

**THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

**ARROW ELECTRONICS, INC.,**

**Plaintiff,**

v.

**ANTRON COMPACT ELECTRONICS,  
LLP, d/b/a ANTRON COMPACT  
ELECTRONICS, L.P. AND AC  
ELECTRONICS,**

**Defendant.**

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

**Civil Action No. \_\_\_\_\_**

**JURY DEMANDED**

**PLAINTIFF’S ORIGINAL COMPLAINT AND  
DEMAND FOR JURY TRIAL**

1. Arrow Electronics, Inc. (“Arrow”) brings this action against Antron Compact Electronics, LLP, d/b/a Antron Compact Electronics, L.P. and AC Electronics (“ACE”) for misconduct arising out of an agreement for the sale and distribution of LED drivers.

2. Under a September 29, 2014 Distribution Agreement (the “Distribution Agreement” or “Agreement,” attached as Exhibit A), ACE promised to sell LED drivers to Arrow in exchange for Arrow’s promise to pay for, promote, and resell the drivers.

3. The parties’ commercial relationship proceeded without interruption under the terms of the Distribution Agreement until spring 2017, when two things happened: certain ACE LED drivers were named in a third-party patent-infringement suit, and ACE went behind Arrow’s back to sell LED drivers directly to customers to which Arrow had a longstanding connection.

4. Although the parties negotiated for a resolution of the disputes that had developed between them, those negotiations were fruitless and, on September 12, 2017, Arrow served ACE with notice of termination under the Distribution Agreement.

5. Pursuant to its contractual right under the Agreement, Arrow has demanded that ACE repurchase unused inventory that Arrow previously purchased, but ACE has refused to honor its contractual obligation.

6. In light of the facts alleged here and those set forth below, Arrow asserts claims for breach of the Distribution Agreement, breach of the implied warranty against infringement, tortious interference with business relations, punitive damages based on ACE's bad faith tortious conduct, and reasonable legal fees.

## **I.** **PARTIES**

7. Arrow is a New York corporation with its principal place of business at 9201 East Dry Creek Road in Centennial, Colorado 80112. Arrow is a global provider of products, services, and solutions to industrial and commercial users of electronic components and enterprise computing solutions.

8. ACE is registered with the Texas Secretary of State as a limited partnership with a registered address and principal place of business at 3401 Avenue D, Arlington, Texas 76011. Its sole general partner is ACE-GP, LLC. ACE has never had an office outside of Arlington, and all of its personnel, documents, and operations are in Texas. ACE may be served through its registered agent, J. Richard McVay, at 503 East Border Street, Arlington, Texas 76010.<sup>1</sup>

---

<sup>1</sup> The Distribution Agreement was executed on behalf of "Antron Compact Electronics LLP, DBA – AC Electronics." No limited liability partnership (LLP) by that name is registered in Texas, but a limited partnership (LP) registered under that name shares the same address and management as the LLP that signed the Distribution Agreement. On information and belief, these entities are one and the same.

9. ACE-GP, LLC's mailing address registered with the Texas Secretary of State is 503 East Border Street, Arlington, Texas 76010. The managing member of ACE-GP, LLC is Dwayne Hillman, and its other member is Bill Tsai.

10. Dwayne Hillman is the President and Chief Executive Officer of ACE. His address listed with the Texas Secretary of State is 3401 Avenue D, Arlington, Texas 76011. Mr. Hillman is not a citizen or domiciliary of either New York or Colorado.

11. Bill Tsai's address listed with the Texas Secretary of State is 3401 Avenue D, Arlington, Texas 76011. Mr. Tsai is not a citizen or domiciliary of either New York or Colorado.

## **II.** **JURISDICTION AND VENUE**

12. The Court has diversity jurisdiction over the parties pursuant to 28 U.S.C. § 1332(a). The amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and the parties are completely diverse—Arrow is a citizen of both New York and Colorado, and ACE is a citizen of neither state.

13. ACE is a resident of Tarrant County, Texas, where its principal place of business is located. Pursuant to 28 U.S.C. § 1391(b)(1), venue is therefore proper in the U.S. District Court for the Northern District of Texas, which includes Tarrant County. Furthermore, the Distribution Agreement requires that venue be laid in the state or federal forum covering the defending party's principal place of business. *See* Ex. A § 24(c).

14. This action should proceed in the Fort Worth Division of the Northern District of Texas because Tarrant County is situated within the Division.

**III.**  
**GENERAL ALLEGATIONS**

**LED Drivers and Relevant Entities**

15. This dispute is about LED drivers that ACE sold to Arrow and others. An LED driver regulates the current and voltage to a light-emitting diode—i.e., an LED—or a chain of LEDs. The driver matches the LED circuit’s voltage and current requirements, and it modulates electricity input to account for variables like temperature. Drivers are manufactured in a wide variety of configurations for different wattages, voltages, currents, and other characteristics.

16. Before 2014, ACE sold LED drivers to the Eshel Technology Group, Inc. (“ETG”), a leading distributor of LED hardware that Arrow acquired in 2010 and converted into a division of Arrow.

17. One of the important customers that came with Arrow’s acquisition of ETG was Deco Enterprises, Inc., also known as Deco Lighting (“Deco”), which ETG had long supplied with drivers for use in the various LED products that Deco manufactures and sells to businesses and other consumers.

18. In mid-2014, ACE and Arrow began negotiations for Arrow to distribute ACE LED drivers directly, rather than through Arrow’s subsidiary ETG.

19. In particular, ACE and Arrow agreed that Arrow would sell ACE LED drivers to Deco.

20. After several months of negotiation, on September 29, 2014, ACE and Arrow executed the Distribution Agreement, which was effective as of September 23, 2014. *See Ex. A at 1.*

### The Distribution Agreement

21. Under the Distribution Agreement, Arrow was required to use its reasonable best efforts to promote ACE drivers, timely deliver them to customers, and participate in training programs offered by ACE. *See id.* § 1.

22. ACE was required to furnish Arrow with current price and product information, including detailed performance specifications and regulatory-compliance data, and products that complied with all laws and other legal requirements. *See id.* § 2.

23. Each sale from ACE to Arrow was governed by ACE's price list and was effectuated by an individual purchase order. *See id.* §§ 4-5.

24. ACE also made several representations and warranties in the Distribution Agreement.

25. It represented that its practices and policies complied with all applicable laws and warranted that it held legal rights to all intellectual property for the products and product components Arrow would purchase. *See id.* §§ 5(c), 22.

26. ACE also promised to "indemnify [Arrow] against, and hold it harmless from, any cost . . . arising from or related to . . . the failure, or alleged failure, of the products, as manufactured and sold to [Arrow], to fully comply with all applicable laws . . . or to be suitable for resale or other distribution by [Arrow] as contemplated by the Agreement." *See id.* § 9.

27. Moreover, ACE promised to "indemnify, defend, and otherwise hold harmless [Arrow] from all cost . . . arising from any proceeding or claim brought or asserted against . . . [Arrow] customers, to the extent such proceeding or claim is based on an allegation that the products, [or] any part thereof . . . infringe any patent . . . [so long as Arrow] notifies [ACE] of

any such proceeding or claim promptly after it becomes known and provides all assistance and cooperation to [ACE] that is reasonably requested.” *See id.* § 10.

28. The parties agreed that either of them could terminate the Agreement without cause and for convenience upon 90 days’ prior written notice and that neither party would in any way be liable to the other for any loss, expense, or damage arising from a termination for convenience. *See id.* § 11(a).

29. Alternatively, either party could terminate the Agreement for cause or seek legal relief if, among other things, the other party breached the Agreement and failed to cure such breach within 60 days of receiving written notice of the breach. *See id.* § 11(b)(ii), (c).

30. Upon termination with or without cause, the Agreement stated that ACE would “repurchase from [Arrow] any or all unsold products designated by [Arrow] from its inventory at the price paid therefor,” so long as the products were in their original, unopened packaging or were undamaged and in merchantable condition. If it terminated without cause, Arrow would have to pay a 5% handling charge and shipping costs for such returns. *See id.* § 11(d).

### **Termination of the Distribution Agreement**

31. The parties performed under the Distribution Agreement for nearly two years, but two developments undermined their commercial relationship.

32. First, on April 12, 2017, a patent-infringement lawsuit was filed against Arrow’s customer Deco, alleging, among other things, that certain components in ACE LED drivers used by Deco infringe third-party patents.

33. The lawsuit, *Philips Lighting North America Corp. v. Deco Enterprises, Inc.*, No. 17 Civ. 10624 (D. Mass.), alleged that ACE driver components used in multiple products

infringe patents held by the plaintiff, and the complaint sought a permanent injunction against the infringing products and product components and damages for infringement to date.

34. Under 35 U.S.C. § 271(c), Arrow could be held liable for contributory infringement by selling or offering to sell infringing ACE products or product components.

35. Despite Arrow's repeated requests and a formal demand for information regarding the extent to which the alleged infringement infects other ACE products, ACE has refused to provide Arrow with a responsive list of affected products nor has ACE reasonably satisfied Arrow that the drivers purchased by Arrow are not affected.

36. Rather, Arrow has been forced to dedicate its own engineers to weeks of testing and analysis to determine whether the ACE drivers infringe third-party patents.

37. Based on that testing and analysis, Arrow's engineers have concluded that all ACE LED drivers in Arrow's inventory infringe third-party patents in certain applications.

38. As a result, Arrow has been forced to halt sales of ACE LED drivers to avoid potential liability for contributory infringement, leaving Arrow with approximately \$1.7 million in inventory that it cannot sell.

39. Second, in May 2017, ACE bypassed Arrow and the Distribution Agreement by contracting to sell LED drivers directly to the contract manufacturer for Arrow's customer Deco, even though Deco had been buying its drivers from Arrow and Arrow's ETG subsidiary for at least four years.

40. ACE knew about Arrow's and Arrow ETG's preexisting sales contracts with Deco, and, by selling to Deco's contract manufacturer, ACE interfered with Arrow's longstanding relationship with Deco.

41. Further, ACE knew that Arrow had specially purchased inventory from ACE to support Deco's forecasted need for LED drivers, and by selling directly to Deco's contract manufacturer, ACE undermined Arrow's ability to resell that inventory to Deco as the parties had contemplated.

42. After these two developments, Arrow requested a mark-down on ACE LED Drivers, which ACE refused.

43. Instead, ACE offered to repurchase some of the inventory Arrow had purchased, but it demanded a 15% restocking fee and imposed limitations on the volume of inventory that Arrow could return.

44. In or around August 2017, Arrow notified ACE that it planned to terminate the Distribution Agreement and exercise its right to return all unused inventory for repurchase by ACE.

45. After further negotiation, Arrow submitted its notice of termination without cause and for convenience on September 12, 2017, and demanded that ACE repurchase Arrow's inventory of ACE LED drivers.

46. The current value of Arrow's inventory of ACE LED drivers is approximately \$1.7 million.

**IV.**  
**CLAIMS FOR RELIEF**

**A.**  
**COUNT ONE**  
**Breach of the Distribution Agreement**  
**(Section 11(d)—Repurchase Obligation)**

47. The preceding allegations are incorporated as though set forth fully herein.

48. The Distribution Agreement is governed by New York law. *See* Ex. A § 24(c).



49. To prevail on a breach of contract claim under New York law, a plaintiff must prove that it had an enforceable agreement with the defendant, that the plaintiff performed while the defendant failed to perform under the agreement, and that the plaintiff was harmed as a result.

50. Here, the parties entered into the Distribution Agreement under which Arrow promised to undertake certain obligations involved in the distribution of ACE LED drivers in exchange for ACE's promise to, among other things, repurchase any drivers offered by Arrow after the Distribution Agreement terminated.

51. Specifically, the repurchase provision stated that:

In the event of any termination of this Agreement, [ACE] will repurchase from [Arrow] any or all unsold products designated by [Arrow] from its inventory at the price paid therefor by [Arrow], less any prior credits taken by [Arrow] on such products. If [Arrow] terminates the Agreement without cause, or [ACE] terminates it with cause, the price will be reduced by a five percent handling charge and [Arrow] will pay all freight and shipping charges (which otherwise will be paid by [ACE]). . . . [ACE] will be required to accept only those products which are in their original unopened packaging or are undamaged and in merchantable condition. [*Id.* § 11(c).]

52. Arrow terminated the Distribution Agreement without cause and for convenience on September 12, 2017, which termination became effective December 11. *See id.* § 11(a).

53. Arrow has demanded that ACE repurchase approximately \$1.7 million in unused, unopened, undamaged inventory, but ACE has refused.

54. Although ACE has argued that a course of dealing preceding the Distribution Agreement alters the plain language of the repurchase provision and that subsequent communications between the parties have amended it, the Distribution Agreement expressly “supersedes all prior communications or understandings between” Arrow and ACE, and it “cannot be changed in any way except by a writing signed by” Arrow. *Id.* § 24(a)-(b).

55. Arrow has not signed any amendment to the Agreement.

56. Accordingly, ACE has breached the contract by refusing to repurchase Arrow's proffered inventory.

57. ACE's breach has harmed Arrow in the approximate amount of \$1.7 million, less a 5% handling charge. *See id.* § 11(d).

58. Arrow therefore seeks approximately \$1.7 million in damages, less 5%, plus pre-judgment interest at the rate of 9% per year pursuant to N.Y. C.P.L.R. 5001, 5002, and 5004, and applicable post-judgment interest.

**B.**  
**COUNT TWO**  
**Breach of the Distribution Agreement**  
**(Sections 5(c), 9-10, 22—Legal and IP Violations)**

59. The preceding allegations are incorporated as though set forth fully herein.

60. In the Distribution Agreement, ACE warranted that its practices and policies complied with all applicable laws and that it held legal rights to all intellectual property for the products and product components Arrow would purchase. *See Ex. A* §§ 5(c), 22.

61. Among the other obligations imposed on it by the Distribution Agreement, ACE must:

indemnify [Arrow] against, and hold it harmless from, any cost . . . arising from or related to . . . the failure, or alleged failure, of the products, as manufactured and sold to [Arrow], to fully comply with all applicable laws . . . or to be suitable for resale or other distribution by [Arrow] as contemplated by the Agreement. [*Id.* § 9.]

62. Furthermore, ACE must:

indemnify, defend, and otherwise hold harmless [Arrow] from all cost . . . arising from any proceeding or claim brought or asserted against . . . [Arrow] customers, to the extent such proceeding or claim is based on an allegation that the products, any part thereof, or their distribution . . . infringe any patent . . . [so long as Arrow] notifies [ACE] of any such proceeding or claim promptly after it becomes known and provides all

assistance and cooperation to [ACE] that is reasonably requested.  
[*Id.* § 10.]

63. All warranty and indemnification provisions survived the termination of the Distribution Agreement. *See id.* § 9.

64. ACE LED drivers were the subject of a patent-infringement complaint against Arrow's customer Deco in the U.S. District Court for the District of Massachusetts, *Philips Lighting North America Corp. v. Deco Enterprises, Inc.*, No. 17 Civ. 10624.

65. By letter dated October 30, 2017, Arrow Vice President Bruce Jones notified ACE that the technology in ACE's products was infringing third-party patents and demanded that ACE repurchase the LED drivers held in Arrow's inventory.

66. Arrow personnel also sent multiple emails requesting assistance from ACE in determining whether all or some of ACE's products contained the technology that was alleged to infringe the third-party patents.

67. ACE has denied that its drivers infringe third-party patents, but it has not identified for Arrow which drivers were implicated by the infringement claims against Deco, nor has it reasonably satisfied Arrow that the ACE LED drivers in Arrow's inventory are non-infringing.

68. On December 13, 2017, counsel for Arrow sent ACE a final demand for a list of ACE products and product components that contained the allegedly infringing technology.

69. ACE has not responded to Arrow's demand or repurchased the LED drivers in Arrow's inventory.

70. In the meantime, Arrow engineers have undertaken weeks of testing and analysis and have concluded that all of the ACE LED drivers in Arrow's inventory infringe third-party patents in certain applications.

71. Arrow has incurred approximately \$1.7 million in costs for ACE LED drivers now held in inventory, and Arrow cannot recoup those costs through sales because selling the drivers may expose Arrow to liability for contributory infringement.

72. ACE has breached its warranties regarding legal compliance and intellectual property rights, and it has failed to satisfy its obligation to indemnify Arrow for the \$1.7 million in lost costs arising from ACE products' "alleged failure" to comply with U.S. patent law and from the allegation against Arrow's client "that the products [or] part[s] thereof" manufactured by ACE infringe third-party patents. *Id.* §§ 9-10.

73. ACE's violation of its warranties and its refusal to repurchase the drivers or to otherwise indemnify Arrow's costs arising from the allegations of infringement breach the Distribution Agreement.

74. Arrow has been harmed in the approximate amount of \$1.7 million as a result of this breach.

75. Arrow therefore seeks approximately \$1.7 million in damages, plus pre-judgment interest at the rate of 9% per year pursuant to N.Y. C.P.L.R. 5001, 5002, and 5004, and applicable post-judgment interest.

**C.**  
**COUNT THREE**  
**Breach of the Implied Warranty Against Infringement**  
**(N.Y. U.C.C. § 2-312(3))**

76. The preceding allegations are incorporated as though set forth fully herein.

77. Implied contractual warranties under New York law apply to this contract because the contract is governed by New York law. *See* Ex. A § 24(c).

78. Pursuant to N.Y. U.C.C. § 2-312(3):

Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like . . . .

79. Under this provision, a “rightful claim” means any nonfrivolous claim of infringement—i.e., any claim that is not totally and completely without merit—that has any significant and adverse effect on the buyer’s ability to make use of the purchased goods.

80. Here, ACE’s principal business is the manufacture and sale of LED Drivers, and the parties stated in the Distribution Agreement that Arrow’s chief purpose for entering the Agreement was to buy LED drivers from ACE that are “suitable for resale or other distribution.” *See Ex. A § 9.*

81. After several weeks of testing and analysis, Arrow engineers have concluded that all of the ACE LED drivers in Arrow’s inventory infringe third-party patents in certain applications.

82. Arrow has incurred \$1.7 million in costs for ACE LED drivers now held in inventory, and Arrow cannot recoup those costs because the nonfrivolous third-party claims of infringement in *Philips Lighting North America Corp. v. Deco Enterprises, Inc.*, No. 17 Civ. 10624, and Arrow’s own analysis show that Arrow is at risk of liability for contributory infringement if it resells infringing ACE products.

83. The infringement at issue is not a result of specifications furnished to ACE by Arrow, and the parties have not formed any agreement contrary to this warranty.

84. Accordingly, ACE has breached the implied warranty against infringement.

85. Arrow has been harmed in the approximate amount of \$1.7 million as a result of this breach.

86. Arrow therefore seeks approximately \$1.7 million in damages, plus pre-judgment interest at the rate of 9% per year pursuant to N.Y. C.P.L.R. 5001, 5002, and 5004, and applicable post-judgment interest.

**D.**  
**COUNT FOUR**  
**Tortious Interference with**  
**Prospective Business Relations**

87. The preceding allegations are incorporated as though set forth fully herein.

88. To recover for tortious interference with prospective business relations under Texas law, a plaintiff must prove there was a reasonable probability that the parties would have entered into a business relationship and the defendant's intentional and tortious or otherwise wrongful conduct prevented the relationship, resulting in harm to the plaintiff.

89. Here, Arrow—directly and through its ETG division—had a longstanding relationship with Deco, characterized by several years of contracts between them for the sale of LED drivers, all of which ACE knew.

90. Indeed, one of the purposes of the Distribution Agreement was to convert ETG's existing relationship with Deco into a direct relationship with ETG's corporate parent, Arrow.

91. With reckless disregard for Arrow and ETG's history of contractual relations with Deco, and after selling LED drivers to Arrow with the specific understanding that those drivers would be resold to Deco, ACE offered and executed a sale of 6,000 LED drivers in May 2017 to Deco's contract manufacturer.

92. By selling these drivers, ACE took for itself the very sales that it had agreed to channel through Arrow, and deprived Arrow of the revenue from those sales—approximately \$95,000.00.

93. Arrow has been harmed by ACE's intentional and wanton interference with Arrow's business relationship with Deco in the approximate amount of \$95,000.00.

94. Arrow therefore seeks in damages the approximate amount of \$95,000.00, plus pre-judgment interest pursuant to Texas law, and applicable post-judgment interest.

**E.**  
**COUNT FIVE**  
**Punitive Damages**

95. The preceding allegations are incorporated as though set forth fully herein.

96. In order to obtain punitive damages for a claim of tortious interference under Texas law, the plaintiff must show that the defendant acted with actual malice.

97. Here, ACE was fully aware of the longstanding relationship and the series of contracts Deco had entered with Arrow and Arrow's ETG division.

98. Moreover, ACE was aware that Arrow had entered the Distribution Agreement in part to solidify a direct relationship with Deco, which had historically worked with ETG.

99. Furthermore, ACE was aware that Arrow had purchased LED drivers from ACE specifically for resale to Deco.

100. Nevertheless, with reckless indifference to Arrow's business relationship with Deco, ACE offered and sold 6,000 LED drivers to Deco's contract manufacturer, cutting Arrow out of its multi-year partnership with Deco and the arrangement contemplated by the Distribution Agreement.

101. As set forth above, Arrow has been harmed by ACE's tortious interference, and willful and wanton misconduct of this kind undermines efficient and productive commercial activity generally.

102. As a sanction for ACE's misconduct, Arrow seeks punitive damages in the amount of \$100,000.00, plus applicable post-judgment interest.

**F.**  
**COUNT SIX**  
**Attorneys' Fees**  
**(Distribution Agreement—Section 24(c))**

103. The preceding allegations are incorporated as though set forth fully herein.

104. The Distribution Agreement provides that the prevailing party in any action brought under or in connection with the Agreement will be paid reasonable legal fees by the other party. *See* Ex. A § 24(c).

105. If Arrow prevails in this litigation, Arrow seeks its reasonable legal fees in connection with the litigation, plus applicable pre-judgment interest at the rate of 9% per year pursuant to N.Y. C.P.L.R. 5001, 5002, and 5004, and applicable post-judgment interest.

**V.**  
**CONDITIONS PRECEDENT**

106. All conditions precedent have been performed or have occurred.

**VI.**  
**DEMAND FOR JURY TRIAL**

107. Pursuant to Fed. R. Civ. P. 38, Arrow demands a trial by jury of all claims triable to a jury.

**VII.**  
**PRAYER FOR RELIEF**

WHEREFORE, Arrow respectfully requests that this Court enter judgment as follows:

- a. On Count One, awarding damages in favor of Arrow in the approximate amount of \$1.7 million, less 5%, plus applicable pre- and post-judgment interest;
- b. On Count Two, awarding damages in favor of Arrow in the approximate amount of \$1.7 million, plus applicable pre- and post-judgment interest;



- c. On Count Three, awarding damages in favor of Arrow in the approximate amount of \$1.7 million, plus applicable pre- and post-judgment interest;
- d. On Count Four, awarding damages in favor of Arrow in the approximate amount of \$95,000.00, plus applicable pre- and post-judgment interest;
- e. On Count Five, awarding punitive damages in favor of Arrow in the amount of \$100,000.00, plus applicable post-judgment interest;
- f. On Count Six, awarding to Arrow its reasonable legal fees incurred in this case, plus applicable pre- and post-judgment interest;
- g. Awarding Arrow its reasonable costs and fees in addition to legal fees sought in Count Six; and
- h. Granting Arrow such other and further relief as the Court deems just and proper.

Dated: January 4, 2018

Respectfully submitted,

Paul D. Swanson  
State Bar No. CO50923  
paul.swanson@dgsllaw.com  
DAVIS GRAHAM & STUBBS LLP  
1550 17th St., Suite 500  
Denver, Colorado 80202  
Telephone: (303) 892-7378  
Facsimile: (303) 893-1379

*/s/ Bill Warren*

---

Bill Warren (local counsel)  
State Bar No. 00786331  
bill.warren@kellyhart.com  
KELLY HART & HALLMAN LLP  
201 Main Street, Suite 2500  
Fort Worth, Texas 76102  
Telephone: (817) 332-2500  
Facsimile: (817) 878-9280

**ATTORNEYS FOR PLAINTIFF  
ARROW ELECTRONICS, INC.**