UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Stephen G. Larson and the assigned discovery Magistrate Judge is Victor B. Kenton.

The case number on all documents filed with the Court should read as follows:

EDCV09- 955 SGL (VBKx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

---

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

[ ] **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

[ ] **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

[X] **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MAG INSTRUMENT, INC., a California corporation,

v. PLAINTIFF,

BRANDERS.COM, INC., a Delaware corporation, and DOES 1-10,

DEFENDANTS.

CASE NUMBER

CV- EDCV09-0955 SGL VBK

SUMMONS

TO: THE ABOVE-NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED and required to file with this court and serve upon plaintiff's attorney

Robert C. Weiss , whose address is:

JONES DAY
555 South Flower Street, 50th Floor
Los Angeles, CA 90071
(213) 489-3939

An answer to the ☒ COMPLAINT, ☐ _____ AMENDED COMPLAINT,
(1", 2", etc.)
☐ COUNTERCLAIM, ☐ CROSS-CLAIM which is herewith served upon you within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

CLERK, U. S. DISTRICT COURT

DATE: MAY 18 2009

By LA'REE HORN
Deputy Clerk

(SEAL OF THE COURT)

CENTRAL DIST. OF CALIF. 1192

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UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself ☐)
MAG INSTRUMENT, INC., a California corporation

DEFENDANTS
BRANDERS.COM, INC., a Delaware corporation, and DOES 1-10

(b) County of Residence of First Listed Plaintiff (Except in U.S. Plaintiff Cases):
San Bernardino

County of Residence of First Listed Defendant (In U.S. Plaintiff Cases Only):

(c) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)
Robert C. Weiss
JONES DAY
555 South Flower Street, 50th Floor
Los Angeles, CA 90071
(213) 489-3939

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.)

☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)

☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant.)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business in this State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business in Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. ORIGIN (Place an X in one box only.)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☐ Yes ☒ No ☒ **MONEY DEMANDED IN COMPLAINT: $** To Be Determined

VI. 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.)
Patent Infringement – 35 United States Code, Section 271, et seq.
Trademark Infringement – 15 United Sates Code, Section 1051, et seq.

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES
☐ 400 State Reapportionment
☐ 410 Antitrust
☐ 430 Banks and Banking
☐ 450 Commerce/ICC Rates/etc.
☐ 460 Deportation
☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 480 Consumer Credit
☐ 490 Cable/Sat TV
☐ 810 Selective Service
☐ 850 Securities/Commodities /Exchange
☐ 875 Customer Challenge 12 USC 3410
☐ 891 Agricultural Act
☐ 892 Economic Stabilization Act
☐ 893 Environmental Matters
☐ 894 Energy Allocation Act
☐ 895 Freedom of Info. Act
☐ 900 Appeal of Fee Determination Under Equal Access to Justice
☐ 950 Constitutionality of State Statutes
☐ 890 Other Statutory Actions

CONTRACT
☐ 110 Insurance
☐ 120 Marine
☐ 130 Miller Act
☐ 140 Negotiable Instrument
☐ 150 Recovery of Overpayment & Enforcement of Judgment
☐ 151 Medicare Act
☐ 152 Recovery of Defaulted Student Loan (Excl. Veterans)
☐ 153 Recovery of Overpayment of Veteran's Benefits
☐ 160 Stockholders' Suits
☐ 190 Other Contract
☐ 195 Contract Product Liability
☐ 196 Franchise

REAL PROPERTY
☐ 210 Land Condemnation
☐ 220 Foreclosure
☐ 230 Rent Lease & Ejectment
☐ 240 Torts to Land
☐ 245 Tort Product Liability
☐ 290 All Other Real Property

TORTS PERSONAL INJURY
☐ 310 Airplane
☐ 315 Airplane Product Liability
☐ 320 Assault, Libel & Slander
☐ 330 Fed. Employers' Liability
☐ 340 Marine
☐ 345 Marine Product Liability
☐ 350 Motor Vehicle
☐ 355 Motor Vehicle Product Liability
☐ 360 Other Personal Injury
☐ 362 Personal Injury-Med Malpractice
☐ 365 Personal Injury-Product Liability
☐ 368 Asbestos Personal Injury Product Liability

TORTS PERSONAL PROPERTY
☐ 370 Other Fraud
☐ 371 Truth in Lending
☐ 380 Other Personal Property Damage
☐ 385 Property Damage Product Liability

BANKRUPTCY
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CIVIL RIGHTS
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☐ 443 Housing/Accommodations
☐ 444 Welfare
☐ 445 American with Disabilities - Employment
☐ 446 American with Disabilities - Other
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PRISONER PETITIONS
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☐ 550 Civil Rights
☐ 555 Prison Condition

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☐ 620 Other Food & Drug
☐ 625 Drug Related Seizure of Property 21 USC 881
☐ 630 Liquor Laws
☐ 640 R.R. &Truck
☐ 650 Airline Regs
☐ 660 Occupational Safety /Health
☐ 690 Other

LABOR
☐ 710 Fair Labor Standards Act
☐ 720 Labor/Mgmt. Relations
☐ 730 Labor/Mgmt. Reporting & Disclosure Act
☐ 740 Railway Labor Act
☐ 790 Other Labor Litigation
☐ 791 Empl. Ret. Inc. Security Act

PROPERTY RIGHTS
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☒ 830 Patent
☐ 840 Trademark

SOCIAL SECURITY
☐ 861 HIA (1395ff)
☐ 862 Black Lung (923)
☐ 863 DIWC/DIWW (405(g))
☐ 864 SSID Title XVI
☐ 865 RSI (405(g))

FEDERAL TAX SUITS
☐ 870 Taxes (U.S. Plaintiff or Defendant)
☐ 871 IRS-Third Party 26 USC 7609

VIII(a). IDENTICAL CASES: Has this action been previously filed and dismissed, remanded or closed? ☒ No ☐ Yes
If yes, list case number(s):

FOR OFFICE USE ONLY: Case Number:

EDCV09-0955

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

AFTER COMPLETING THE FRONT SIDE OF FORM JS-44C, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(b). RELATED CASES: Have any cases been previously filed that are related to the present case? ☐ No ☒ Yes

If yes, list case number(s): See Notice Of Related Cases

Civil cases are deemed related if a previously filed case and the present case:
(Check all boxes that apply)
- ☐ A. Appear to arise from the same or substantially identical transactions, happenings, or events;
- ☐ B. Involve the same or substantially the same parties or property;
- ☒ C. Involve the same patent, trademark or copyright;
- ☐ D. Call for determination of the same or substantially identical questions of law, or
- ☐ E. Likely for other reasons may entail unnecessary duplication of labor if heard by different judges.

IX. VENUE: List the California County, or State if other than California, in which **EACH** named plaintiff resides (Use an additional sheet if necessary)
☐ Check here if the U.S. government, its agencies or employees is a named plaintiff.

San Bernardino

List the California County, or State if other than California, in which **EACH** named defendant resides. (Use an additional sheet if necessary).
☐ Check here if the U.S. government, its agencies or employees is a named defendant.

Los Angeles

List the California County, or State if other than California, in which **EACH** claim arose. (Use an additional sheet if necessary)
Note: In land condemnation cases, use the location of the tract of land involved.

Los Angeles

X. SIGNATURE OF ATTORNEY (OR PRO PER): Chris A. Kitt **Date** May 18, 2009

Notice to Counsel/Parties: The CV-71 (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. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

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Attorneys for Plaintiff
MAG INSTRUMENT, INC.

FILED
2009 MAY 18 AM 11:46
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES
BY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

EDCV09-0955 SGL VBKx

MAG INSTRUMENT, INC., a California corporation,

Plaintiff,

v.

BRANDERS.COM, INC., a Delaware corporation, and DOES 1-10,

Defendants.

Case No.

COMPLAINT FOR PATENT INFRINGEMENT, FEDERAL TRADEMARK INFRINGEMENT, FEDERAL FALSE DESIGNATION OF ORIGIN, FEDERAL TRADEMARK DILUTION, CALIFORNIA TRADEMARK DILUTION, COMMON LAW TRADEMARK INFRINGEMENT, AND COMMON LAW UNFAIR COMPETITION

DEMAND FOR JURY TRIAL

COPY

Plaintiff, Mag Instrument, Inc. ("Mag Instrument"), files this Complaint against defendants, Branders.com, Inc. ("Branders") and DOES 1-10, and demanding a trial by jury, alleges as follows:

JURISDICTION AND VENUE

1. The FIRST cause of action is for patent infringement, which arises under the patent laws of the United States, Title 35, United States Code. This Court has original jurisdiction over the subject matter of this cause of action pursuant to the provisions of 28 U.S.C. §§1331 and 1338(a).

2. This Court also has original jurisdiction over the subject matter of the SECOND through FOURTH causes of action pursuant to the provisions of 28 U.S.C. §§1331 and 1338(a), as well as 15 U.S.C. §1121, because these causes of action are for federal trademark infringement, federal false designation of origin, and federal trademark dilution, respectively, which arise under the Trademark (Lanham) Act of 1946, as amended, 15 U.S.C. §1051, et seq.

3. This Court also has original jurisdiction over the subject matter of the FIFTH through EIGHTH causes of action pursuant to the provisions of 28 U.S.C. §1338(b), because these causes of action are for California unfair competition under California common law and Business and Professions Code §17200, California trademark dilution under Business and Professions Code §14247, and California trademark infringement in violation of California common law, all of which are claims for unfair competition under California law that are joined with a substantial and related claim under the trademark laws of the United States.

4. Further, this Court has supplemental jurisdiction over the FIFTH through EIGHTH causes of action, which assert state law claims, pursuant to the provisions of 28 U.S.C. §1367(a). These state law claims are so related to the other claims in this case, over which this Court has original jurisdiction, that they form a part of the same case or controversy under Article III of the United States Constitution.

5. Upon information and belief, venue is proper under 28 U.S.C. §§1391(b) and 1391(c), as well as 28 U.S.C. §1400(b).

THE PARTIES

6. Mag Instrument is a corporation incorporated under the laws of the State of California and has its principal place of business at 2001 South Hellman Avenue, Ontario, California 91761.

7. Upon information and belief, Branders is a corporation incorporated under the laws of the State of Delaware and has its principal place of business at 1850 Gateway Drive, Suite 400, San Mateo, California 94404.

8. Upon information and belief, Branders resides in this district under 28 U.S.C. §1391. In particular, Branders does business in this district and a substantial part of the events giving rise to the claims in this case occurred in this district. Branders has also introduced infringing products into the stream of commerce knowing that they would be sold in this district.

9. Mag Instrument is not fully informed regarding the involvement of the defendants sued herein under the fictitious names DOES 1-10, inclusive (the "Doe Defendants"). Upon information and belief, the Doe Defendants are involved with Branders and/or the activities alleged herein. Mag Instrument has thus sued the Doe Defendants by their fictitious names. Mag Instrument will seek leave to amend this Complaint to allege the true names, capacities, and residences of the Doe Defendants when their involvement is ascertained. Branders and the Doe Defendants are hereinafter collectively referred to as the "Defendants."

10. Mag Instrument is informed and believes, and thereupon alleges, that the Doe Defendants, and each of them, are responsible in some manner, by their acts and/or omissions, for the matters alleged herein. Mag Instrument is further informed and believes, and thereupon alleges, that the Doe Defendants, and each of them, at all material times herein alleged, were the agents, servants, and/or

employees of the other Defendants, or otherwise participated in the improper conduct alleged herein.

FIRST CAUSE OF ACTION

(Patent Infringement – 35 U.S.C. §271, et seq.)

(United States Design Patent No. D530,439)

11. Mag Instrument repeats, realleges, and incorporates by reference, as though fully set forth herein, the allegations contained in paragraphs 1-10, above.

12. On October 17, 2006, United States Design Patent No. D530,439 ("the '439 patent"), entitled "Flashlight," was duly and legally issued in the name of Anthony Maglica. By virtue of proper assignment, Mag Instrument has acquired and duly owns all right, title, and interest in this patent, including the right to sue and recover for infringement thereof. A copy of the '439 patent is attached hereto as **Exhibit 1**.

13. Upon information and belief, Defendants have notice of Mag Instrument's rights in the '439 patent.

14. Defendants have infringed the '439 patent by manufacturing, using, importing, offering to sell, and/or selling flashlights embodying one or more of the inventions claimed therein within the United States, or by supplying infringing products to others to use, thereby inducing and/or contributing to the infringement of the '439 patent.

15. Defendants' continuing infringement has inflicted and, unless restrained by this Court, will continue to inflict great and irreparable harm upon Mag Instrument. Mag Instrument has no adequate remedy at law. Mag Instrument is entitled to preliminary and permanent injunctions enjoining Defendants from engaging in further acts of infringement.

16. As a direct and proximate result of the foregoing acts of Defendants, Mag Instrument has suffered, and is entitled to, monetary damages in an amount not yet determined. Mag Instrument is also entitled to its costs of suit and interest.

17. Upon information and belief, Defendants' acts were in conscious and willful disregard for Mag Instrument's rights, and the resulting damage to Mag Instrument is such as to warrant the trebling of damages in order to provide just compensation.

SECOND CAUSE OF ACTION

(Federal Trademark Infringement–SSOA of the MINI MAGLITE® Flashlight)

(15 U.S.C. §1051, et seq.)

18. Mag Instrument repeats, realleges, and incorporates by reference, as though fully set forth herein, the allegations contained in paragraphs 1-10, above.

19. For many years, and prior to the acts of Defendants complained of herein, Mag Instrument has continuously manufactured, advertised, assembled, marketed, sold, and distributed, in interstate and international commerce, high-quality machined, anodized aluminum, high-intensity, adjustable beam flashlights, including, but not limited to, a line of flashlights under the distinctive trademark MINI MAGLITE®. These flashlights are also characterized by their distinctive shape, style, and overall appearance ("SSOA"), which is also a trademark of Mag Instrument. These flashlights are further characterized by their outstanding quality, extraordinary design, materials of construction, workmanship, performance, reliability, durability, and outstanding optical features.

20. The SSOA of the MINI MAGLITE® flashlight is inherently distinctive, non-functional, and has acquired secondary meaning in that it has come to be associated by the trade and consuming public exclusively with Mag Instrument and, as a result, has come to signify Mag Instrument as the source of flashlights bearing the same or similar characteristics.

21. Mag Instrument has obtained, and is the owner of, a federal registration on the SSOA of the MINI MAGLITE® flashlight (the "SSOA trademark"). A copy of this federal registration, United States Trademark Registration Number 2,074,795, is attached hereto as **Exhibit 2**. This registration

remains in full force and effect, and has become incontestable. At all relevant times, Mag Instrument has consistently and continuously displayed the registration symbol "®" or its equivalent since this trademark has become registered.

22. Mag Instrument has manufactured, advertised, marketed, and promoted its flashlights and related products so that the public associates them with the idea of outstanding quality, extraordinary design, materials, workmanship, performance, reliability, durability, and outstanding optical features. In furtherance of that goal, Mag Instrument usually displays its products and the associated trademarks in its advertising and promotional presentations. To date, Mag Instrument has spent several millions of dollars advertising and promoting its MINI MAGLITE® flashlights, as well as other flashlights and related products, and has had over a billion dollars in sales of its flashlights and related products.

23. Mag Instrument's flashlights are manufactured exclusively in the United States of America. Moreover, Mag Instrument's flashlights are sold with a warranty, backed up by a full-service staff of full-time employees at the Ontario, California facility. Mag Instrument also employs several people in its customer service department located at Mag Instrument's headquarters.

24. Defendants have manufactured, advertised, distributed, marketed, imported, promoted, offered for sale, and/or sold commercially in interstate commerce a certain flashlight, one of which is shown in **Exhibit 3** (the "Branders Aluminum" flashlight).

25. The Branders Aluminum flashlight bears a shape, style, and overall appearance that is the same as, or confusingly similar to, the SSOA of Mag Instrument's MINI MAGLITE® flashlight. Defendants' manufacture, advertising, distribution, marketing, importation, promotion, offer for sale, and/or sale of the Branders Aluminum flashlight, having a shape, style, and overall appearance that is the same as or confusingly similar to that of Mag Instrument's MINI MAGLITE® flashlight, is likely to cause confusion and, upon information and belief, has caused

confusion that the Branders Aluminum flashlight is made by, sponsored by, or affiliated with Mag Instrument.

26. Defendants' use of the shape, style, and overall appearance of the Branders Aluminum flashlight is without the permission of Mag Instrument. This use is with the knowledge that the shape, style, and overall appearance of the Branders Aluminum flashlight is confusingly similar to Mag Instrument's SSOA trademark, which has previously been and is being used by Mag Instrument.

27. Upon information and belief, Defendants had knowledge of Mag Instrument's MINI MAGLITE® flashlight and the considerable commercial success it has achieved. Mag Instrument is informed and believes, and thereon alleges, that Defendants willfully and with conscious disregard for Mag Instrument's product configuration trademark in the MINI MAGLITE® flashlight manufactured, advertised, distributed, marketed, imported, promoted, offered for sale, and/or sold the Branders Aluminum flashlight that is a colorable imitation of Mag Instrument's product configuration trademark.

28. The above-recited acts by Defendants constitute trademark infringement of Mag Instrument's federally registered trademark in violation of the Lanham Act, 15 U.S.C. §1051, et seq., to the substantial and irreparable injury of the public and of Mag Instrument's business reputation and goodwill.

29. As a result of their acts, Defendants have been, and will continue to be, unjustly enriched by profits that Defendants have made in connection with the manufacture, advertising, distribution, marketing, importation, promotion, offer for sale, and/or sale of the Branders Aluminum flashlight having a shape, style, and overall appearance that is confusingly similar to the SSOA of the MINI MAGLITE® flashlight.

30. Defendants' continuing infringement has inflicted and, unless restrained by this Court, will continue to inflict great and irreparable harm upon Mag Instrument. Mag Instrument has no adequate remedy at law. Mag Instrument

is entitled to preliminary and permanent injunctions enjoining Defendants from engaging in further acts of infringement.

31. As a direct and proximate result of the foregoing acts of Defendants, Mag Instrument has suffered, and is entitled to, monetary damages in an amount not yet determined. Mag Instrument is also entitled to its attorneys' fees and costs of suit herein.

32. Upon information and belief, Defendants' acts were in conscious and willful disregard for Mag Instrument's rights to the SSOA trademark, and the resulting damage to Mag Instrument is such as to warrant the trebling of damages in order to provide just compensation.

THIRD CAUSE OF ACTION

(False Designation of Origin – SSOA of the MINI MAGLITE® Flashlight)

(15 U.S.C. §1125(a))

33. Mag Instrument repeats, realleges, and incorporates by reference, as though fully set out herein, the allegations contained in paragraphs 1-10 and 19-32, above.

34. Mag Instrument owns and enjoys common law trademark rights in the SSOA of the MINI MAGLITE® flashlight, which rights are superior to any rights that Defendants may claim in the product configuration with respect to the Branders Aluminum flashlight. The SSOA for the MINI MAGLITE® flashlight is inherently distinctive, non-functional, and has acquired secondary meaning with the trade and consuming public and/or has become distinctive in the minds of purchasers in that this SSOA for flashlights is associated with Mag Instrument, as evidenced in part by the grant of United States Trademark Registration No. 2,074,795 therefor.

35. Upon information and belief, Defendants have used and are using the shape, style, and overall appearance of the Branders Aluminum flashlight to sell, market, and promote their flashlight with the intent of passing off and confusing the

public into believing that the Branders Aluminum flashlight is the same as, originates with, and/or is sponsored by Mag Instrument.

36. By manufacturing, advertising, distributing, marketing, importing, promoting, offering for sale, and/or selling the Branders Aluminum flashlight, having a shape, style, and overall appearance that is confusingly similar to that of Mag Instrument's MINI MAGLITE® flashlight, Defendants have infringed on Mag Instrument's federal and common law trademark rights in the SSOA of the MINI MAGLITE® flashlight in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a). Defendants' above-recited acts further constitute false designation of origin, false description, false representation, and unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a), as such acts are likely to deceive customers and prospective customers into believing that the Branders Aluminum flashlight is from or sponsored by Mag Instrument and, as a consequence, are likely to divert and have diverted customers away from Mag Instrument.

37. If not enjoined by this Court, Defendants will continue to sell the Branders Aluminum flashlight in commerce, which flashlight will be attributed to having emanated from Mag Instrument. Mag Instrument, however, has no control over the nature and quality of the Branders Aluminum flashlight so rendered, and any fault or objection with said flashlight will adversely affect future sales by Mag Instrument of its flashlights under the SSOA trademark.

38. As a result of their acts, Defendants have been, and will continue to be, unjustly enriched by profits that Defendants have made in connection with their manufacture, advertising, distribution, marketing, importation, promotion, offer for sale, and/or sale of the Branders Aluminum flashlight, that bears a shape, style, and overall appearance that is confusingly similar to the SSOA trademark.

39. Defendants' continuing infringement has inflicted and, unless restrained by this Court, will continue to inflict great and irreparable harm upon

Mag Instrument. Mag Instrument has no adequate remedy at law. Mag Instrument is entitled to preliminary and permanent injunctions enjoining Defendants from engaging in further acts of infringement.

40. As a direct and proximate result of the foregoing acts of Defendants, Mag Instrument has suffered, and is entitled to, monetary damages in an amount not yet determined. Mag Instrument is also entitled to its attorneys' fees and costs of suit herein.

41. Upon information and belief, Defendants' acts were in conscious and willful disregard for Mag Instrument's rights to the SSOA trademark, and the resulting damage to Mag Instrument is such as to warrant the trebling of damages in order to provide just compensation.

FOURTH CAUSE OF ACTION

(Federal Trademark Dilution – SSOA Trademark)

(15 U.S.C. § 1125(c))

42. Mag Instrument repeats, realleges, and incorporates by reference, as though fully set out herein, the allegations contained in paragraphs 1-10, 19-32, and 34-41, above.

43. The SSOA trademark is a distinctive and famous mark.

44. In connection with the Branders Aluminum flashlight, Defendants began using a shape, style, and overall appearance confusingly similar to the SSOA trademark subsequent to the SSOA trademark becoming famous.

45. Defendants' manufacture, advertising, distribution, marketing, importation, promotion, offer for sale, and/or sale of the Branders Aluminum flashlight, that has a shape, style, and overall appearance that is the same or confusingly similar to that of Mag Instrument's SSOA trademark, causes dilution by lessening the capacity of the famous SSOA of Mag Instrument's MINI MAGLITE® flashlight to identify and distinguish flashlights.

46. By reason of their acts complained of herein, Defendants have caused the dilution of the distinctive quality of the SSOA trademark, and lessened the capacity of the famous SSOA trademark to identify and distinguish flashlights in violation of 15 U.S.C. §1125(c).

47. As a result of their acts, Defendants have been, and will continue to be, unjustly enriched by profits that Defendants have made in connection with their manufacture, advertising, distribution, marketing, importation, promotion, offer for sale, and/or sale of the Branders Aluminum flashlight bearing a shape, style, and overall appearance that is confusingly similar to the SSOA trademark.

48. As a direct and proximate result of the foregoing acts of Defendants, Mag Instrument has suffered, and is entitled to, monetary damages in an amount not yet determined. Mag Instrument is also entitled to its attorneys' fees and costs of suit herein.

49. Upon information and belief, Defendants' acts were in conscious and willful disregard for Mag Instrument's rights to the SSOA trademark, and the resulting damage to Mag Instrument is such as to warrant the trebling of damages in order to provide just compensation.

50. Upon information and belief, Defendants willfully intended to trade on Mag Instrument's reputation and/or to cause dilution of Mag Instrument's famous SSOA trademark. Defendants' acts and the resulting damage to Mag Instrument are such as to warrant the trebling of damages in order to provide just compensation. Unless Defendants are restrained and enjoined by this Court, Defendants' actions will continue to cause irreparable harm and injury to Mag Instrument.

FIFTH CAUSE OF ACTION

(California Statutory Unfair Competition)

(Cal. Bus. & Prof. Code §17200, et seq.)

51. Mag Instrument repeats, realleges, and incorporates by reference, as though fully set out herein, the allegations contained in paragraphs 1-10, 19-32, 34-41, and 43-50, above.

52. Mag Instrument has built valuable goodwill in its SSOA trademark. Defendants' manufacture, advertising, distribution, marketing, importation, promotion, offer for sale, and/or sale of the Branders Aluminum flashlight, that has a shape, style, and overall appearance that is the same or confusingly similar to that of Mag Instrument's SSOA trademark, is likely to and does permit Defendants to trade upon the goodwill of Mag Instrument's trademark and to confuse the public regarding a connection or affiliation between Mag Instrument and Defendants. This conduct results in damage to Mag Instrument's goodwill and reputation and unjust enrichment of Defendants.

53. By manufacturing, advertising, distributing, marketing, importing, promoting, offering for sale, and/or selling the Branders Aluminum flashlight, that has a shape, style, and overall appearance that is the same or confusingly similar to that of Mag Instrument's SSOA trademark, Defendants mislead others, and will continue to mislead others, into assuming there is a connection between Defendants and Mag Instrument.

54. Defendants' use of the Branders Aluminum flashlight, that bears the same or a confusingly similar shape, style, and overall appearance to that of Mag Instrument's SSOA trademark, was and is without the consent of Mag Instrument.

55. Defendants' manufacture, advertising, distribution, marketing, importation, promotion, offer for sale, and/or sale of the Branders Aluminum flashlight, that has a shape, style, and overall appearance that is the same or confusingly similar to that of Mag Instrument's SSOA trademark, constitutes unfair

competition in violation of §17200, et seq. of the California Business and Professions Code.

56. Mag Instrument is informed and believes and thereon alleges that, unless restrained by this Court, Defendants will continue to infringe Mag Instrument's marks, and pecuniary compensation will not afford Mag Instrument adequate relief for the damage to its trademarks in the public perception.

57. As a result of their acts complained of herein, Defendants have been, and will continue to be, unjustly enriched by profits which Defendants made in connection with the manufacture, advertising, distribution, marketing, importation, promotion, offer for sale, and/or sale of the Branders Aluminum flashlight bearing a shape, style, and overall appearance that is the same or confusingly similar to that of Mag Instrument's SSOA trademark.

SIXTH CAUSE OF ACTION

(California Trademark Dilution – SSOA Trademark)

(Cal. Bus. & Prof. Code §14247)

58. Mag Instrument repeats, realleges, and incorporates by reference, as though fully set out herein, the allegations contained in paragraphs 1-10, 19-32, 34-41, 43-50, and 52-57, above.

59. The SSOA trademark is a distinctive and famous mark. Mag Instrument, through the SSOA trademark, enjoys a reputation in California for excellence and style for the products it sells.

60. In connection with the Branders Aluminum flashlight, Defendants began using a shape, style, and overall appearance confusingly similar to the SSOA trademark after the SSOA trademark became famous.

61. Defendants' manufacture, advertising, distribution, marketing, importation, promotion, offer for sale, and/or sale of the Branders Aluminum flashlight, that has a shape, style, and overall appearance that is the same or confusingly similar to that of Mag Instrument's SSOA trademark, has injured the

business reputation of Mag Instrument and dilutes and/or is likely to dilute the distinctive value of the SSOA trademark in violation of California Business and Professions Code §14247.

62. Injury to Mag Instrument and dilution of the SSOA trademark will continue, all to Mag Instrument's irreparable harm, unless Defendants are enjoined by this Court.

63. Mag Instrument has no adequate remedy at law.

SEVENTH CAUSE OF ACTION

(Common Law Trademark Infringement)

64. Mag Instrument repeats, realleges, and incorporates by reference, as though fully set out herein, the allegations contained in paragraphs 1-10, 19-32, 34-41, 43-50, 52-57, and 59-63, above.

65. By reason of Mag Instrument's continuous use and promotion of the SSOA trademark, as well as the distinctiveness of that trademark, consumers associate and recognize the SSOA trademark as representing a single, even if anonymous, source or sponsor of goods, and therefore the SSOA trademark is a protectable trademark at common law.

66. Mag Instrument owns and enjoys common law trademark rights in the overall commercial impression and presentation of its MINI MAGLITE® flashlight which rights are superior to any rights that Defendants may claim in and to said trademarks with respect to their flashlight. Mag Instrument's SSOA trademark is inherently distinctive, non-functional, and has acquired secondary meaning with the trade and consuming public and/or has become distinctive in the minds of purchasers in that the SSOA trademark for flashlights is associated with Mag Instrument.

67. Defendants have used the Branders Aluminum flashlight, that bears a confusingly similar appearance to Mag Instrument's MINI MAGLITE® flashlight. Defendants' use of a similar appearance for the Branders Aluminum flashlight has

created a likelihood that the trade and consuming public will be confused as to the source of the products.

68. The manufacture, advertising, distribution, marketing, importation, promotion, offer for sale, and/or sale by Defendants of the Branders Aluminum flashlight throughout the United States is likely to cause confusion and, upon information and belief, has caused confusion as to the source of the Branders Aluminum flashlight in that purchasers thereof will be likely to associate or have associated such product as originating with Mag Instrument, all to the detriment of Mag Instrument.

69. By reason of Defendants' actions alleged herein, Mag Instrument has suffered, and will continue to suffer, irreparable injury to its rights and suffer substantial loss of goodwill and in the value of its SSOA trademark unless and until Defendants are enjoined from continuing their wrongful acts.

70. By reason of Defendants' actions alleged herein, Mag Instrument has been damaged in an amount not presently ascertained, and such damage will continue and increase unless and until Defendants are enjoined from continuing their wrongful acts.

71. Upon information and belief, Defendants' conduct in this cause of action is willful, wanton, malicious, oppressive, and in conscious disregard of Mag Instrument's rights in its SSOA trademark, justifying the imposition of punitive and exemplary damages under California Civil Code §3294.

EIGHTH CAUSE OF ACTION

(Common Law Unfair Competition)

72. Mag Instrument repeats, realleges, and incorporates by reference, as though fully set out herein, the allegations contained in paragraphs 1-10, 19-32, 34-41, 43-50, 52-57, 59-63, and 65-71, above.

73. Defendants' actions in connection with the Branders Aluminum flashlight are likely to cause confusion, to cause misrepresentation, to cause

mistake, and/or to deceive the public as to the affiliation, approval, sponsorship, or connection between Defendants and Mag Instrument and constitute unfair competition at common law.

74. By reason of Defendants' actions in connection with the Branders Aluminum flashlight, Mag Instrument has suffered, and will continue to suffer, irreparable injury to its rights and suffer substantial loss of goodwill and in the value of its SSOA trademark unless and until Defendants are enjoined from continuing their wrongful acts.

75. By reason of Defendants' actions in connection with the Branders Aluminum flashlight, Mag Instrument has been damaged in an amount not presently ascertained, and such damage will continue and increase unless and until Defendants are enjoined from continuing their wrongful acts.

76. Upon information and belief, Defendants' conduct in this cause of action is willful, wanton, malicious, oppressive, and in conscious disregard of Mag Instrument's rights in its SSOA trademark, justifying the imposition of punitive and exemplary damages under California Civil Code §3294.

PRAYER FOR RELIEF

WHEREFORE, Mag Instrument respectfully demands judgment:

1. That Defendants, their officers, directors, agents, servants, employees, attorneys, confederates, and all persons and/or entities acting for, with, by, through, or in concert with them or any of them be enjoined preliminarily and permanently:

(a) from infringing the '439 patent, either directly or contributorily;

(b) from inducing others to infringe the '439 patent;

(c) from manufacturing, advertising, distributing, marketing, importing, promoting, offering for sale, and/or selling the Branders Aluminum flashlight;

(d) from using the SSOA trademark and/or any other designation that is a colorable imitation of and/or is confusingly similar to the SSOA trademark

in connection with the manufacture, advertising, distribution, marketing, importation, promotion, offering for sale, and/or sale of flashlights neither originating from nor authorized by Mag Instrument;

(e) from representing in any manner, or by any method whatsoever, that goods, services, or other products provided by Defendants are sponsored, approved, authorized by, or originate from Mag Instrument, or otherwise taking any action likely to cause confusion, mistake, or deception as to the origin, approval, sponsorship, or certification of such goods or services;

(f) from infringing and/or diluting the distinctive quality of the SSOA trademark; and

(g) from unfairly competing with Mag Instrument in any manner.

2. That Defendants be required to deliver up to the Court any and all flashlights in their possession, custody, and/or control that infringe the '439 patent and/or the SSOA trademark.

3. That Defendants be required to prepare and deliver to the Court a complete list of entities from whom Defendants purchased, and to whom they distributed and/or sold, flashlights that infringe the '439 patent and/or the SSOA trademark and to serve a copy of such list on Mag Instrument's attorneys.

4. That Defendants be required to deliver to the Court any and all documents reflecting or relating to the purchase, sale, and/or distribution of any flashlights that infringe the '439 patent and/or the SSOA trademark.

5. That Defendants be required to deliver to the Court all products, containers, packages, labels, literature, catalogs, signs, advertising material, and the like bearing the SSOA trademark and/or a shape, style, and overall appearance that is confusingly similar to the SSOA trademark, together with all plates, molds, and other means of making the same.

6. That Defendants, within thirty (30) days after service of judgment with notice of entry thereof upon them, be required to file with the Court and serve upon

Mag Instrument's attorneys a written report, under oath, setting forth in detail the manner in which Defendants have complied with paragraphs 1-5, above.

7. That Defendants be required to account for and pay over to Mag Instrument their profits and the cumulative damages sustained by Mag Instrument by reason of Defendants' unlawful acts of patent infringement, trademark infringement, dilution, and unfair competition herein alleged, that the amount of recovery be increased as provided by law, up to three times, and that interest and costs be awarded to Mag Instrument.

8. That the Court order disgorgement and/or restitution of Defendants' profits to Mag Instrument.

9. That Mag Instrument be awarded its reasonable costs and attorneys' fees.

10. That the present case be found exceptional and that attorneys' fees be awarded to Mag Instrument under 35 U.S.C. §285.

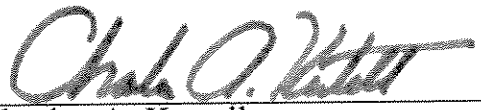
11. That Mag Instrument be awarded punitive damages.

12. That Mag Instrument have such other and further relief as the Court may deem equitable.

Dated: May 18, 2009

Respectfully submitted,

JONES DAY

By: 
Charles A. Kertell

Attorneys for Plaintiff
MAG INSTRUMENT, INC.

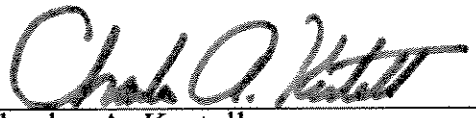
DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b) and Central District of California Local Rule 38-1, Mag Instrument, Inc. hereby demands a trial by jury on all issues triable in this action.

Dated: May 18, 2009

Respectfully submitted,

JONES DAY

By: 
Charles A. Kertell

Attorneys for Plaintiff
MAG INSTRUMENT, INC.

EXHIBIT 1

USD530439S

(12) **United States Design Patent** (10) **Patent No.: US D530,439 S**
Maglica (45) **Date of Patent: ** Oct. 17, 2006**

(54) **FLASHLIGHT**

(75) Inventor: **Anthony Maglica**, Anaheim, CA (US)

(73) Assignee: **Mag Instrument, Inc.**, Ontario, CA (US)

(**) Term: **14 Years**

(21) Appl. No.: **09/385,129**

(22) Filed: **Aug. 27, 1999**

Related U.S. Application Data

(63) Continuation of application No. 07/410,965, filed on Sep. 22, 1989, now abandoned, which is a division of application No. 07/356,361, filed on May 23, 1989, now Pat. No. 4,942,505, which is a continuation of application No. 07/222,378, filed on Jul. 19, 1988, now Pat. No. 4,899,265, which is a continuation of application No. 07/034,918, filed on Apr. 6, 1987, now abandoned, which is a continuation of application No. 06/828,729, filed on Feb. 11, 1986, now Pat. No. 4,658,336, which is a continuation of application No. 06/648,032, filed on Sep. 6, 1984, now Pat. No. 4,577,263.

(51) **LOC (8) Cl.** **26-02**
(52) **U.S. Cl.** **D26/49**
(58) **Field of Classification Search** D26/37–50; 362/157–158, 183–208
See application file for complete search history.

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Primary Examiner—Alan P. Douglas
(74) *Attorney, Agent, or Firm*—Jones Day

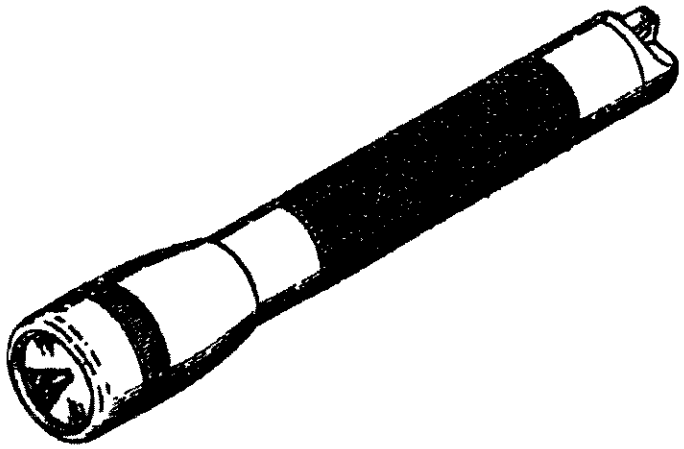
(57) **CLAIM**

The ornamental design for a flashlight, as shown and described.

DESCRIPTION

FIG. 1 is a front perspective view of a flashlight showing my new design;
FIG. 2 is a side elevational view thereof; and,
FIG. 3 is a front elevational view thereof.

1 Claim, 1 Drawing Sheet



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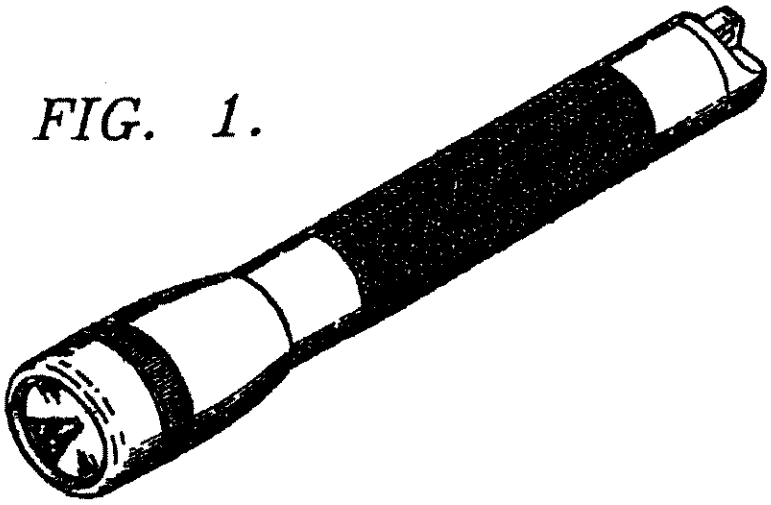
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"Lights", brochure by Justrite®, 5 pgs. (Ptf's Ex. CX–1310).
Sa–So Sargent–Sowell Inc. brochure, 7 pgs. (Ex. BRX 206).
"Home & Auto" ad (Nov. 1980), 3 pgs. (Ex BRX 216).
"Mag–Lite", "Standard Head "D" & "C" Size Commercial Specifications", 2 pg. marked Confidential—Counsel Eyes Only—(Ex BRX 119).
G.T. Price Products, Inc. "The Professional Line" catalog, 9 pgs. (Ptf's Ex. CX 1431).
National Law Enforcement Supply, "Off–Duty Gift Catalog", 5 pgs. (Ptf's Ex. CX 1313).
"Magnificent!", Mag Charger by Mag Instrument, 2 pg. ad May 1984 (Ex. BRX 213).
Mag Lite ad "They demand . . . the very best.", 1 pg. (Ex. BRX 291).
Mag–Lite™ ad, "Strength & Reliability", 1 pg. (Ex. BRX 202 (Depo. Ex. PX 82).
"The Last Flashlight You'll Ever Have to Buy" (Ptf's Ex. 3050).
The Sunday Oregonian, Dec. 1982 "From: GI Joe's", 1 pg. ad re Mag–Lite (Ptf's Ex. 3055).
Mag–Lite, 1 pg. ad by The 63rd CSGA Annual National Convention and Exhibition, Feb. 3–6, 1980 (Ex. BRX 219).
Mag Instrument ad, 1 pg. (Ex. BRX 211).
Mag–Lite add, 1 pg. by Nationwide Sports Distributor, (Ex. BRX 220).
"Mag–Lite™, The right light . . . for the job." 4 pg. brochure, (Ptf's Ex. 425).
"A precision tool . . . " by Mag–lite, 1 pg. (Ptf's Ex. 422–A).
"Pick up the lighters", by Mag Instrument, 1 pg. ad (Ptf's Ex. 422–B).
Mag–lite®, 1 pg. ad re C–Cell & D–Cell, (Ptf's Ex. 483).
View of flashlight, Ex. DX 5625.
View of flashlight, Ex. DX 5626.
View of flashlight Ex. DX 5628.
View of flashlight, Ex. DX 5629.
View of flashlight, Ex. DX 5640.
View of flashlight, Ex. DX 5641.
View of flashlight, Ex. DX 5462.
View of flashlight, Ex. DX 5643.
View of flashlight, (Ptf's Ex. 92).
View of flashlight, (Ptf's Ex. 93).
View of flashlight, (Ptf's Ex. 95).
View of flashlight, (Ptf's Ex. 96).
View of flashlight, (Ptf's Ex. 98).
View of flashlight, (Ptf's Ex. 100).
View of flashlight, (Ptf's Ex. 103).
View of flashlight, (Ptf's Ex. 104).
View of flashlight, (Ptf's Ex. 106).
View of flashlight, (Ptf's Ex. 108).
View of flashlight, (Ptf's Ex. 247).
View of flashlights, (6) (Ptf's Ex. 415).
View of flashlight, (Ptf's Ex. 699).
View of flashlight, (Ptf's Ex. 701).
View of flashlight, (Ptf's Ex. 702).
View of flashlight, (Ptf's Ex. 704).
View of flashlight, (Ptf's Ex. 709).
View of flashlight, (Ptf's Ex. 713).
View of flashlight, (Ptf's Ex. 714).

View of flashlight, (Ptf's Ex. 724).
View of flashlight, (Ptf's Ex. 728).
View of flashlight, (Ptf's Ex. 748 or 743?) (has carrying strap).
View of flashlight, (Ptf's Ex. 740).
View of flashlight, (Ptf's Ex. 744).
View of flashlight, (Ptf's Ex. 747).
Eveready Masterlites, The Light of a New Age, 11 pg. catalog, marked Ex. DX 5326.
Eveready Daylo, Dealer's Edition Catalog No. 736, (1918), 8 pgs. (Ex. DX 5327).
"The History of Portable Light in America", 24 pg. by Eveready (Ex. DX 5325).
"Eveready Automatic Spotlights", 15 pg. brochure (Ex. DX 5324).
50–pg. booklet, 1st legible page reads "To the founders and past presidents of the Bridgeport Metal Goods Manufacturing Company . . . ", (Ex. No. not legible).
View of flashlight with Coca Cola can and ruler, marked "5001".
View of flashlight with Coca Cola can and ruler, marked "5002".
View of flashlight with Coca Cola can and ruler, marked "5003".
View of flashlight with Coca Cola can and ruler, marked "5004".
View of flashlight with Coca Cola can and ruler, marked "5005".
View of flashlight with Coca Cola can and ruler, marked "5006".
View of flashlight with Coca Cola can and ruler, marked "5007".
View of flashlight with Coca Cola can and ruler, marked "5008".
View of flashlight with Coca Cola can and ruler, marked "5009".
View of flashlight with Coca Cola can and ruler, marked "5023".
View of flashlight with Coca Cola can and ruler, marked "5024".
View of flashlight with Coca Cola can and ruler, marked "5025".
View of flashlight with Coca Cola can and ruler, marked "5032".
View of flashlight with Coca Cola can and ruler, marked "5033".
View of flashlight with Coca Cola can and ruler, marked "5034".
View of flashlight with Coca Cola can and ruler, marked "5035".
View of flashlight with Coca Cola can and ruler, marked "5036".
View of flashlight with Coca Cola can and ruler, marked "5045".
View of flashlight with Coca Cola can and ruler, marked "5048".
View of flashlight with Coca Cola can and ruler, marked "5049".
View of flashlight with Coca Cola can and ruler, marked "5050".
View of flashlight with Coca Cola can and ruler, marked "5051".
View of flashlight with Coca Cola can and ruler, marked "5052".
View of flashlight with Coca Cola can and ruler, marked "5056".
View of flashlight with Coca Cola can and ruler, marked "5057".
View of flashlight with Coca Cola can and ruler, marked "5060".
View of flashlight with Coca Cola can and ruler, marked "5061".
View of flashlight with Coca Cola can and ruler, marked "5062".
View of flashlight with Coca Cola can and ruler, marked "5063".
View of flashlight with Coca Cola can and ruler, marked "5064".
View of flashlight with Coca Cola can and ruler, marked "5065".
View of flashlight with Coca Cola can and ruler, marked "5067".
View of flashlight with Coca Cola can and ruler, marked "5074A".
View of flashlight with Coca Cola can and ruler, marked "5075A".
View of flashlight with Coca Cola can and ruler, marked "5076".
View of flashlight with Coca Cola can and ruler, marked "5078".
View of flashlight with Coca Cola can and ruler, marked "5079".
View of flashlight with Coca Cola can and ruler, marked "5080".
View of flashlight with Coca Cola can and ruler, marked "5081".
View of flashlight with Coca Cola can and ruler, marked "5082".
View of flashlight with Coca Cola can and ruler, marked "5083".
View of flashlight with Coca Cola can and ruler, marked "5084".
View of flashlight with Coca Cola can, "Maxlite 5–3–2" box and ruler, marked "5111".
View of flashlight with Coca Cola can and ruler, marked "5112".
View of flashlight with Coca Cola can and ruler, marked "5115".
View of flashlight with Coca Cola can and ruler, marked "5118".
View of flashlight with Coca Cola can and ruler, marked "5118A".
View of flashlight with Coca Cola can and ruler, marked "5126".
View of flashlight with Coca Cola can and ruler, marked "5127".
View of flashlight with Coca Cola can and ruler, marked "5129".
View of flashlight with Coca Cola can and ruler, marked "5130".
View of flashlight with Coca Cola can and ruler, marked "5131".
View of flashlight with Coca Cola can and ruler, marked "5132".
View of flashlight with Coca Cola can and ruler, marked "5133".
View of flashlight with Coca Cola can and ruler, marked "5137A".

View of flashlight with Coca Cola can and ruler, marked "5145".
View of flashlight with Coca Cola can and ruler, marked "5147".
View of flashlight with Coca Cola can and ruler, marked "5149".
View of flashlight with Coca Cola can and ruler, marked "5154".
View of flashlight with Coca Cola can and ruler, marked "5279".
View of flashlight with Coca Cola can and ruler, marked "5300".
View of flashlight with Coca Cola can, "Fulton" box and ruler, marked "5301".
View of flashlight with Coca Cola can, "Fulton" box and ruler, marked "5302".
View of flashlight with Coca Cola can, "Rayovac Police Flashlight" box and ruler, marked "5303".
View of flashlight with Coca Cola can and ruler, marked "5304".
View of flashlight with Coca Cola can and ruler, marked "5305".
View of flashlight with Coca Cola can and ruler, marked "5306".
View of flashlight with Coca Cola can and ruler, marked "5307".
View of flashlight with Coca Cola can and ruler, marked "5308".
View of flashlight with Coca Cola can and ruler, marked "5309".
View of flashlight with Coca Cola can and ruler, marked "5310".
View of flashlight with Coca Cola can and ruler, marked "5311".
View of flashlight with Coca Cola can and ruler, marked "5312".
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View of flashlight with Coca Cola can and ruler, marked "5317".
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View of flashlight with Coca Cola can and ruler, marked "5841".
View of flashlight with Coca Cola can and ruler, marked "5845".
View of flashlight with Coca Cola can and ruler, marked "5846".
View of flashlight with Coca Cola can and ruler, marked "5971".
View of flashlight with Coca Cola can and ruler, marked "5972".
View of flashlight with Coca Cola can and ruler, marked "5973".
View of flashlight with Coca Cola can and ruler, marked "5974".
View of flashlight with Coca Cola can, "Bianchi" box and ruler, marked "6005A".
View of flashlight with Coca Cola can and ruler, marked "6005A".
View of flashlight with Coca Cola can and ruler, marked "6112".
View of flashlight with Coca Cola can and ruler, marked "6118".
View of flashlight with Coca Cola can and ruler, marked "6119".
View of flashlight with Coca Cola can and ruler, marked "6120".
View of flashlight with Coca Cola can and ruler, marked "6121".
View of flashlight with Coca Cola can and ruler, marked "6124".
View of flashlight with Coca Cola can, container, and ruler, marked "12A".
View of flashlight with Coca Cola can, "Little Commander Pocketlight" packaging and ruler, marked "468".
View of flashlight with Coca Cola can and ruler, marked "2577".
View of flashlight with Coca Cola can and ruler, marked "2578".
View of flashlight with Coca Cola can and ruler, marked "2579".
View of flashlight with Coca Cola can and ruler, marked "2580".
View of flashlight with Coca Cola can and ruler, marked "2581".
View of flashlight with Coca Cola can and ruler, marked "2582".
View of flashlight with Coca Cola can and ruler, marked "2584".
View of flashlight with Coca Cola can and ruler, marked "2570".
View of flashlight with Coca Cola can and ruler, marked "2571".
View of flashlight with Coca Cola can and ruler, marked "2572".
View of flashlight with Coca Cola can and ruler, marked "2574".
View of flashlight with Coca Cola can and ruler, marked "2677".
View of flashlight with Coca Cola can and ruler, marked "2742".
View of flashlight with Coca Cola can and ruler, marked "2749".
View of flashlight with Coca Cola can and ruler, marked "2753".
View of flashlight with Coca Cola can and ruler, marked "2755".
View of flashlight with Coca Cola can and ruler, marked "2874".
View of flashlight with Coca Cola can and ruler, marked "3717".
View of flashlight marked "2678".
View of flashlight marked "2679".

View of flashlight, with two additionoal parts, marked "2580".
View of flashlight with ruler.
View of flashlight with Coca Cola can and ruler, marked "464 (CPX–55)".
View of flashlight with Coca Cola can and ruler, marked "CPX–422".
View of flashlight with Coca Cola can and ruler, marked "CPX–393".
View of flashlight with Coca Cola can and ruler, marked "CPX–385".
View of flashlight with Coca Cola can and ruler, marked "CPX–264".
View of flashlight with Coca Cola can and ruler, marked "349".
View of flashlight with Coca Cola can and ruler, marked "SL575".
View of flashlight with Coca Cola can and ruler, marked "SL351".
View of flashlight with Coca Cola can and ruler, marked "SL699".
View of flashlight with Coca Cola can and ruler, marked "SL102".
View of flashlight, marked Deposition Exhibit 45 (?).
Consent Judgment and Permanent Injunction in *Mag Instrument, Inc. v. Central Purchasing, Inc.*, No. 89–4668 ER (JRx), filed Apr. 1990.
Consent Judgment and Injunction in *Mag Instrument. Inc. v. Dayton Hudson Corporation*, No. 89–0529 ER (JRx), filed Feb. 1990.
Consent Judgment and Permanent Injunction in *Mag Instrument. Inc. v. Gila Products Limited*, No. 89–CV–7802, filed Nov. 1988.
Consent Judgment and Injunction in *Mag Instrument. Inc. v. Jadico Limited, Inc.*, No. 89–4259–CV–C–9, filed Jun. 1989.
Consent Judgment and Permanent Injunction in *Mag Instrument. Inc. v. Jadico Limited, Inc.*, No. 89–4260–CV–C–5, filed Jul. 1989.
Consent Judgment and Permanent Injunction in *Mag Instrument. Inc. v. Jomira/Advance, Inc.*, No. 89–20286 RPA, filed Aug. 1989.
Consent Judgment and Permanent Injunction in *Mag Instrument. Inc. v. Jomira/Advance, Inc.*, No. 89–20447 RFP, filed Aug. 1989.
Initial Determination, in the matter of Certain Small Aluminum Flashlights and Components Thereof, Investigation No. 337–TA–254.
Views of the Commission, in the matter of Certain Small Aluminum Flashlights and Components Thereof, Investigation No. 337–TA–254.
Decision in Mag v. The U.S. Int'l Trade Commission (Kassner Imports, Inc.; Brinkmann Corporation; Brinkmann International (Hong Kong), Ltd.; and J. Baxter Brinkmann International Corporation, Intervenors, — 88–1313 decided Feb. 15, 1989.
Notice of Issuance of General Exclusion Order, in the matter of Certain Small Aluminum Flashlights and Components Thereof, Investigation No. 337–TA–254.
General Exclusion Order, in the matter of Certain Small Aluminum Flashlights and Components Thereof, Investigation No. 337–TA–254.
Opinion; Findings of Fact and Conclusions of Law, in *Kassnar Imports, Inc. v. Mag Instrument & Mag Instrument, Inc. v. Kassnar Imports, Inc.* — CV 86–802 FFF, filed Jan. 6, 1989.
Judgment in *Kassnar Imports, Inc. v. Mag Instrument & Mag Instrument, Inc. v. Kassnar Imports, Inc.* — CV 86–802 FFF, filed Jan. 6, 1989.
Xscribe Computer–Aided Trasncription—George Price Testimony Nov. 4, 1988 "Price—Direct", pp. DA–77 through DA–81.
Xscribe Computer–Aided Trasncription—Gerald Ford Testimony Nov. 2, 1988, pp. 4, 23 & '24.
Injunction and Partial Consent Judgment re *Mag Instrument, Inc. v. K Mart Corporation*, No. 89–1203–ER (JRx), filed Aug. 31, 1989.
Consent Judgment and Permanent Injunction in *Mag Instrument, Inc. v. Longs Drug Stores Californai, Inc.*, No. C 619212, filed Jan. 22, 1990.
Consent Judgment and Permanent Injunction in *Mag Instrument, Inc. v. Outdoor Sports Headquarters, Inc.*, No. C–3–89–411, filed Oct. 13, 1989.
Consent Judgment and Permanent Injunction in *Mag Instrument, Inc. v. Outdoor Sports Headquarters, Inc.*, No. C–3–89–410, filed Oct. 13, 1989.
Injunction and Consent Judgment in *Mag Instrument, Inc. v. Sears, Roebuck & Company*, No. 89–0972 ER (JRx), filed Dec. 13, 1989.
Injunction and Consent Judgment, in *Mag Instrument, Inc., v. Sears, Roebuck and Co.*, No. 89–0972 ER (JRx), filed Jan. 17, 1990.
Consent Judgment and Permanent Injunction, in *Mag Instrument, Inc. v. Streamlight, Inc.*, No. 85–6104 SVW(Kx), filed Jan. 16, 1986.
Final Judgment by Consent and Permanent Injunction, in *Mag Instrument, Inc. v. Streamlight, Inc.*, No. CV–87–02530 ER (JRx), filed Sep. 10, 1990.
Weston, "Mini Flash Lite", advertisement received in U.S. Patent & Trademark Office, Jul. 11, 1949.
Brinkmann, Micro–Max 1 package Insert, Copyright 1987, (Photocopies of flashlight Included in Package and Pictures of Disassembled Flashlight Enclosed).

FIG. 1.



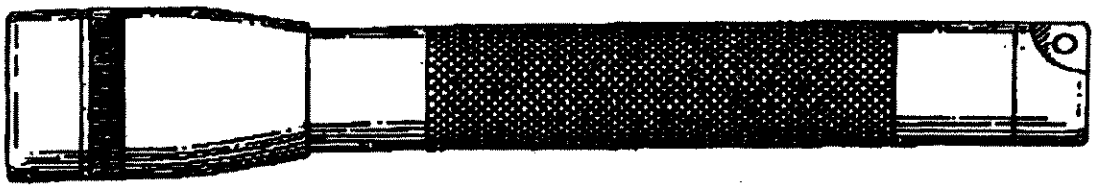


FIG. 2.



FIG. 3.

EXHIBIT 2

Int. Cl.: 11

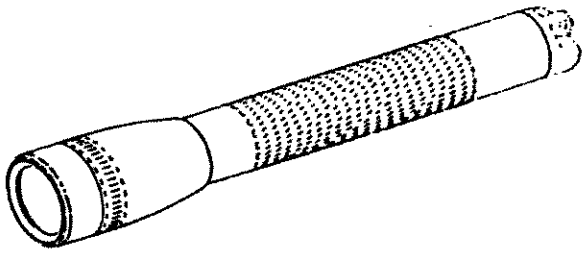
Prior U.S. Cl.: 21

United States Patent and Trademark Office

Reg. No. 2,074,795

Registered July 1, 1997

TRADEMARK
PRINCIPAL REGISTER



MAG INSTRUMENT, INC. (CALIFORNIA CORPORATION)
1635 SOUTH SACRAMENTO AVENUE
ONTARIO, CA 91776

FOR: FLASHLIGHTS, IN CLASS 11 (U.S. CL. 21).

FIRST USE 1-0-1984; IN COMMERCE 1-0-1984.

THE MARK IS THE SHAPE, STYLE AND OVERALL APPEARANCE OF THE FLASHLIGHT ITSELF WHICH IS CHARACTERIZED BY THE RATIO OF THE LENGTH OF THE HEAD TO THE OVERALL LENGTH OF THE FLASHLIGHT, THE RATIO OF THE OUTER DIAMETER OF THE HEAD TO THE OUTER DIAMETER OF THE BARREL, AND THE PROFILE OF THE TRANSITION FROM THE GREATEST OUTER DIAMETER OF THE HEAD TO THE OUTER DIAMETER OF THE BARREL.

SEC. 2(F).

SER. NO. 74-403,053, FILED 6-14-1993.

RANDY RICARDO, EXAMINING ATTORNEY

EXHIBIT 3

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Flashlight - Aluminum Flashlight



Zoom

Item No: 60410

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Customer Rating: Not Rated

The bright krypton bulb on this compact aluminum flashlight throws plenty of light on the subject. It also includes wrist strap and batteries.

Product Summary | Available Colors

Ships In	17 business days (pending credit, art, and proof approval)	Decoration Method	Engraving (Logo is the same color as the product) Silkscreen (Max. logo colors : 2)
Imprint Area	0.5 in. H X 2.0 in. W	Dimensions	6 in. H X 1 in. W
Weight	0.3lb.	Material	Aluminum

Quantity	250 (minimum)	300	450	650	1,050	1450+
Price	$4.61	$4.34	$4.10	$3.88	$3.46	CALL

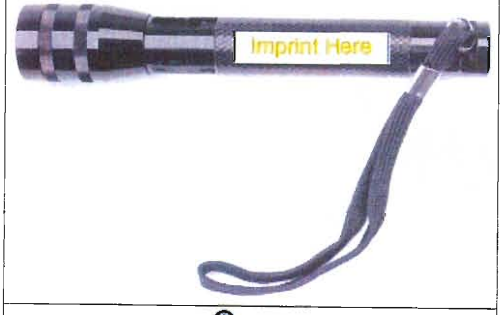
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Imprint Area



Zoom

Available Colors

Actual color may vary slightly from color shown due to different monitor settings.



Black

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PAGE 28
EXHIBIT 3

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Back to product details

Flashlight - Aluminum Flashlight



Quantity	250 (minimum)	300	450	650	1,050	1450+
Price	$4.61	$4.34	$4.10	$3.88	$3.46	**CALL**

The bright krypton bulb on this compact aluminum flashlight throws plenty of light on the subject. It also includes wrist strap and batteries.

#60410

Ships In	17 business days (pending credit, art, and proof approval)
Available Color	Black
Decoration Methods	Engraving (Logo is the same color as the product) Silkscreen (Max. logo colors : 2)
Imprint Area Size:	2.0 in. W X 0.5 in. H
Dimensions	6 in. H X 1 in. W
Weight	0.3lb.
Material	Aluminum

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