

13 13. Plaintiffs kept Defendant Raz informed of their development efforts for their
14 "LIGHT MY SHED" product to get his feedback regarding the U.S. market and identify
15 potential buyers for Plaintiffs' product. Plaintiffs also reminded Defendant Raz in
16 correspondence sent on January 19, 2003, that he should maintain all of the information and
17 related items provided to him on a confidential basis. On or about April 7, 2003, Plaintiffs told
18 Defendant Raz that a working prototype of their "LIGHT MY SHED" solar-powered shed light
19 was complete and that it would be shown to Defendant Raz during Plaintiffs' next trip to the
20 United States.

21 14. On or about April 14, 2003, Plaintiffs met with Defendant Raz in San Diego.
22 During this meeting, Plaintiffs and Defendant Raz re-affirmed their mutual commitment for
23 Defendant Raz to market Plaintiffs' products in Home Depot stores on the west coast of the
24 United States. Plaintiffs showed Defendant Raz prototypes for their "LIGHT MY SHED"
25 product and left a working prototype of the "LIGHT MY SHED" product with Defendant Raz
26 to use in his marketing efforts.

27 15. During April and May, 2003, Plaintiffs continued to correspond with Defendant
28 Raz in good faith, sending him the status of their development efforts for other solar-powered

1 products, including "LIGHT MY NUMBER" a solar-powered lighting product for illuminating
2 the number on a house, and "LIGHT MY STEP," a solar-powered step light. In late April,
3 2003, Plaintiffs sent a prototype of the "LIGHT MY NUMBER" product to Defendant Raz for
4 his feedback of this product. On or about May 22, 2003, Plaintiffs sent a computer simulation
5 of the "LIGHT MY STEP" product to Defendant Raz to evaluate the potential market for this
6 product. Plaintiffs made these disclosures in good faith based on Defendant Raz's numerous
7 representations that he was engaged in marketing Plaintiffs' "LIGHT MY SHED" product.

8 16. On or about June 20, 2003, Plaintiffs met with Defendant Raz and Scott
9 Hassman ("Hassman"), a buyer from Home Depot, in Orange County, California, in a meeting
10 arranged by Defendant Raz. During this meeting, Plaintiffs presented several solar-powered
11 products that they had developed and Hassman gave Plaintiffs some feedback on the products.
12 The meeting concluded with a discussion focused on possibly obtaining future orders from
13 Home Depot for Plaintiffs' "LIGHT MY SHED" product. The next day, Plaintiffs left more
14 prototypes with Defendant Raz (the improved "LIGHT MY SHED" version, "LIGHT MY
15 PATH" and "LIGHT MY POCKET") because Defendant Raz said that Scott Hassman would
16 need to get approval from the Home Depot main offices in Atlanta and it would be best if the
17 prototypes remained in the US with Defendant Raz.

18 17. Plaintiffs are informed and believe, and thereon allege, that Defendant Raz
19 continued to represent to Home Depot that he was working with Plaintiffs to market Plaintiffs'
20 "LIGHT MY SHED" product. On or about June 30, 2003, Defendant Raz wrote to Plaintiffs
21 indicating that Home Depot had communicated to him that a final decision on ordering the
22 Plaintiffs' product would occur in September, 2003. Thereafter, Defendant Raz continued to
23 represent to Plaintiffs that he was continuing his marketing efforts of Plaintiffs' shed light
24 product to Home Depot.

25 18. On or about August 12, 2003, Defendant Raz informed Plaintiffs that he was
26 ready to proceed with preparations for receiving an order from Home Depot for Plaintiffs' shed
27 light. Plaintiffs indicted that in order to do this they must address logistical issues associated
28 with selling Plaintiffs' products, such as warehousing and service. In an email sent by

1 Defendant Raz to Plaintiffs on or about September 1, 2003, Defendant Raz informed Plaintiffs
2 that logistical costs for selling and servicing Plaintiffs' products would cost more than \$650,000
3 and indicated his desire for Plaintiffs to enter into a partnership arrangement with his company,
4 Defendant Octopus, to share profits and expenses. In this email, Defendant Raz asked Plaintiffs
5 for a letter giving Defendant Octopus the sole rights to market Plaintiffs' products at Home
6 Depot, Costco, Sam's Club, Walmart, BJ Club and Frye's Electronics.

7 19. In an email on or about September 3, 2003, Plaintiffs indicated that the estimate
8 of \$650,000 for logistical costs seemed too high. Thereafter, Defendant Raz became
9 increasingly uncooperative and demanded an ever larger role in marketing Plaintiffs' products.
10 In an email on or about September 10, 2003, Defendant Raz appeared to be angry with
11 Plaintiffs' response and stated his understanding was that Plaintiffs were in charge of the R&D
12 of Plaintiffs' product, that he will market Plaintiffs' products in the United States, that he wants
13 to move forward with Home Depot for Plaintiffs' "LIGHT MY SHED" product and Plaintiffs'
14 other products, and further proposed that he would obtain drawings from Plaintiffs for their
15 "LIGHT MY SHED" product, make manufacturing molds in China, and reimburse Plaintiffs for
16 the development expenses and give the Plaintiffs a share of the profits. Plaintiffs did not agree
17 to this plan and had not agreed to have Defendant Raz market their other solar-powered
18 products, so on or about September 11, 2003, Plaintiffs informed Defendant Raz that the only
19 product he would be marketing for them is their "LIGHT MY SHED" shed light product.

20 20. After failing to resolve their differences by exchanging numerous
21 communications with Defendant Raz, Plaintiffs met with Defendant Raz on or about October
22 10, 2003, to discuss their current business relationship and propose an option for investing
23 together in a company to market Plaintiffs' products that would formalize the business
24 arrangement among the parties to their satisfaction. During this meeting, Defendant Raz
25 informed Plaintiffs that he had applied for United States trademarks in the name of Octopus,
26 LLC for the LIGHT MY SHED, LIGHT MY NUMBER, and LIGHT MY PATH marks.
27 Although Plaintiffs were surprised and shocked, Defendant Raz assured them that they were
28 going to be partners so it did not matter that the trademark applications were in the name of

1 Octopus. At the end of this meeting, Defendant Raz agreed to prepare a partnership agreement
2 with the terms that his existing company, Octopus, would market Plaintiffs' "LIGHT MY
3 SHED" product to Home Depot stores in the Western United States, and Plaintiffs would
4 receive a 50% ownership in Octopus.

5 21. On or about October 23, 2003, Plaintiffs received an agreement from Defendant
6 Raz that bore no relation to the terms agreed to in the meeting of October 10, 2003. Instead of a
7 partnership agreement, Raz had formulated an exclusive distribution agreement in which
8 Defendants would be the sole distributors of Plaintiffs' products in the United States. Plaintiffs
9 rejected Defendant Raz's proposed agreement, and corresponded with Defendants numerous
10 times to understand why Defendant Raz would propose terms in his agreement contradictory to
11 those discussed at the October 10, 2003 meeting. Although Plaintiffs' continued to
12 communicate with Defendant Raz to try to understand his position regarding the partnership
13 agreement, Defendant Raz stubbornly refused to consider that his role for marketing Plaintiffs'
14 products should be anything less than the entire United States, even stating that "ISRAEL,
15 SOUTH AMERICA and CHINA is your turf" and "the US is my turf" in an email on or about
16 October 30, 2003. Plaintiffs' attempts to address Defendant Raz's concerns were repeatedly
17 and unreasonably rebuked by Defendants, or ignored altogether, to the extent that Plaintiffs
18 reasonably determined that further attempts to reason with Defendants would be fruitless.

19 22. Plaintiffs are informed and believe, and thereon allege, that Defendants had no
20 intention of investing together as partners under a fair and reasonable agreement to market
21 Plaintiffs' solar-powered shed light, but instead were only interested using Plaintiffs' and trade
22 secrets and significant product development efforts for Defendants' own benefit. Thereafter and
23 to the present date, despite numerous requests by the Plaintiffs to the Defendants for the return
24 of the prototypes of Plaintiffs' solar-powered lighting products, including its "LIGHT MY
25 SHED" product, the Defendants have failed to return any of the Plaintiffs' prototypes, instead
26 making specious excuses such as "there is a big fire in my neighborhood" or that "they are no
27 longer in my possession."

28 ///

1 23. Plaintiffs' are informed and believe, and based thereon allege, that Defendants
2 used Plaintiffs' refusal to agree to the exclusive distributorship agreement proposed by
3 Defendant Raz as a convenient excuse to break off the business relationship with Plaintiffs. In
4 view of this and pursuant to Plaintiffs Gamasonic's written notice to Defendant Raz on or about
5 January 21, 2004, Plaintiffs completely terminated their business relationship with Defendants
6 regarding the marketing of Plaintiffs' solar-powered lighting products and insisted that
7 Defendants return all of Plaintiffs' prototypes.

8 24. Plaintiffs are informed and believe, and thereon allege, that Defendants utilized
9 Plaintiffs' proprietary and confidential prototypes to manufacture a solar-powered shed light in
10 China virtually identical to Plaintiffs' shed light without Plaintiffs' permission, and that
11 Defendants misappropriated Plaintiffs' proprietary and trade secret information to design and
12 manufacture packaging material for Defendants' shed light that is nearly identical to the
13 packaging Plaintiffs' designed for their shed light, including using Plaintiffs' confidential and
14 proprietary trade secret name "LIGHT MY SHED" on Defendants' packaging. Plaintiffs are
15 informed and believe, and thereon allege, that Defendants have unlawfully sold and are now
16 unlawfully selling the shed light, manufactured from Plaintiffs' misappropriated proprietary
17 information and trade secrets, in Home Depot Stores in California under the "LIGHT my
18 SHED" mark.

19 25. Plaintiffs are informed and believe, and based thereon allege, that Defendants
20 and each of them have misappropriated Plaintiffs' proprietary and trade secret product
21 development, and breached their duty of confidence that they owed to the Plaintiffs as partners
22 in their business relationship to market Plaintiffs' solar powered shed light and in so doing have
23 acted with malice by willfully and consciously disregarding Plaintiffs' ownership rights in their
24 proprietary and trade secret product development and by willfully and consciously disregarding
25 the duty of confidence that they each owed Plaintiffs.

26 26. By the aforesaid acts of Defendants, and each of them, Plaintiffs have been
27 greatly damaged in the manner and amounts as further alleged below, and will continue to be
28 greatly damaged unless Defendants are enjoined by the Court.

1 **FIRST CAUSE OF ACTION**

2 **TRADE SECRET MISAPPROPRIATION**

3 (Against All Defendants)

4 27. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 26 of
5 the Complaint.

6 28. This is a cause of action for Misappropriation of Trade Secrets under the
7 Uniform Trade Secrets Act, Cal. Civ. Code § 3426 et seq., based upon Defendants' wrongful
8 and improper use and disclosure of Plaintiffs' confidential and proprietary trade secrets relating
9 to Plaintiffs' solar powered lighting products and their new family of trademarks for their solar
10 powered lighting products with intent to injure Plaintiffs and confer benefit upon themselves.

11 29. Plaintiffs' confidential and trade secret new family of "LIGHT MY ____" marks
12 and their new line of solar powered lighting products that Plaintiffs were developing were their
13 confidential trade secrets because the new products and marks derived independent economical
14 value while not being generally known to the public or to other persons who can obtain
15 economic value from its disclosure or use, and because the new products and marks that
16 Plaintiffs were developing were the subject of reasonable efforts under the circumstances to
17 maintain them as confidential.

18 30. Plaintiffs' disclosure to the Defendants of their Plaintiffs' confidential and trade
19 secret new family of "LIGHT MY ____" marks and their new line of solar-powered lighting
20 products was done solely for the purposes of forming a partnership or joint venture among the
21 parties to market the Plaintiffs' solar powered shed light to Home Depot stores in the United
22 States, giving rise to a duty on the part of Defendants to not use or disclose Plaintiffs'
23 proprietary and trade secret new products and marks without their approval or permission, and
24 only for the benefit of the Plaintiffs or the fair and reasonable benefit for all the parties.

25 31. Plaintiffs took reasonable precautions under the circumstances to protect their
26 proprietary and trade secret new family of "LIGHT MY ____" marks and their new line of
27 solar-powered lighting products. Plaintiffs would not have disclosed their confidential and
28 trade secret new family of "LIGHT MY ____" marks and their new line of solar-powered

1 lighting products to the Defendants if they had known that Defendants would deliberately
2 misappropriate Plaintiffs' proprietary and trade secret products and marks and use them for
3 themselves and disclose them to third parties without Plaintiffs' consent or permission.

4 32. Plaintiffs are informed and believe, and thereon allege, that Defendants continue
5 to use and disclose to third parties Plaintiffs' proprietary and trade secret new products and
6 marks without their consent or permission, in attempting to develop Plaintiffs' products and
7 marks as their own.

8 33. Plaintiffs are informed and believe, and thereon allege, that Defendant Octopus
9 filed United States trademark applications for the Plaintiffs' proprietary and trade secret family
10 of marks they had developed for their new products, including LIGHT MY STEP, LIGHT MY
11 SHED, LIGHT MY PATH, LIGHT MY NUMBER, LIGHT MY POOL, and LIGHT MY
12 TABLE, said applications indicating Defendant Octopus as the owner of the marks, without
13 Plaintiffs' consent or permission, in attempting to claim Plaintiffs' family of marks as their own.

14 34. Plaintiffs are informed and believe, and thereon allege, that Defendants have
15 wrongfully misappropriated Plaintiffs' proprietary, confidential and trade secret new family of
16 "LIGHT MY ____" marks and its new line of solar-powered lighting products and wrongfully
17 represented to others that the products and family of marks were owned by Defendants, and will
18 continue to do so, maliciously in willful and conscious disregard for the rights of Plaintiffs.

19 35. As a direct and proximate result of Defendants' willful, improper and unlawful
20 use and disclosure of Plaintiffs' proprietary confidential and trade secret new family of "LIGHT
21 MY ____" marks and their new line of solar-powered lighting products as alleged herein,
22 Plaintiffs have and will continue to suffer great harm and damage, which damage Plaintiffs are
23 unable at this time to ascertain but Plaintiffs are informed and believe, and thereon allege, is in
24 excess of \$10 million. Plaintiffs will continue to be irreparably damaged unless Defendants are
25 preliminarily and permanently enjoined from further use and disclosure of Plaintiffs'
26 proprietary and trade secret newly developed products and trademarks.

27 36. Plaintiffs are informed and believe, and thereon allege that the aforementioned
28 acts of Defendants in wrongfully misappropriating Plaintiffs' proprietary, confidential and trade

1 secret new family of "LIGHT MY ____" marks and their new line of solar-powered lighting
2 products as alleged herein, and in conspiring and continuing to conspire to do so, were and
3 continue to be willful and malicious, warranting an award of exemplary damages, as provided
4 by Civ. Code § 3426.3(c), and an award of reasonable attorneys fees, as provided by Civ. Code
5 § 3426.4.

6 **SECOND CAUSE OF ACTION**

7 **BREACH OF CONFIDENCE**

8 (Against All Defendants)

9 37. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 36 of
10 the Complaint.

11 38. This is a cause of action for Breach of Confidence under California common law.

12 39. When Plaintiffs disclosed their proprietary, confidential and trade secret new
13 family of "LIGHT MY ____" marks and their new line of solar-powered lighting products to
14 Defendants, they did so in confidence for the purposes of forming a marketing cooperation
15 among the parties to market the Plaintiffs' solar powered shed light to Home Depot stores on
16 the west coast of the United States. Defendants therefore owed Plaintiffs a legal duty of
17 confidence to maintain Plaintiffs' proprietary and trade secret new products and new marks in a
18 confidential and proprietary manner, and not to use Plaintiffs' proprietary and trade secret new
19 products and new marks obtained through their confidential relationship with Plaintiffs for their
20 own purposes.

21 40. Defendants accepted Plaintiffs' disclosure of Plaintiffs' proprietary, confidential
22 and trade secret information as alleged herein voluntarily and for the purposes of becoming
23 partners in a marketing cooperation to market Plaintiffs' "LIGHT MY SHED" shed light,
24 thereby owing Plaintiffs a duty of confidence with respect to Plaintiffs' proprietary and trade
25 secret new products and its planned family of trademarks

26 41. Plaintiffs are informed and believe, and thereon allege, that Defendants have
27 willfully and in conscious disregard for the duty of confidence owed to Plaintiffs, used for their
28 own purposes and disclosed to others Plaintiffs' proprietary and trade secret new products and

1 its family of trademarks for the purposes of advancing Defendant's own improper development
2 and sales of Plaintiffs' new products.

3 42. As a direct and proximate result of Defendants' willful, improper and unlawful
4 breach of their duty of confidence owed to Plaintiffs as alleged herein, Plaintiffs have and will
5 continue to suffer great harm and damage, which damage Plaintiffs are unable at this time to
6 ascertain but Plaintiffs are informed and believe, and thereon allege, is in excess of \$10 million.
7 Plaintiffs will continue to be irreparably damaged unless Defendants are preliminarily and
8 permanently enjoined from further use and disclosure of Plaintiffs' proprietary and trade secret
9 products and trademarks.

10 43. Plaintiffs are informed and believe, and thereon allege, that the aforementioned
11 acts of Defendants in breaching their duty of confidence owed to Plaintiffs, were and continue
12 to be willful and malicious, warranting an award of punitive damages in addition to the actual
13 damages suffered by Plaintiffs.

14 **THIRD CAUSE OF ACTION**

15 **UNFAIR COMPETITION**

16 (Against All Defendants)

17 44. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 43 of
18 this Complaint.

19 45. This is a cause of action for Unfair Competition under the California common
20 law.

21 46. The acts of Defendants alleged herein, including, but not limited to, the
22 conspiracy among the Defendants to misappropriate Plaintiffs' proprietary and trade secret new
23 products and their planned family of trademarks for the purposes of developing Defendants'
24 own business to compete with that of Plaintiffs, constitutes unlawful, unfair and fraudulent
25 business practices in violation of the California common law of Unfair Competition.

26 47. Plaintiffs are informed and believe, and thereon allege, that Defendants have
27 willfully and in conscious disregard for Plaintiffs' rights and their business, committed unfair
28 and unlawful business practices including, but not limited to, using for Defendants' own

1 purposes, and adversely to the interests of Plaintiffs and the business venture, Plaintiffs'
2 proprietary and trade secret new products and planned family of trademarks.

3 48. As a direct and proximate result of Defendants' willful, improper, unfair and
4 unlawful business practices as alleged herein, Plaintiffs have and will continue to suffer great
5 harm and damage, which damage Plaintiffs are unable at this time to ascertain but Plaintiffs are
6 informed and believe, and thereon allege, is in excess of \$10 million. Plaintiffs will continue to
7 be irreparably damaged unless Defendants are preliminarily and permanently enjoined from
8 further committing unfair and unlawful business practices against Plaintiffs and Plaintiffs'
9 business.

10 49. Plaintiffs are informed and believe, and thereon allege, that the aforementioned
11 acts of Defendants in committing unfair and unlawful business practices against Plaintiffs and
12 Plaintiffs' business, and in continuing to do so, were and continue to be willful and malicious,
13 warranting an award of punitive damages in addition to the actual damages suffered by
14 Plaintiffs.

15 **FOURTH CAUSE OF ACTION**
16 **STATUTORY UNFAIR COMPETITION**

17 (Against All Defendants)

18 50. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 49 of
19 this Complaint.

20 51. This is a cause of action for Statutory Unfair Competition under California Bus.
21 & Prof. Code § 17200, *et seq.*

22 52. The acts of Defendants alleged herein, including, but not limited to, the acts of
23 the Defendants to misappropriate Plaintiffs' proprietary and trade secret new products and
24 planned family of trademarks for the purposes of developing Defendants' own business to
25 compete with that of Plaintiffs, constitutes unlawful, unfair and fraudulent business practices in
26 violation of California Bus. & Prof. Code § 17200 *et seq.*

27 53. As a direct and proximate result of Defendants' willful, improper, unfair and
28 unlawful business practices as alleged herein, Plaintiffs have and will continue to suffer great

1 harm and damage, which damage Plaintiffs are unable at this time to ascertain but Plaintiffs are
2 informed and believe, and thereon allege, is in excess of \$10 million. Plaintiffs will continue
3 to be irreparably damaged unless Defendants are preliminarily and permanently enjoined from
4 further committing unfair and unlawful business practices against Plaintiffs and Plaintiffs'
5 business.

6 **FIFTH CAUSE OF ACTION**

7 **CONVERSION**

8 (Against All Defendants)

9 54. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 53 of
10 this Complaint.

11 55. Plaintiffs own and have all right, title and interest in and to the proprietary and
12 confidential information and trade secrets developed by Plaintiffs relating to their new solar-
13 powered lighting products, including Plaintiffs' product prototypes and family of trademarks,
14 which were disclosed to Defendants pursuant to oral representations of secrecy and under
15 circumstances giving rise to a duty to maintain such disclosures in secrecy.

16 56. Pursuant to Plaintiffs' written notice to Defendants on or about January 21, 2004,
17 Plaintiffs completely terminated their relationship with Defendants regarding the marketing of
18 Plaintiffs solar-powered lighting products and requested Defendants to return all of Plaintiffs'
19 prototypes of solar-powered light products.

20 57. Defendants failed to return all of Plaintiffs' proprietary, confidential material and
21 trade secrets, including Plaintiffs' prototypes of solar-powered light products and, Plaintiffs' are
22 informed and believe and thereon allege, thereafter Defendants intentionally converted such
23 property for Defendants' own gain and benefit to the detriment of the Plaintiffs.

24 58. Even before Plaintiffs' terminated their business relationship with Defendants,
25 Plaintiffs are informed and believe, and thereon allege, that Defendants filed United States
26 trademark applications for Plaintiffs' proprietary, confidential and trade secret planned family
27 of trademarks LIGHT MY STEP, LIGHT MY SHED, LIGHT MY PATH, LIGHT MY
28 NUMBER, LIGHT MY POOL, and LIGHT MY TABLE, said applications indicating

1 Defendant Octopus as the owner of the marks, without Plaintiffs' consent or permission, in
2 attempting to convert and claim Plaintiffs' planned family of trademarks as their own.

3 59. Plaintiffs are informed and believe, and thereon allege, that Defendants
4 manufactured a solar-powered light product utilizing the Plaintiffs' prototype which Defendants
5 had converted. Plaintiffs are informed and believe, and thereon allege, that Defendants are
6 selling the converted lighting product under the converted "LIGHT my SHED" mark in Home
7 Depot stores in California.

8 60. As a direct and proximate result of Defendants' conduct, Plaintiffs have been
9 damaged by Defendants' conversion in an amount according to proof, including but not limited
10 to the loss of profits and loss of good will.

11 61. Between the time of Defendants' conversion of Plaintiffs' property to
12 Defendants' use and the filing of this action, Plaintiffs have expended substantial time and
13 money in pursuit of the converted property, all to Plaintiffs' further damage in a sum according
14 to proof.

15 62. Plaintiffs are informed and believe, and thereon allege, that the aforementioned
16 acts of Defendants were willful, wanton, malicious, and oppressive and were performed with a
17 conscious disregard of Plaintiffs' rights and with the intent to injure and destroy Plaintiffs'
18 opportunity for business in the area of solar-powered lighting. Plaintiffs are, therefore, entitled
19 to an award of punitive damages against Defendants in addition to actual damages.

20 **SIXTH CAUSE OF ACTION**

21 **FOR DECLARATORY RELIEF/OWNERSHIP OF**

22 **TRADEMARK APPLICATIONS**

23 (Against All Defendants)

24 63. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 62 of
25 this Complaint.

26 64. This is a claim for declaratory relief under the Declaratory Judgment Act, 28
27 U.S.C. § 2201.

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ON THE FIRST CAUSE OF ACTION:

1. That Defendants and their agents, servants, employees and attorneys, and those persons in active concert or participation with any of them, be preliminarily and permanently restrained and enjoined from using, disclosing, or otherwise misappropriating Plaintiffs' proprietary and confidential information and trade secrets;
2. That the Court award Plaintiffs general and special damages according to proof;
3. That the Court award Plaintiffs punitive damages for Defendants' willful and malicious conduct;
4. That the Court award Plaintiffs their reasonable attorneys fees;
5. That the Court award Plaintiffs pre- and post judgment interest;
6. That the Court award Plaintiffs their costs of suit incurred herein; and
7. That Plaintiffs shall have such other and further relief as the Court may deem just and proper.

ON THE SECOND CAUSE OF ACTION:

1. That Defendants and their agents, servants, employees and attorneys, and those persons in active concert or participation with any of them, be preliminarily and permanently restrained and enjoined from using, disclosing, or otherwise misappropriating Plaintiffs' proprietary and confidential information and trade secrets;
2. That the Court award Plaintiffs general and special damages according to proof;
3. That the Court award Plaintiffs punitive damages for Defendants' willful and malicious conduct;
4. That the Court award Plaintiffs pre- and post judgment interest;
5. That the Court award Plaintiffs their costs of suit incurred herein; and
6. That Plaintiffs shall have such other and further relief as the Court may deem just and proper.

ON THE THIRD CAUSE OF ACTION:

1. That Defendants and their agents, servants, employees and attorneys, and those persons in active concert or participation with any of them, be preliminarily and permanently

1 restrained and enjoined from using, disclosing, or otherwise misappropriating Plaintiffs'
2 confidential and proprietary information and trade secrets;

3 2. That the Court award Plaintiffs general and special damages according to proof;

4 3. That the Court award Plaintiffs punitive damages for Defendants' willful and
5 malicious conduct;

6 4. That the Court award Plaintiffs pre- and post judgment interest;

7 5. That the Court award Plaintiffs their costs of suit incurred herein; and

8 6. That Plaintiffs shall have such other and further relief as the Court may deem just
9 and proper.

10 ON THE FOURTH CAUSE OF ACTION:

11 1. That Defendants and their agents, servants, employees and attorneys, and those
12 persons in active concert or participation with any of them, be preliminarily and permanently
13 restrained and enjoined from using, disclosing, selling or otherwise misappropriating Plaintiffs'
14 confidential and proprietary information and trade secrets;

15 2. That Defendants and their agents, servants, employees and attorneys, and those
16 persons in active concert or participation with any of them, be preliminarily and permanently
17 restrained and enjoined from selling the "LIGHT MY SHED" solar-powered light product
18 which incorporates Plaintiffs' confidential and proprietary information and trade secrets;

19 3. That the Court award Plaintiffs restitution by disgorging any illicit profits of
20 Defendants;

21 4. That the Court award Plaintiffs their reasonable attorneys fees;

22 5. That the Court award Plaintiffs pre- and post judgment interest;

23 6. That the Court award Plaintiffs their costs of suit incurred herein; and

24 7. That Plaintiffs shall have such other and further relief as the Court may deem just
25 and proper.

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3. That the Court order that Defendants, and each of them, and their agents, servants, employees and attorneys, and those persons in active concert or participation with any of them are permanently enjoined and restrained from marketing, selling or otherwise distributing their "LIGHT MY SHED" product or any other product associated with the "LIGHT MY ____" family of trademarks;

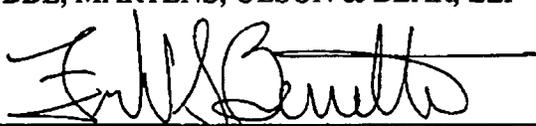
4. That the Court award Plaintiffs their costs of suit incurred herein; and

5. That Plaintiffs shall have such other and further relief as the Court may deem just and proper.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: June 14, 2004

By: 

Frederick S. Berretta
Gregory A. Hermanson

Attorneys for Plaintiffs
GAMASONIC LTD. and
GAMA SONIC INDUSTRIES (HK) LTD.

S:\DOCS\GAH\GAH-2646.DOC
060204

AO 120 (3/85)

TO: Commissioner of Patents and Trademarks Washington, D.C. 20231	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT
--	--

In compliance with the Act of July 19, 1952 (66 Stat. 814; 35 U.S.C. 290) you are hereby advised
 that a court action has been filed on the following patent(s) in the U.S. District Court:

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT
04cv1199W(NLS)	06/15/04	United States District Court, Southern District of California
PLAINTIFF		DEFENDANT
Gamasonic LTC, et al		Octopus LLC, et al
PATENT NO.	DATE OF PATENT	PATENTEE
1 See complaint	See complaint	See enclosed complaint
2		
3		
4		
5		

In the above-entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY			
	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading			
PATENT NO.	DATE OF PATENT	PATENTEE		
1				
2				
3				
4				
5				

In the above-entitled case, the following decision has been rendered or judgment issued:

DECISION/JUDGMENT		
CLERK	(BY) DEPUTY CLERK	DATE

Copy 1 - Upon initiation of action, mail this copy to Commissioner Copy 3 - Upon termination of action, mail this copy to Commissioner
 Copy 2 - Upon filing document adding patent(s), mail this copy to Commissioner Copy 4 - Case file copy

ORIGINAL CIVIL COVER SHEET

JS 44
(Rev. 07/89)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

GAMASONIC LTD., an Israeli corporation,
and GAMA SONIC INDUSTRIES (HK) LTD., a
Hong Kong corporation

DEFENDANTS

OCTOPUS, LLC, a California limited
liability company, AVRAHAM RAZ, an
individual, and PACIFIC IMAGE, an unknown
entity.

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
DEPUTY

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF foreign
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT San Diego
(IN U.S. PLAINTIFF CASES ONLY)

BY: NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Frederick S. Berretta
KNOBBE MARTENS OLSON & BEAR, LLP
550 West C Street, Suite 1200
San Diego, CA 92101
(619) 235-8550

ATTORNEYS (IF KNOWN)

'04 CV 1199 (NLS)

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
 2 U.S. Government Defendant
 3 Federal Question (U.S. Government Not a Party)
 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PT	DEF		PT	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)
Misappropriation of Trade Secrets under Cal. Civ Code 3426, et seq, Breach of Confidence & Unfair Competition under Cal. common law, Cal. Bus. & Prof. Code 17200, & Conversion under Cal common law & Cal Civ Co 3336, & Declaratory relief

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395b) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motion to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Emp. Ret. Inc. Security Act	

VI. ORIGIN

- (PLACE AN "X" IN ONE BOX ONLY)
- 1 Original Proceeding
 2 Removal from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multidistrict Litigation
 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION DEMAND \$ UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:
JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ Docket Number _____

DATE: June 15, 2004 SIGNATURE OF ATTORNEY OF RECORD: *Gregory A. Hermanson* Gregory A. Hermanson

104553 6/15/04
150th JG

Exhibit B

GOP

FILED

04 JUL 30 PM 3:41

U.S. DISTRICT COURT

BY:

DEPUTY

1 John E. Gartman (CA SBN 152300)
2 Craig E. Hunsaker (CA SBN 168829)
3 Kristi B. Panikowski (CA SBN 218943)
4 FISH & RICHARDSON P.C.
5 12390 El Camino Real
6 San Diego, CA 92130
7 Telephone: (858) 678-5070
8 Facsimile: (858) 678-5099

9 Attorneys for Defendants
10 OCTOPUS, LLC, AVRAHAM RAZ, and PACIFIC IMAGE

11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA

BY FAX

13 GAMASONIC LTD., an Israeli corporation,
14 and GAMA SONIC INDUSTRIES (HK)
15 LTD., a Hong Kong corporation,

16 Plaintiffs,

17 v.

18 OCTOPUS, LLC, a California limited
19 liability company, AVRAHAM RAZ, an
20 individual, and PACIFIC IMAGE, an
21 unknown entity,

22 Defendants.

04-CV-1199 W (NLS)

ANSWER OF DEFENDANTS OCTOPUS,
LLC, AVRAHAM RAZ AND PACIFIC
IMAGE

Courtroom: 3
Hon. Thomas J. Whelan

23 Defendants Octopus, LLC, Avraham Raz ("Raz"), and Pacific Image ("Defendants") hereby
24 answer the Complaint of Plaintiffs Gamasonic Ltd. and Gama Sonic Industries, Ltd. as follows:

25 ANSWER

- 26 1. Defendants admit the allegations in Paragraph 1 of the Complaint.
- 27 2. Defendants admit that they are citizens of California, do business within the County
28 of San Diego, California and that Plaintiffs claim damages in excess of \$75,000. Defendants deny
that they have engaged in conduct "giving rise" to the causes of action in the Complaint, and are
without information sufficient to form a belief as to the truth or falsity of the allegations in
Paragraph 2 regarding Plaintiffs' citizenship, and on that basis deny said allegations.

1 3. Defendants are without information sufficient to form a belief as to the truth or
2 falsity of the allegations in Paragraph 3 of the Complaint, and on that basis deny said allegations.

3 4. Defendants are without information sufficient to form a belief as to the truth or
4 falsity of the allegations in Paragraph 4 of the Complaint, and on that basis deny said allegations.

5 5. Defendants admit the allegations in Paragraph 5 of the Complaint.

6 6. Defendants admit the allegations in Paragraph 6 of the Complaint.

7 7. Defendants admit the allegations in Paragraph 7 of the Complaint.

8 8. Defendants deny the allegations in Paragraph 8 of the Complaint.

9 9. Defendants deny the that Plaintiffs "independently conceived" of the solar-powered
10 products at issue in this lawsuit, and deny that Plaintiffs began developing such products prior to
11 meeting with Defendants. Defendants are without information sufficient to form a belief as to the
12 truth or falsity of the remaining allegations in Paragraph 9 of the Complaint, and on that basis deny
13 said allegations.

14 10. Defendants admit that a meeting took place between Raz and Plaintiffs on December
15 25, 2002, and that another meeting was scheduled thereafter, but deny all other allegations in
16 Paragraph 10 of the Complaint.

17 11. Defendants admit that a meeting took place between Raz and Plaintiffs on December
18 29, 2002, and that Plaintiffs showed Raz a single Solar Kit model SK-20. Defendants specifically
19 deny that Plaintiffs disclosed to Raz any "products under development" and that there was any
20 "understanding of proceeding in a business relationship," and deny all other allegations in
21 Paragraph 11 of the Complaint.

22 12. Defendants admit that Plaintiffs began developing the "LIGHT MY SHED" product
23 after meeting with Raz, but deny that Plaintiffs alone conceived of the "LIGHT MY SHED" name,
24 or the family of "LIGHT MY _____" products, and deny all other allegations in Paragraph 12 of the
25 Complaint.

26 13. Defendants admit that Plaintiffs occasionally informed Raz of the development
27 efforts of the "LIGHT MY SHED" product and agreed to provide Raz with a working prototype of
28 the product, but deny all other allegations in Paragraph 13 of the Complaint.

1 14. Defendants admit that Plaintiffs met with Raz in San Diego on April 14, 2003, that
2 Plaintiffs provided Raz with a working prototype of a "LIGHT MY SHED" product, and that the
3 parties discussed Raz marketing the product to Home Depot, but deny all other allegations in
4 Paragraph 14 of the Complaint.

5 15. Defendants admit that Plaintiffs sent Raz a prototype of "LIGHT MY NUMBER"
6 and a simulation of "LIGHT MY STEP," but deny all other allegations in Paragraph 15 of the
7 Complaint.

8 16. Defendants deny that the "LIGHT MY SHED" product was or is Plaintiffs' product,
9 but admit all other allegations in Paragraph 16 of the Complaint.

10 17. Defendants deny that the "LIGHT MY SHED" product was or is Plaintiffs' product,
11 but admit all other allegations in Paragraph 17 of the Complaint.

12 18. Defendants admit that Raz and Plaintiffs exchanged correspondence on and between
13 August 12, 2003 and September 1, 2003, but deny Plaintiffs' characterizations of that
14 correspondence and deny all other allegations in Paragraph 18 of the Complaint.

15 19. Defendants admit that Raz and Plaintiffs exchanged correspondence on and between
16 September 3, 2003 and September 11, 2003, but deny Plaintiffs' characterizations of that
17 correspondence and deny all other allegations in Paragraph 19 of the Complaint.

18 20. Defendants admit that Raz and Plaintiffs met, that Raz applied for the identified
19 United States trademarks, and that Raz agreed to prepare a partnership agreement. Defendants deny
20 that Plaintiffs exhibited "surprise" or "shock" by Defendants' application for the trademarks, that
21 Raz made any assurances as alleged, and that the terms of to-be-prepared partnership agreement are
22 as characterized, and deny all other allegations in Paragraph 20 of the Complaint.

23 21. Defendants admit that a draft agreement was sent by Raz to Plaintiffs, but deny the
24 characterizations of the draft agreement and subsequent communications – including the use of
25 selective excerpts of correspondence. Defendants are without information sufficient to form a
26 belief as to Plaintiffs' state of mind, and on that basis deny all such allegations, and deny all other
27 allegations in Paragraph 21 of the Complaint.

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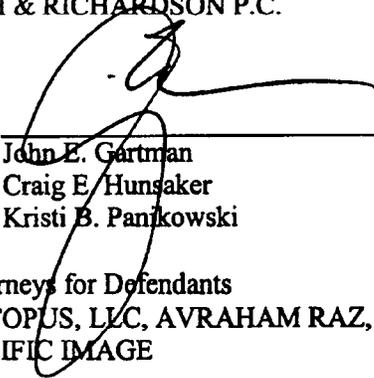
- 1 22. Defendants admit that Plaintiffs requested return of prototypes of Plaintiffs' solar-
- 2 powered lighting products, but deny all other allegations in Paragraph 22 of the Complaint.
- 3 23. Defendants admit to receiving written correspondence from Plaintiffs on January 21,
- 4 2004, but deny all other allegations in Paragraph 23 of the Complaint.
- 5 24. Defendants deny the allegations in Paragraph 24 of the Complaint.
- 6 25. Defendants deny the allegations in Paragraph 25 of the Complaint.
- 7 26. Defendants deny the allegations in Paragraph 26 of the Complaint.
- 8 27. Defendants incorporate all responses to Paragraphs 1 through 26, above.
- 9 28. Defendants admit that the cause of action is as specified, but deny all other
- 10 allegations in Paragraph 28 of the Complaint.
- 11 29. Defendants deny the allegations in Paragraph 29 of the Complaint.
- 12 30. Defendants deny the allegations in Paragraph 30 of the Complaint.
- 13 31. Defendants deny the allegations in Paragraph 31 of the Complaint.
- 14 32. Defendants deny the allegations in Paragraph 32 of the Complaint.
- 15 33. Defendants admit that Defendant Octopus filed United States trademark applications
- 16 in its name for the identified marks, but deny all other allegations in Paragraph 33 of the Complaint.
- 17 34. Defendants deny the allegations in Paragraph 34 of the Complaint.
- 18 35. Defendants deny the allegations in Paragraph 35 of the Complaint.
- 19 36. Defendants deny the allegations in Paragraph 36 of the Complaint.
- 20 37. Defendants incorporate all responses to Paragraphs 1 through 36, above.
- 21 38. Defendants admit that the cause of action purports to be as specified, but deny that
- 22 the Complaint states facts legally sufficient to constitute said cause of action.
- 23 39. Defendants deny the allegations in Paragraph 39 of the Complaint.
- 24 40. Defendants deny the allegations in Paragraph 40 of the Complaint.
- 25 41. Defendants deny the allegations in Paragraph 41 of the Complaint.
- 26 42. Defendants deny the allegations in Paragraph 42 of the Complaint.
- 27 43. Defendants deny the allegations in Paragraph 43 of the Complaint.
- 28 44. Defendants incorporate all responses to Paragraphs 1 through 43, above.

- 1 45. Defendants admit that the cause of action purports to be as specified, but deny that
2 the Complaint states facts legally sufficient to constitute said cause of action.
- 3 46. Defendants deny the allegations in Paragraph 46 of the Complaint.
- 4 47. Defendants deny the allegations in Paragraph 47 of the Complaint.
- 5 48. Defendants deny the allegations in Paragraph 48 of the Complaint.
- 6 49. Defendants deny the allegations in Paragraph 49 of the Complaint.
- 7 50. Defendants incorporate all responses to Paragraphs 1 through 49, above.
- 8 51. Defendants admit that the cause of action purports to be as specified, but deny that
9 the Complaint states facts legally sufficient to constitute said cause of action.
- 10 52. Defendants deny the allegations in Paragraph 52 of the Complaint.
- 11 53. Defendants deny the allegations in Paragraph 53 of the Complaint.
- 12 54. Defendants incorporate all responses to Paragraphs 1 through 53, above.
- 13 55. Defendants deny the allegations in Paragraph 55 of the Complaint.
- 14 56. Defendants admit to receiving written correspondence from Plaintiffs on January 21,
15 2004, but deny all other allegations in Paragraph 56 of the Complaint.
- 16 57. Defendants deny the allegations in Paragraph 57 of the Complaint.
- 17 58. Defendants admit that Defendant Octopus filed United States trademark applications
18 in its name for the identified marks, but deny all other allegations in Paragraph 58 of the Complaint.
- 19 59. Defendants admit that Defendant Octopus has manufactured and is marketing a
20 "LIGHT MY SHED" product, including to Home Depot, but deny all other allegations in Paragraph
21 59 of the Complaint.
- 22 60. Defendants deny the allegations in Paragraph 60 of the Complaint.
- 23 61. Defendants deny the allegations in Paragraph 61 of the Complaint.
- 24 62. Defendants deny the allegations in Paragraph 62 of the Complaint.
- 25 63. Defendants incorporate all responses to Paragraphs 1 through 62, above.
- 26 64. Defendants admit that the cause of action purports to be as specified, but deny that
27 the Complaint states facts legally sufficient to constitute said cause of action.
- 28 65. Defendants deny the allegations in Paragraph 65 of the Complaint.

1 reserve the right to assert additional affirmative defenses in the event discovery or further
2 proceedings indicate such affirmative defenses would be appropriate.

3 Dated: July 30, 2004

FISH & RICHARDSON P.C.

4
5 By: 

6 John E. Gartman
7 Craig E. Hunsaker
8 Kristi B. Panikowski

9 Attorneys for Defendants
10 OCTOPUS, LLC, AVRAHAM RAZ, AND
11 PACIFIC IMAGE
12
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1 **CERTIFICATE OF SERVICE**

2 I am employed in the County of San Diego. My business address is Fish & Richardson P.C.,
3 12390 El Camino Real, San Diego, California 92130. I am over the age of 18 and not a party to the
4 foregoing action.

5 I am readily familiar with the business practice at my place of business for collection and
6 processing of correspondence for personal delivery, for mailing with United States Postal Service,
7 for facsimile, and for overnight delivery by Federal Express, Express Mail, or other overnight
8 service.

9 On July 30, 2004, I caused a copy of the following document(s):

10 **ANSWER OF DEFENDANTS OCTOPUS, LLC, AVRAHAM RAZ AND PACIFIC
11 IMAGE**

12 to be served on the interested parties in this action by placing a true and correct copy thereof,
13 enclosed in a sealed envelope, and addressed as follows:

14 Frederick S. Berretta, Esq.
15 Gregory A. Hermanson, Esq.
16 Knobbe Martens Olson & Bear LLP
17 550 West C Street, Suite 1200
18 San Diego, CA 92101
19 Telephone: (619) 235-8550
20 Facsimile: (619) 235-0176

21 Plaintiffs
22 GAMASONIC LTD. and GAMA
23 SONIC INDUSTRIES (HK) LTD.

24 **FACSIMILE:** Such document was faxed to the facsimile transmission machine with
25 the facsimile machine number stated above. Upon completion of the
26 transmission, the transmitting machine issued a transmission report
27 showing the transmission was complete and without error.

28 I declare that I am employed in the office of a member of the bar of this Court at whose
direction the service was made.

I declare under penalty of perjury that the above is true and correct. Executed on July 30,
2004, at San Diego, California.

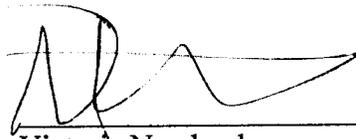


Kirsten Blue

10419221

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing Applicant's Motion for Suspension of Inter Partes Proceeding was served via first class mail, on the attorney for Petitioner, Frederick S. Berretta, Esq., Knobbe, Martens, Olsen & Bear, LLP, 550 West C Street, Suite 1200, San Diego, California 92101 on this 21st day of October, 2004.

A handwritten signature in black ink, appearing to read 'VN', is written over a horizontal line.

Victoria Newland
McColloch & Campitiello LLP
Attorney for Respondent