

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

POWER CELL LLC, d/b/a ZEUS BATTERY)
PRODUCTS,)

Plaintiff,)

v.)

SPRINGS WINDOW FASHIONS, LLC)

Defendant.)

Case No.

2017CH06528
CALENDAR/ROOM 11
TIME 00:00
Declaratory Judgment

**COMPLAINT FOR DECLARATORY,
INJUNCTIVE AND OTHER RELIEF**

Plaintiff Power Cell LLC, d/b/a Zeus Battery Products ("Zeus"), as and for its
Complaint against Defendant, Springs Window Fashions, LLC ("SWF"), states as follows:

NATURE OF THE CASE

1. This action comes before the Court for declaratory and injunctive relief and damages stemming from commercial disparagement and breach of contract. SWF has issued a series of public statements, under the smoke screen of its alleged concern for public safety, that are false or materially misleading concerning the safety of lithium batteries supplied by Zeus in SWF's motorized window covering product. Worse still, SWF instituted a recall that seeks to remove a perfectly safe product from the marketplace (Zeus' lithium batteries) while leaving an unsafe and dangerous product (SWF's motorized window coverings) available to consumers. In addition to the foregoing, SFW has materially breached the terms of the purchase orders it has placed with Zeus.

PARTIES

2. Zeus is an Illinois limited liability company with its principal place of business located at 191 Covington Drive, Bloomingdale, Illinois 60018. Zeus markets and sells a full range of battery products and battery-related services.

3. SWF is a Delaware limited liability company with its principal place of business located at 7549 Graber Road, Middleton, WI 53562. SWF is registered in Illinois as a foreign LLC, with its registered agent being Illinois Corporation Service Company, 801 Adlai Stevenson Drive, Springfield, IL 62703.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this case pursuant to 735 ILCS 5/2-209 because, among other things, Defendant is registered to do business in Illinois, transacts business in Illinois on a regular basis, engaged in tortious conduct in Illinois as described herein and entered into and performed certain contracts with Plaintiff in Illinois.

5. Venue is proper in this Court pursuant to 735 ILCS 5/2-101 because, among other things, Defendant is a nonresident of the State of Illinois and the transaction, or some part thereof, out of which the causes of action arose, occurred in Cook County.

GENERAL ALLEGATIONS

The Parties

6. Zeus is a private labeler of a full range of battery products, including among other products, FR6 AA lithium iron disulfide cylindrical 1.5 volt batteries (singularly, the "Subject Battery" or where the plural is used, the "Subject Batteries").

7. SWF is in the business of selling motorized window shades and coverings, among other products, in various retail stores across the country, including stores located in Cook County, Illinois.

8. Zeus' supplier (and manufacturer) of the Subject Battery, Great Power Battery (Zuhai) Co., Ltd. ("Great Power"), has been manufacturing the Subject Batteries since 2004, either as its own brand or as an OEM product for other well known brands. To date, Great Power has manufactured and sold over 130 million of the Subject Batteries.

The Subject Battery

9. The Subject Battery has been tested for safe operation and approved in accordance with the following recognized safety standards:

- Underwriters Laboratories (UL) 1642;
- UN Transportation Testing (UN DOT 38.3); and
- International Electrotechnical Commission (IEC) 60086.

10. In addition to the foregoing, the Subject Battery has also been tested and approved under Great Power's Primary Lithium Battery Reliability Test Standard.

11. The Subject Battery conforms to the same high standards as Energizer and other recognized competitor brands of lithium batteries.

12. The Subject Battery is not designed to be recharged. Nevertheless, if one of the batteries is installed in a reverse polarity position and a complete circuit is formed, the reversed battery will begin to receive a charge from the other batteries installed in a multi-battery pack.

The SWF Product

13. SWF markets and sells a virtual cord custom motorized window covering (the “SWF Product”) for sale in various retail and trade stores across the country, including in Cook County, Illinois. (See Operating Manual of the SWF Product, attached hereto as Exhibit A).

Supplier Relationship

14. Beginning in April of 2014, Zeus began to quote pricing information for the Subject Battery to SWF with the understanding that Zeus would be a potential supplier of the Subject Batteries to SWF for use in motorized window coverings that SWF sold to retailers like Costco, Menards and others.

15. Between May through December of 2014, Zeus shipped samples of the Subject Battery to multiple SWF locations for qualification testing.

16. On July 30, 2015, SWF conducted an on-site audit of Global Power’s production facility for quality control inspections on the Subject Battery. The production facility passed SWF’s audit.

17. In September 2015, a SWF senior electrical engineer signed off on the Battery Specification Product Approval for the Subject Battery. In connection therewith, SWF agreed to purchase the Subject Batteries from Zeus in the quantities and on the dates described below.

The Purchase Orders

18. On September 2, 2015, SWF sent its first purchase order to Zeus for a blanket purchase of 24,960 units of an 8-pack of the Subject Battery at a price of \$8.64 per unit, for a total purchase price of \$215,654.40. (See 9/2/15 Purchase Order, attached hereto as Exhibit B). Zeus delivered all 24,960 units under this purchase order to SWF.

19. On March 15, 2016, SWF sent a purchase order to Zeus for a blanket purchase of another 24,960 units of an 8-pack of the Subject Battery at a price of \$8.64 per unit, for a total purchase price of \$215,654.40. (See 3/15/16 Purchase Order, attached hereto as Exhibit C). Zeus delivered all 24,960 units under this purchase order to SWF.

20. On July 14, 2016, SWF sent a third purchase order to Zeus for a blanket purchase of 24,960 units of an 8-pack of the Subject Battery at a price of \$8.64 per unit, for a total purchase price of \$215,654.40. (See 7/14/16 Purchase Order, attached hereto as Exhibit D).

21. Pursuant to the July 14, 2016 purchase order, Zeus delivered a total of 17,237 units to SWF facilities, leaving a remaining balance of 7,723 units that are in stock at Zeus and have not yet been distributed to SWF facilities. SWF has refused to accept delivery of these units.

22. On August 17, 2016, SWF sent a fourth purchase order to Zeus for a blanket purchase of 29,760 units of an 8-pack of the Subject Battery at a price of \$8.64 per unit, for a total purchase price of \$257,126.40. (See 8/17/16 Purchase Order, attached hereto as Exhibit E). All 29,760 units from this blanket purchase order remain in stock in Zeus' facility as SWF has refused to accept delivery of any of these units.

23. All told, the July 14, 2016 and August 17, 2016 purchase orders requested delivery of 54,720 units of an 8-pack of the Subject Battery. Of those orders, 17,237 units have been delivered and 37,483 units remain in stock at Zeus' facility. The total purchase price of the yet-to-be delivered units from these orders is \$323,853.12.

24. In addition to the foregoing, SWF has failed to pay numerous outstanding invoices for goods that it did receive, totaling \$117,158.40. (See Outstanding Invoices, attached hereto as Exhibit F). A summary of these outstanding invoices is set forth below:

Invoice #	Invoice Date	Customer PO#	Invoice Amount
224733	9/27/2016	829057	\$1,036.80
224737	9/27/2016	831452	\$16,588.80
224739	9/27/2016	833359	\$16,588.80
224743	9/28/2016	838358	\$8,294.40
224745	9/28/2016	828361	\$8,294.40
224959	10/11/2016	843328	\$8,294.40
224960	10/11/2016	843326	\$16,588.80
225199	10/26/2016	848265	\$16,588.80
225443	11/9/2016	853580	\$8,294.40
225444	11/9/2016	853583	\$16,588.80

Totals: \$117,158.40

25. On December 8, 2016, SWF informed Zeus that it intended to return \$132,978 worth of unused batteries that it had in stock. Moreover, SWF demanded \$119,165 from Zeus to cover the cost of replacing the Subject Batteries.

Alleged Incidents

26. On June 7, 2016, a customer of Lowe's allegedly had problems with a SWF Product. Specifically, this customer allegedly reported problems with the operation of the SWF

Product and stated that one of the battery tubes was so hot that it almost burned his hands and the batteries inside were charred and melted.

27. SWF prepared an incident report regarding this occurrence, but it did not send a copy of that report to Zeus at that time.

28. On September 1, 2016, a customer of Diane's Draperies allegedly had problems with a SWF Product. Specifically, this customer allegedly reported that a battery case exploded and that the window shade would no longer operate.

29. SWF prepared an incident report regarding this occurrence, but it did not send a copy of that report to Zeus at that time. (See Diane's Draperies Incident Report, attached hereto as Exhibit G). A photograph included in the incident report reveals that four of the Subject Batteries were installed in reverse polarity positions.

30. On September 21, 2016, a customer of MJ Distributors allegedly had problems with a SWF Product. Specifically, this customer allegedly reported that the batteries in one shade leaked and damaged the case and window casing.

31. SWF prepared an incident report regarding this occurrence, but it did not send a copy of that report to Zeus at that time.

32. On November 10, 2016, Menards allegedly had problems with an SWF Product. Specifically, Menards allegedly reported that one or more batteries had a catastrophic deconstruction as a result of venting.

33. SWF prepared an incident report regarding this occurrence.

34. On February 16, 2017, a customer of Gotcha Covered allegedly had problems with an SWF Product. Specifically, this customer allegedly reported that the motorized blind it

had purchased from SWF caught on fire and caused property damage and that two of the batteries had exploded after falling from the melted window shade.

35. All five of these incidents involved an SWF Product installed with the Subject Batteries.

36. SWF, however, has not provided Zeus with any evidence that the Subject Batteries were defective and/or the cause of any of the above referenced isolated incidents.

37. When it learned of the foregoing incidents, Zeus independently ran tests on the SWF Product and determined that SWF Product's design allows it to operate regardless of whether the batteries are installed correctly in the proper polarity alignment. In other words, Zeus determined that the SWF Product will operate even when a battery has been inserted the wrong way -- a condition known in the industry as reverse-polarity. This is a serious defect in the SWF product. Products should be designed so that they do not operate if batteries are installed the wrong way. Indeed, it is a violation of UL Standard 1642 for an electrical product to operate when batteries are installed the wrong way.

38. Such improper, reverse-polarity installation is known, industry-wide, to cause overheating in otherwise conforming batteries and battery manufacturers and suppliers (including Zeus) warn against this risk. Indeed, manufacturers make their products so that they will not operate if batteries are installed in the wrong way.

39. Zeus informed SWF promptly, at least as early as November 30, 2016, that it believed a cause of the incidents described above was improper reverse-polarity installation of the Subject Batteries.

40. In addition to having a fundamental design defect in its Product, at the time of the incidents referred to above, SWF did not provide any warning to consumers. Neither the SWF Operating Manual nor any label near the battery case of the SWF Product contained a statement (or warning) advising consumers not to insert the Subject Batteries in a reverse position. (See Ex. A.)

41. In addition to the foregoing design defect that allows the SWF Product to operate when a battery has been inserted incorrectly, Zeus identified other defects in the SWF Product as described below.

42. UL Standard 1642 expressly states that where lithium and alkaline batteries are mixed and used in the same end product, the cells may present a risk of fire. Yet, the SWF Product is designed so as to allow lithium and alkaline batteries to be mixed and used in any combination. This is another serious design defect that poses a risk of fire and other dangerous outcomes.

43. Despite this additional design defect, at the relevant time, the SWF Product contained no warning to consumers. Thus, neither the SWF Operating Manual nor any label next to the battery case for the SWF Product warned consumers not to mix battery types in the SWF Product. (See Ex. A.)

44. The SWF Product is also designed in such a way that it is very difficult to insert and remove batteries. The plastic housing enclosure is so tight that it sometimes requires hand tools (e.g., scissors, pliers or knives) to install and remove batteries. This defect in the design allows for physical damage to the cell, damage to the sleeve of cells or damage to the SWF Product itself.

45. The cord that exits the reloadable battery case in the SWF Product has a micro USB plug attached to it. This type of plug is a common connector used to recharge cell phones and the like. This defect in the design allows for the improper charging of a device that the SWF Product is not intended to charge. Here too, there is no warning in the SWF Operating Manual or on the SWF Product alerting consumers that they should not try to recharge the batteries through this USB plug. (See Ex. A.)

46. The SWF Operating Manual references a plug-in transformer that is recommended for larger shades. (See Ex. A at p. 4.) The transformer allows for the operation of the shade without a battery case. There is, however, no warning in the SWF Operating Manual or on the SWF Product warning consumers that the transformer should never be connected to the battery case. (Id.) There is also no warning in the SWF Operating Manual or on the SWF Product alerting consumers that the USB plug should never be attached to the transformer. (Id.) These additional defects in design and in warnings allow for the improper charging of the SWF Product.

47. Since the events described above, SWF changed the labeling of the SWF Product and now warns customers not to insert batteries in reverse polarity positions and not to mix types of batteries.

The Recall

48. On February 24, 2017, Zeus received notice of a product recall (the “Recall”) initiated by SWF with the Consumer Product Safety Commission (“CPSC”). The Recall concerns the sale of the Subject Batteries coupled with the SWF Product during the period December 14, 2015 through approximately November 11, 2016. SWF’s report to the CPSC

acknowledges that it was informed by Zeus that reverse-polarity installation is the likely cause of the foregoing incidents.

49. Also on February 24, 2017, SWF sent a document labeled “Important Safety Notice” to its customers who have the SWF Product with the Subject Batteries. (See Important Safety Notice, attached hereto as Exhibit H.)

50. Both the Initial Report and the Important Safety Notice contain statements that are false and misleading and that disparage the Subject Battery. In particular, as described below in more detail, the Important Safety Notice states that there is a safety concern regarding the Subject Batteries, even though, when used properly, the Subject Batteries pose no risk of harm to consumers and, in fact, it is the SWF Product that poses a safety concern.

51. At least one retailer (Costco) has posted the “Important Safety Notice” online. (See <https://www.costco.com/wcsstore/CostcoUSBCCatalogAssetStore/Attachment/recalls/zeus-battery-recall-170224.pdf>.)

52. On March 7, 2017, counsel for Zeus submitted to the CPSC a written response to SWF’s February 24th report with the CPSC. Among other things, Zeus pointed out all of the defects in the SWF Product as described in paragraphs 37 to 46 above and identified reverse-polarity installation as the likely cause of the incidents. Zeus provided a copy of the Response Letter to SWF. Zeus’ written submission to the CPSC has been ignored and/or disregarded by SWF.

53. In or about March 2017, SWF prepared a Recall Alert regarding the Subject Batteries which again ignores the design defects in the SWF Product and purports to place the entire blame for the alleged incidents on Zeus and/or the Subject Batteries. Among other things,

the alert states that SWF “recalls Zeus lithium batteries sold with window blinds due to fire and burn hazard.” (See Recall Alert, attached hereto as Exhibit I). This statement, among others, is false, misleading, and otherwise disparaging of Zeus and its products.

54. The above described dissemination of false and misleading information to retailers and consumers has irreparably harmed Zeus and Zeus brand products.

COUNT I

Declaratory Judgment That The Subject Batteries Are Safe And/Or That The SWF Product Is Unsafe And Dangerous To The Public

55. Zeus realleges and restates the allegations of paragraphs 1 through 54 above and paragraphs 62 through 70 below as and for the allegations of this paragraph 55.

56. SWF has been informed by Zeus and otherwise knows that the Subject Battery was not the cause of the incidents that led to the Recall. Indeed, as alleged above, the Subject Battery has been tested for safe operation and approved in accordance with various safety standards, including UL 1642.

57. The SWF Product, on the other hand, contains serious defects and fails to provide sufficient warnings to consumer of the risks and dangers inherent in the product.

58. In light of the Recall, there are actual controversies between the parties regarding: (a) the cause of the incidents that led to the Recall; (b) the safety of the Subject Battery; and (c) the risks and dangers of the SWF Product and the absence of adequate warnings to consumers with respect thereto.

59. In addition, SWF has demanded that Zeus defend and indemnify SWF in connection with all costs and expenses incurred in the Recall. By reason of the matters alleged

herein, SWF is entitled to no such defense or indemnity from Zeus and the Court should issue a declaration to that effect.

60. The relief requested herein will terminate all or some part of the controversies giving rise to this proceeding.

WHEREFORE, Zeus prays that the Court enter judgment in favor of it and against SWF granting the following relief:

- (a) Declaring that the Subject Battery is a safe product and was not the cause of the incidents that led to the Recall;
- (b) Declaring that the SWF Product contains serious defects and poses an unreasonable risk of harm to consumers and that the warnings provided by SWF to consumers regarding the SWF Product are insufficient and inadequate;
- (c) Declaring that SWF is not entitled to be defended and/or indemnified by Zeus in connection with any and all costs or expenses incurred in the Recall;
- (d) Awarding Zeus its costs in bringing this action; and
- (e) For such other and further relief as is appropriate.

COUNT II

Deceptive Trade Practices Act (Injunctive Relief)

61. Zeus realleges and restates the allegations of paragraphs 1 through 54 above, as and for the allegations of this paragraph 61.

62. The Illinois Uniform Deceptive Trade Practices Act, 815 Ill. Comp. Stat. 510/2(a) (the “Deceptive Trade Act”) provides that “[a] person engages in a deceptive trade practice when, in the course of his or her business, vocation, or occupation, the person: . . . (8) disparages the goods, services, or business of another by false or misleading representation of fact.”

63. The “Important Safety Notice” issued by SWF to its customers on February 24, 2017 contains at least the following false or misleading representation of fact:

- (a) “We are writing to inform you about a safety concern regarding Zeus brand AA lithium batteries provided with your custom motorized window treatment, which was purchased between December, 2015 and November, 2016;”
- (b) “There have been isolated instances associated with this brand of batteries overheating;” and
- (c) “Because our number one priority is customer safety, we have completely removed these batteries from our supply chain and have also issued a voluntary recall in cooperation with the Consumer Products Safety Commission.”

64. The “Recall Alert” initiated by SWF and issued by CPSC in March 2017 also contains the following false or misleading representation of fact: “**Hazard:** The lithium batteries sold with certain motorized window blinds can overheat, leak or discharge, posing a fire or burn hazard.”

65. These statements are both false and misleading, as the Subject Battery was not the cause of the incidents that triggered the Recall. Nor will recalling the Subject Battery alleviate risks of fire. Indeed, as SWF was fully aware, it was the faulty design of the SWF Product, which permits the SWF Product to operate when batteries are improperly installed, that caused the incidents. Contributing factors were SWF’s failure to provide adequate instructions and

warnings to customers about the use of batteries with the SWF Product and the other design flaws in the SWF Product identified above.

66. SWF has been informed by Zeus and otherwise knows that the Subject Battery was not the cause of the incidents that led to the Recall. Prior to instituting the Recall and issuing the Important Safety Notice and/or Recall Alert, SWF had undertaken no additional testing of the Subject Battery and had no basis for concluding that it was the cause of any of the incidents referenced in the Recall. Indeed, the Subject Battery had previously passed all safety tests, including those conducted by SWF itself.

67. SWF's publication of false and misleading statements and representations of fact has disparaged Zeus and its products, including the Subject Battery.

68. As a direct and proximate result of this disparagement, Zeus has suffered damage in various ways including, but not limited to, damage to its brand as well as out-of-pocket costs for testing of the SWF Product.

69. Without a full retraction of the foregoing false, misleading and otherwise disparaging statements, Zeus will continue to suffer damage to its brand and lose business and profits as long as its products and name are tarnished.

70. Zeus has an inadequate remedy at law, and will suffer irreparable harm absent an injunction, because it is difficult to value the damage to its brand and/or to quantify its lost profits caused by SWF's false and misleading statements.

WHEREFORE, Zeus prays that the Court enter judgment in favor of it and against SWF granting the following relief:

- (a) That Defendant be temporarily, preliminarily, and permanently enjoined from making any further false, misleading or otherwise disparaging statements about Zeus, its products and services, including the Subject Battery;
- (b) Directing SWF to issue a full retraction and/or correction of the false, misleading and otherwise disparaging statements made about Zeus, its products and services, including the Subject Battery;
- (c) Awarding Zeus its attorneys' fees and costs; and
- (d) For such other relief as is proper under the circumstances.

COUNT III

Consumer Fraud And Deceptive Business Practices Act

71. Zeus realleges and restates the allegations of paragraphs 1 through 70 above, as and for the allegations of this paragraph 71.

72. The Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. 505/2 (the "Consumer Fraud Act") renders unlawful "the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act" . . . in the conduct of any trade or commerce."

73. In violation of the Consumer Fraud Act, SWF has engaged in deceptive acts and practices by willfully and recklessly making false and misleading representations of fact concerning Zeus, its products and services, including the Subject Battery, and by making material misrepresentations and material omissions of fact to the public as a whole. SWF's actions were taken with the intent to disparage Zeus, its products and services, including the

Subject Battery and to fool the public into believing that SWF's own products are safe when in fact they are defective and pose a danger to public safety.

74. SWF's deceptive acts and practices occurred during a course of conduct involving trade and commerce.

75. SWF's deceptive acts and practices showed a reckless disregard for the rights of Zeus.

76. Zeus is a person within the meaning of the Consumer Fraud Act and has standing to assert this claim.

77. As a direct and proximate result of SWF's violation of the Consumer Fraud Act, Zeus has suffered, and will continue to suffer, actual and significant damages.

WHEREFORE, Zeus prays that the Court enter judgment in its favor and against SWF:

- (a) Awarding damages to Zeus in an amount greater than \$50,000;
- (b) Awarding interest as may be allowed by law, including, without limitation, prejudgment interest;
- (c) Awarding punitive damages to Zeus in an amount to be determined at trial;
- (d) Awarding Zeus its attorneys' fees and costs; and
- (e) For such other relief as is proper under the circumstances.

COUNT IV

Breach Of Contract

78. Zeus realleges and restates the allegations of paragraphs 1 through 54 above, as and for the allegations of this paragraph 78.

79. Zeus has performed all conditions precedent required of it under the purchase orders and has otherwise fulfilled all of its obligations to SWF.

80. SWF has breached its obligations to make the payments required under the purchase orders by, among other things, failing:

- (a) To pay \$117,158.40 in outstanding invoices on units of the Subject Battery already delivered to SWF locations; and
- (b) To accept and pay for the remaining units (37,483 units of an 8-pack of the Subject Battery) under the July 14, 2016 and the August 17, 2016 blanket purchase orders, totaling \$323,853.12.

81. As a direct and proximate result of SWF's breach of the contract, Zeus has suffered substantial damages.

WHEREFORE, Zeus prays for the entry of a judgment in its favor and against SWF as follows:

- (a) Awarding compensatory damages to Zeus in an amount no less than \$441,011.52;
- (b) Awarding interest as may be allowed by law, including, without limitation, prejudgment interest;
- (c) Awarding Zeus its costs in bringing this action; and
- (d) For such other relief as is proper under the circumstances.

Respectfully submitted,

POWER CELL LLC, D/B/A
ZEUS BATTERY PRODUCTS

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JURY DEMAND

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