

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION



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SMART SOLAR INC. d/b/a SMART LIVING)	
HOME & GARDEN,)	
)	Civil Action No. 1:18-cv-3714
)	
Plaintiff,)	JURY TRIAL DEMANDED
)	
v.)	
)	
SKY BILLIARDS, INC. d/b/a BEST CHOICE)	
PRODUCTS,)	
)	
Defendant.)	
)	

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, Smart Solar Inc. d/b/a Smart Living Home & Garden, by and through its attorneys, complain of Defendant, Sky Billiards, Inc. d/b/a Best Choice Products as follows:

The Parties

1. Plaintiff, Smart Solar Inc. d/b/a Smart Living Home & Garden (“Smart Living”), is a corporation organized and existing under the laws of the State of Wyoming, having a place of business at 1203 Loyola Drive, Libertyville, Illinois 60048.

2. Smart Living is the exclusive licensee of the patent that is at issue in this action.

3. Upon information and belief, Defendant Sky Billiards, Inc. d/b/a Best Choice Products (“Best Choice Products”) is a corporation organized and existing under the laws of the State of California, having a place of business at 2010 Main Street, Suite 650, Irvine, California 92614.

4. Defendant is registered to do business in the State of Indiana under Business ID 2012033000225, and has a registered agent at One Indiana Square, 3500, Indianapolis, IN 46204.

5. Defendant has a distribution facility in Indiana. Upon information and belief, Defendant ships products from its Indiana facility and/or fulfils orders for products from the Indiana facility. Upon information and belief, Defendant's Indiana facility is located at 3374 Plainfield Road, Indianapolis, Indiana 46231.

6. Upon information and belief, Defendant had a distribution facility in Plainfield, Indiana and shipped products from the facility and/or fulfilled orders for products the facility.

Nature of the Action

7. This is a civil action for patent infringement. This action arises under the Patent Act, 35 U.S.C. §§ 101 et seq.

8. Smart Living has a civil action against Defendant for copyright infringement, trade dress infringement, false advertising, unfair competition, and violation of applicable, related state statutory and common law pending in the U.S. District Court for the Northern District of Illinois ("Illinois Action"). The Illinois Action is captioned *Smart Solar Inc. v. Sky Billiards, Inc.* 17-cv-4211 (N.D. Ill.).

Jurisdiction and Venue

9. This Court has jurisdiction over Defendant because, upon information and belief, Defendant has committed and/or threatened to commit acts of infringement in this District, and this action arises from those acts. Defendant transacts business in Indiana, at least by offering to sell, selling, and/or advertising birdbaths and fountains in such a way to reach customers in Indiana and this District. Defendant has purposefully availed itself of the privilege of conducting business in this District.

10. This Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. §§ 1331 and 1338.

11. Venue is proper in this District pursuant to 28 U.S.C. § 1400. Upon information and belief, Defendant has committed acts of patent infringement in this District, and Defendant has a regular and established place of business in this District for at least the reasons that Defendant is and has been offering to sell, selling, and/or importing into the United States birdbaths and fountains in this District that infringe the patent that is at issue, and Defendant's Indiana facility is a regular and established place of business.

12. Jurisdiction and venue are also proper in this District because Defendant admitted in the Illinois Action that jurisdiction and venue are proper in this District for Defendant's patent infringement. *Smart Solar, Inc. v. Sky Billiards, Inc.*, 17-cv-4211 Dkt. 25, Motion to Dismiss, page 5 (N.D. Ill.) (admitting Plaintiffs' patent claim should be transferred to this District). Defendant's admission of jurisdiction and venue is attached as Exhibit 1.

Smart Living's Birdbaths and Fountains

13. Smart Living is and has been engaged in the design, development, and sale of decorative birdbaths and fountains. Smart Living has developed a line of birdbaths and fountains with solar power water pumps for circulating water within the birdbaths and fountains.

14. Smart Living is and has been marketing and selling the Smart Living Country Gardens Solar Birdbath ("Smart Living Country Gardens Birdbath product") in Indiana^[JL1] and throughout the United States in interstate commerce continuously since at least 2005, including model 20622R01 (shown in Exhibit 2). Smart Living markets and sells the Smart Living Country Gardens Birdbath product through online marketplaces, such as Amazon.com, Walmart.com, Sears.com, Jet.com, Home Depot.com, and Hayneedle.com.

15. Smart Living is and has been marketing and selling the Smart Living Portsmouth Solar Bird Bath Fountain ("Smart Living Portsmouth Birdbath product") in Indiana and

throughout the United States in interstate commerce continuously since at least 2002, including model 20623R01 (shown in Exhibit 3). Smart Living markets and sells the Smart Living Portsmouth Birdbath product through online marketplaces, such as Hayneedle.com.

16. Smart Living is and has been marketing and selling the Smart Living Chatsworth 2-Tier Solar Fountain (“Smart Living Chatsworth Fountain product”) in Indiana and throughout the United States in interstate commerce continuously since at least 2005. Smart Living has marketed and sold multiple models of the Smart Living Chatsworth Fountain product, including 24260RM1 (On-Demand, Bronze) (shown in Exhibit 4) and 24220R01 (Weathered Stone). Smart Living markets and sells the Smart Living Chatsworth Fountain product through online marketplaces, such as such as Amazon.com, Walmart.com, Sears.com, Jet.com, and Hayneedle.com.

17. The Smart Living Country Gardens Birdbath product, the Smart Living Portsmouth Birdbath product, and the Smart Living Chatsworth Fountain product (Bronze) are shown below:



Country Gardens



Portsmouth Birdbath



Chatsworth Fountain

U.S. Patent No. 7,484,671

18. United States Patent No. 7,484,671 (“the ’671 Patent”), titled “Water Feature,” was duly and legally issued on February 3, 2009 to inventors Simon Howard Wigglesworth and Franz Roecker. A true and correct copy of the ’671 Patent is attached as Exhibit 5.

19. The ’671 Patent was assigned to Smart Solar Limited. Smart Solar Limited changed its name to Smart Garden Products Ltd (“Smart Garden”). Smart Garden owns the full rights, title, and interest in the ’671 Patent.

20. Smart Living is the exclusive licensee of the ’671 Patent.

21. Smart Living’s products that include the patented invention claimed in the ’671 Patent have been substantially and continuously marked with the ’671 Patent’s patent number.

Defendant’s Wrongful Conduct

22. Upon information and belief, Defendant makes, uses, offers to sell, sells, and/or imports into the United States a variety of consumer products, including birdbaths and fountains.

23. As described herein, Defendant’s birdbaths and fountains are knock-offs or imitations of Smart Living’s products and infringe the ’671 Patent.

24. Defendant has been accused of infringing intellectual property rights in multiple other cases. *PetEdge, Inc. v. Sky Billiards, Inc.*, 14-cv-14477 (D. Mass.) (patent for pet ramp); *Core Distribution, Inc. v. Sky Billiards, Inc.*, 15-cv-2103 (D. Minn.) (patent for ladder); *Ferrellgas, L.P. v. Best Choice Products*, 16-cv-259 (M.D.N.C.) (trademark); *Blue Rhino Global Sourcing, Inc. v. Best Choice Products*, 17-cv-69 (M.D.N.C.) (patent for heaters); *Smart Solar Inc. v. Sky Billiards, Inc.*, 17-cv-4211 (N.D. Ill.) (copyright and trademark for birdbaths, fountains, and lanterns); *Great American Duck Races, Inc. v. Sky Billiards, Inc.*, 17-cv-1943 (D. Ariz.) (copyright and trademark for toy duck); *P&P Imports LLC v. Best Choice*, 18-cv-358

(C.D. Cal.) (copyright and trademark for outdoor games); *Certain Height-Adjustable Desk Platforms and Components Thereof*, 337-TA-1125 (I.T.C.) (patent for desk). Upon information and belief, these cases show a pattern of Defendant's willful infringement of intellectual property rights.

A. Defendant's Copying of the Smart Living Country Gardens Birdbath Product

25. Defendant has been making, using, offering to sell, selling, and/or importing into the United States Item No. SKY3258 Best Choice Products Solar Birdbath Fountain With Integrated Solar Panel ("Best Choice SKY3258 Birdbath product") (shown in Exhibit 6).

26. Upon information and belief, Defendant has been making, using, offering to sell, selling, and/or importing into the United States the Best Choice SKY3258 Birdbath product through its own website (www.bestchoiceproducts.com) and/or through online marketplaces, such as Amazon.com, eBay.com, Walmart.com, and/or Sears.com.

27. Upon information and belief, the Best Choice SKY3258 Birdbath product is and/or was advertised and promoted through the same or overlapping media as the Smart Living Country Gardens Birdbath product and in the same channels of trade.

28. A side-by-side comparison of the Smart Living Country Gardens Birdbath product (left side) and the Best Choice SKY3258 Birdbath product (right side) is shown below:



**Smart Living Country Gardens
Birdbath product**

**Best Choice SKY3258
Birdbath product**

Additional side-by-side comparisons of the Smart Living Country Gardens Birdbath product and the Best Choice SKY3258 Birdbath product are shown in Exhibit 7.

29. Defendant's making, using, offering to sell, selling, and/or importing into the United States the Best Choice SKY3258 Birdbath product—which, as seen above, appears to be a knock-off or imitation of the Smart Living Country Gardens Birdbath product—has been damaging Smart Living's reputation as a retailer of high-quality birdbaths and fountains and its standing in the marketplace. In addition, Defendant's sales of the Best Choice SKY3258 Birdbath product, which retails at a lower price point than the Smart Living Country Gardens Birdbath product, has been causing Smart Living to suffer lost profits and price erosion.

B. Defendant's Copying of the Smart Living Portsmouth Birdbath Product

30. Defendant has been making, using, offering to sell, selling, and/or importing into the United States Item No. SKY3151 Best Choice Products Solar Birdbath Fountain With LED

Lights And Integrated Solar Panel (“Best Choice SKY3151 Birdbath product”) (shown in Exhibit 8).

31. Upon information and belief, Defendant has been making, using, offering to sell, selling, and/or importing into the United States the Best Choice SKY3151 Birdbath product through its own website and/or through online marketplaces, such as Amazon.com, eBay.com, Walmart.com, and/or Sears.com.

32. Upon information and belief, the Best Choice SKY3151 Birdbath product is and/or was advertised and promoted through the same or overlapping media as the Smart Living Portsmouth Birdbath product and in the same channels of trade.

33. A side-by-side comparison of the Smart Living Portsmouth Birdbath product and the Best Choice SKY3151 Birdbath product is shown below:



**Smart Living Portsmouth
Birdbath product**

**Best Choice SKY3151
Birdbath product**

Additional side-by-side comparisons of the Smart Living Portsmouth Birdbath product and the Best Choice SKY3151 Birdbath product are shown in Exhibit 9.

34. Defendant's making, using, offering to sell, selling, and/or importing into the United States the Best Choice SKY3151 Birdbath product—which, as seen above, appears to be a knock-off or imitation of the Smart Living Portsmouth Birdbath product—has been damaging Smart Living's reputation as a retailer of high-quality birdbaths and fountains and its standing in the marketplace.

C. Defendant's Copying of the Smart Living Chatsworth Fountain Product

35. Defendant is and has been making, using, offering to sell, selling, and/or importing into the United States Item No. SKY2532 Best Choice Products Solar Power 2 Tier Weathered Stone Bird Bath Fountain Gray ("Best Choice SKY2532 Fountain product") (shown in Exhibit 10).

36. Upon information and belief, Defendant is and has been making, using, offering to sell, selling, and/or importing into the United States the Best Choice SKY2532 Fountain product through its own website and/or through online marketplaces, such as Amazon.com, eBay.com, Walmart.com, and/or Sears.com.

37. Upon information and belief, the Best Choice SKY2532 Fountain product is and/or was advertised and promoted through the same or overlapping media as the Smart Living Chatsworth Fountain product and in the same channels of trade.

38. A side-by-side comparison of the Smart Living Chatsworth Fountain product (Bronze, left side) and the Best Choice SKY2532 Fountain product (right side) is shown below:



**Smart Living Chatsworth
Fountain product**

**Best Choice SKY2532
Fountain product**

Additional side-by-side comparisons of the Smart Living Chatsworth Fountain product (Bronze) and the Best Choice SKY2532 Fountain product are shown in Exhibit 11.

39. Defendant's making, using, offering to sell, selling, and/or importing into the United States the Best Choice SKY2532 Fountain product—which, as seen above, appears to be a knock-off or imitation of the Smart Living Chatsworth Fountain product—is damaging Smart Living's reputation as a retailer of high-quality birdbaths and fountains and its standing in the marketplace. In addition, Defendant's sales of the Best Choice SKY2532 Fountain product, which retails at a lower price point than the Smart Living Chatsworth Fountain product (Bronze), has been causing Smart Living to suffer lost profits and price erosion.

D. Defendant's Other Infringing Fountain Product

40. Defendant is and/or has been making, using, offering to sell, selling, and/or importing into the United States Item No. SKY3150 Best Choice Products 2-Tier Solar Bird

Bath Fountain With LED Lights And Integrated Solar Panel (“Best Choice SKY3150 Fountain product”) (shown in Exhibit 12).

41. Upon information and belief, Defendant is and has been using, offering to sell, selling, and/or importing into the United States the Best Choice SKY3150 Birdbath product through its own website and/or through online marketplaces, such as Amazon.com, eBay.com, Walmart.com, and/or Sears.com.

42. Long after the introduction and initial sales of the Smart Living Country Gardens Birdbath product, the Smart Living Portsmouth Birdbath product, and the Smart Living Chatsworth Fountain product, Defendant began selling the Best Choice SKY3258 Birdbath product, the Best Choice SKY3151 Birdbath product, the Best Choice SKY2532 Fountain product, the Best Choice SKY3150 Fountain product, to the same classes of purchasers, in Indiana and in interstate commerce, to directly compete with Smart Living.

43. Plaintiff has not authorized or licensed Defendant to use any of Plaintiff’s intellectual property, including the ’671 Patent. Defendant has no right to use the ’671 Patent.

44. On February 22, 2017, Smart Living sent Defendant a letter which apprised Defendant of the ’671 Patent. Smart Living never received a response to the letter before the Illinois Action.

45. On September 21, 2018, Smart Living and the Defendant engaged in a mediation with a private mediator with respect to the Illinois Action and Defendant’s patent infringement. No settlement was reached.

COUNT ONE
Federal Patent Infringement

46. Smart Living asserts infringement under the Patent Act, 35 U.S.C. § 101 et seq. Smart Living incorporates paragraphs 1 to 45 as if set forth in full.

47. Defendant has directly infringed and continues to directly infringe one or more claims of the '671 Patent, including for example (but not limited to) at least Claims 1-4, 6, 8, and 10-11, by making, using, selling, offering to sell, and/or importing into the United States, without license or authority, Defendant's birdbaths and fountains, including, but not limited to at least the Best Choice SKY3258 Birdbath product, the Best Choice SKY3151 Birdbath product, the Best Choice SKY2532 Fountain product, and the Best Choice SKY3150 Fountain product ("Accused Products"), without Smart Living's authority, in violation of 35 U.S.C. § 271(a).

48. Defendant has and/or continues to promote, advertise, and instruct customers and potential customers about the Accused Products and how to use the Accused Products, including infringing uses. Defendant's promotion, advertising, and instruction efforts include, at a minimum, its website (*see* Exhibits 6, 8, 10, and 12) and the production and distribution of instruction manuals for each of the Accused Products (shown in Exhibit 13 (the Best Choice SKY3258 Birdbath product), Exhibit 14 (the Best Choice SKY3151 Birdbath product), Exhibit 15 (the Best Choice SKY2532 Fountain product), and Exhibit 16 (the Best Choice SKY3150 Fountain product)).

49. At least one person has demonstrated infringing uses of the Best Choice SKY2532 Fountain product and the Best Choice SKY3150 Fountain product in videos posted to YouTube®. *See* <https://www.youtube.com/watch?v=KdTCSWIh7Qw> (Published Feb. 20, 2017) (the Best Choice SKY3150 and SKY2532 Fountain products) (shown in Exhibit 17);

<https://www.youtube.com/watch?v=TrGhTK5mbDw&t=1s> (Published May 27, 2016) (the Best Choice SKY2532 Fountain product) (shown in Exhibit 18).

50. As shown in Exhibits 6-18, each of the Accused Products includes all of the elements of at least Claims 1-4 and 6 of the '671 Patent, either literally or equivalently. Further, the Best Choice SKY3258 Birdbath product and the Best Choice SKY3151 Birdbath product each include all of the elements of Claims 8 and 10-11 of the '671 Patent, either literally or equivalently.

51. For example, Claim 1 recites:

A water feature comprising:

(a) a vessel for containing water;

(b) an electrically powered submersible water pump within the vessel for pumping water within the vessel to an outlet of the water feature; and

(c) a solar panel arranged to provide electrical power to said water pump;

wherein the solar panel is disposed within said water vessel above the water pump and so as to be beneath the water level in the vessel in use; and wherein an insert carrying the solar panel separates the vessel into an upper water containing portion and a lower water containing portion; the water pump is positioned in the lower water containing portion of the vessel below the insert carrying the solar panel; and a return path is defined by the insert for water from the upper water containing portion of the vessel to the lower water containing portion of the vessel.

52. The SKY3258 Birdbath product is a water feature. *See, e.g.*, Exhibits 6, 13. The SKY3258 Birdbath product includes a vessel for containing water. *See, e.g.*, Exhibits 6, 13. The SKY3258 Birdbath product includes an electrically powered submersible water pump within the

vessel for pumping water within the vessel to an outlet of the water feature. *See, e.g.*, Exhibits 6, 13. The SKY3258 Birdbath product includes a solar panel arranged to provide electrical power to said water pump. *See, e.g.*, Exhibits 6, 13. The instruction manual, for example, describes the product as a “Solar Birdbath” that includes a “reservoir” and a “solar pump.” Exhibit 13.

53. In the SKY3258 Birdbath product, the solar panel is disposed within said water vessel above the water pump and so as to be beneath the water level in the vessel in use, where an insert carrying the solar panel separates the vessel into an upper water containing portion and a lower water containing portion, the water pump is positioned in the lower water containing portion of the vessel below the insert carrying the solar panel, and a return path is defined by the insert for water from the upper water containing portion of the vessel to the lower water containing portion of the vessel. *See, e.g.*, Exhibits 6, 13. Defendant’s website, for example, states “This fountain recycles water from a discreet hidden reservoir.” Exhibit 6. Further, the instruction manual, for example, states “Pour enough water into the fountain birdbath and make sure the pump is fully submerged in water when placing the solar pump on the birdbath.” Exhibit 13.

54. Accordingly, the SKY3258 Birdbath product includes each and every element of Claim 1, either literally or equivalently.

55. For similar reasons discussed in paragraphs 52 and 53, the SKY3151 Birdbath product includes each and every element of Claim 1, either literally or equivalently. *See, e.g.*, Exhibits 8, 14.

56. The SKY2532 Fountain product is a water feature. *See, e.g.*, Exhibits 10, 15. The SKY2532 Fountain product includes a vessel for containing water. *See, e.g.*, Exhibits 10, 15. The SKY2532 Fountain product includes an electrically powered submersible water pump within

the vessel for pumping water within the vessel to an outlet of the water feature. *See, e.g.*, Exhibits 10, 15. The SKY2532 Fountain product includes a solar panel arranged to provide electrical power to said water pump. *See, e.g.*, Exhibits 10, 15. The instruction manual, for example, describes the product as a “Solar Birdbath” that includes a “reservoir” and a “solar pump.” Exhibit 15.

57. In the SKY2532 Fountain product, the solar panel is disposed within said water vessel above the water pump and so as to be beneath the water level in the vessel in use, where an insert carrying the solar panel separates the vessel into an upper water containing portion and a lower water containing portion, the water pump is positioned in the lower water containing portion of the vessel below the insert carrying the solar panel, and a return path is defined by the insert for water from the upper water containing portion of the vessel to the lower water containing portion of the vessel. *See, e.g.*, Exhibits 10, 15. Defendant’s website, for example, states “It features 2 bowls; the top bowl has 4 indentations for the water to evenly flow into the larger bowl. The water spouts from the top through 1 of 4 spout types that you can choose from. It’s then discreetly recycled and filtered by a concealed water pump.” Exhibit 10. Further, the instruction manual, for example, states “Pour enough water into the fountain birdbath and make sure the pump is fully submerged in water when place the solar pump on the birdbath.” Exhibit 15. As another example, the videos described in paragraph 49 show in the SKY2532 Fountain product a return path is defined by the insert for water from the upper water containing portion of the vessel to the lower water containing portion of the vessel. Exhibits 17, 18 (Exhibit 18 at 0:13-19: “It holds about 2.5 gallons of water, and it just keeps recycling that water.”).

58. For similar reasons discussed in paragraphs 56 and 57, the SKY3150 Fountain product includes each and every element of Claim 1, either literally or equivalently. *See, e.g.*, Exhibit 12, 16-17.

59. Defendant has also indirectly infringed at least Claims 1-4, 6, 8, and 10-11 of the '671 Patent by knowingly and actively inducing others to infringe these claims by making, using, selling, offering to sell, and/or importing into the United States the Accused Patent Products, in violation of 35 U.S.C. § 271(b). For example, Defendant had actual knowledge of the '671 Patent at least as of February 22, 2017, and Defendant has induced infringement of least Claim 1 by instructing its customers through its instruction manuals and website to use each of the Accused Products in an infringing manner. *See* paragraphs 52-58 *supra* and Exhibits 6, 8, 10, and 12-16.

60. Defendant had actual knowledge of the '671 Patent at least as of February 22, 2017. And yet, even with full knowledge of the '671 Patent, Defendant has continued to commit acts of infringement and has failed to cease its infringing activities. Defendant's infringement has been, and continues to be, willful and deliberate.

61. Defendant's acts described in this Count have caused, and will continue to cause unless restrained by this Court, serious, irreparable injury for which Smart Living has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests:

A. A judgment that Defendant has infringed and is infringing at least Claims 1-4, 6, 8, and 10-11 of the '671 Patent;

B. A judgment that Defendant's infringement was and is willful;

C. For a permanent injunction restraining Defendant, its officers, agents, servants, employees, attorneys and all other persons in active concert or participation with it, who receive actual notice of the Order, from: Manufacturing, having manufactured, importing, selling, offering to sell, or distributing the Accused Products or any other infringing birdbaths and fountains.

D. That Smart Living be awarded monetary relief in an amount to be determined by the Court, including:

i. Damages adequate to compensate Smart Living for Defendant's infringement of the '671 Patent, and in no event less than a reasonable royalty for Defendant's acts of infringement; and that such damages be enhanced due to Defendant's willful infringement.

ii. Smart Living's reasonable attorneys' fees connected with this action, pursuant to 35 U.S.C. § 285;

iii. Smart Living's costs connected with this action; and

vi. Pre-judgment interest from the date the infringement began and post-judgment interest at the maximum rate permitted by law.

E. Such other and further relief as the Court may deem just and reasonable.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury as to all issues so triable.

Respectfully submitted,

Date: November 26, 2018

/s/ DRAFT

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