

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

LIGHTNING WHEELS, LLC,
a Florida limited liability company,

Plaintiff,

v.

SKYROCKET TOYS, LLC,
a California limited liability company,

Defendant.

_____ /

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, LIGHTNING WHEELS, LLC, sues Defendant, SKYROCKET TOYS, LLC,
for Patent Infringement under the Patent Act and complains as follows:

JURISDICTION AND VENUE

1. This is an action for Patent Infringement under the Patent Act, 35 U.S.C. § 271.
2. This court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1338(a).
3. This court has personal jurisdiction over Defendant pursuant to Fla. Stat. Ch. 48.193(1) (a) and (b) by virtue of its operating, conducting, engaging in, or carrying on a business or business venture within the State of Florida, and committing tortious acts within this State, including the sale and offer for sale of the accused infringing product.
4. Venue is proper in this District, pursuant to 28 U.S.C. §§ 1391(b & c) and 1400(b), because the Defendant is subject to personal jurisdiction in the District and has committed acts of Patent Infringement in the District.

THE PARTIES

5. Plaintiff is a Florida limited liability company having its principal place of business at 245 Sunrise Avenue, Palm Beach, Florida. It is the owner by assignment of the U.S. Patent Nos. 7,271,813, 8,284,214 and 8,411,108, and is engaged in exploiting commercial applications for the inventions claimed therein.

6. Defendant is a California limited liability company having its principal place of business at 606 Venice Avenue, Suite D, Venice, California. It is engaged in the business of creating and promoting television advertised toy brands which are sold through mass market retailers such as Target, Toys R Us and Amazon.com.

BACKGROUND

7. One of the toy brands developed by the Defendant is FUZE, under which it sells a product called "WHEEL WRITER". This product is mounted directly onto the spokes of most bicycles and, as the wheels spin, it uses LED light to flash on and off in order to create different images and patterns on the wheel. As a result, as the rider pedals the bicycle, the wheel displays bright pictures.

8. The Defendant's FUZE WHEEL WRITER, upon belief, has proven to be very successful in the marketplace, and is sold by mass retailers such as Wal-Mart. The Defendant's WHEEL WRITER was also named as one of seven finalists for "Outdoor Toy of the Year", a prestigious award given by the Toy Industry Association.

9. On August 9, 2013, the Plaintiff's law firm sent a letter via overnight delivery, to the Defendant, notifying it of the Plaintiff's ownership of U.S. Patent No. 8,411,108 ('108

Patent), and the fact that the promotion and sale of the FUZE WHEEL WRITER constituted infringing acts pursuant to 35 U.S.C. § 271(a).

10. On August 22, 2013, the Plaintiff's counsel received a response from Nelo Lucich of Skyrocket Toys LLC, advising that the Accused FUZE WHEEL WRITER did not infringe either of the independent claims of the '108 Patent (claims 1 and 16).

11. Upon belief, the Defendant has continued in committing acts of infringement, including the promotion and sale of the FUZE WHEEL WRITER since its receipt of actual notice of the Plaintiff's Patents. Its conduct since such notification thus constitutes willful infringement.

COUNT I
PATENT INFRINGEMENT

12. This Count alleges Patent Infringement against Defendant, pursuant to 35 U.S.C. § 271(a). Plaintiff repeats and realleges Paragraphs 1 through 11 above.

13. Plaintiff is the owner of U.S. Patent No. 8,411,108, entitled "Rotational Display System" ("the '108 Patent"), which issued on April 2, 2013. A copy of the '108 Patent is attached as Exhibit "A" hereto.

14. Defendant has infringed and is still infringing one or more claims of the '108 Patent by making, using, selling and/or offering to sell rotational wheel display products embodying the invention protected under the '108 Patent, including the FUZE brand WHEEL WRITER, and will continue to do so unless enjoined by this Court.

15. Defendant's acts of infringement are willful, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and warranting a finding that this is an exceptional case pursuant to 35 U.S.C. § 285.

16. Defendant's acts of infringement have occurred, are occurring and will continue to occur without the authority or license of Plaintiff. These infringing acts have caused, are causing and will continue to cause injury to Plaintiff, including irreparable injury and damages, unless and until Defendant is enjoined from doing so by this Court.

COUNT II
INDIRECT PATENT INFRINGEMENT

17. This Count alleges indirect patent infringement of the '108 Patent against Defendant, pursuant to 35 U.S.C. § 271(b). Plaintiff repeats and realleges Paragraphs 1 through 11 above.

18. Plaintiff is the owner of U.S. Patent No. 8,411,108, entitled "Rotational Display System" ("the '108 Patent"), which issued on April 2, 2013. A copy of the '108 Patent is attached as Exhibit "A" hereto.

19. The Defendant has induced others to infringe, and continues to induce others to infringe, one or more claims of the '108 Patent.

20. Retailers who distribute the Accused WHEEL WRITER to customers, and the end-user mounting the product on bicycles have directly infringed, and continue to directly infringe one or more claims of the '108 Patent by respectively selling and/or offering to sell, and using, the FUZE WHEEL WRITER.

21. Despite having knowledge of the issuance of the '108 Patent since August of 2013, the Defendant has sold, offered to sell and promoted the Accused FUZE WHEEL

WRITER with specific intent to encourage and cause the infringement of the '108 Patent by national and regional retail establishments and end users of the FUZE WHEEL WRITER.

22. Since at least August of 2013, the Defendant has had actual knowledge of the claims of the '108 Patent, and the fact that its FUZE WHEEL WRITER infringes one or more of those claims. Upon belief, it has taken no steps to remedy any such infringement.

23. The Defendant has known that selling, and offering to sell, the FUZE WHEEL WRITER would cause the direct infringement of the '108 Patent.

24. The Defendant's act of infringement are willful, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and warrant a finding that this is an exceptional case pursuant to 35 U.S.C. § 285.

25. Defendant's acts of infringement have occurred, are occurring and will continue to occur without the authority or license of Plaintiff. These infringing acts have caused, are causing and will continue to cause injury to Plaintiff, including irreparable injury and damages, unless and until Defendant is enjoined from doing so by this Court.

DEMAND FOR JURY TRIAL

Plaintiff requests that all issues in this case be tried to a jury.

WHEREFORE, Plaintiff prays that this Court:

A. Enter judgment against Defendant for infringement of the '108 Patent and permanently enjoin Defendant, its principals, officers, directors, agents, employees, subsidiaries, affiliates and all other persons in active concert or participation with them, from further acts of infringement, pursuant to 35 U.S.C. § 283;

B. Enter judgment for Plaintiff for an accounting as to all damages arising from Defendant's infringement of the '108 Patent;

C. Enter judgment against Defendant for damages arising from the infringement of the '108 Patent, pursuant to 35 U.S.C. § 284;

D. Enter judgment that this case is exceptional, under 35 U.S.C. § 285, and that Defendant reimburse Plaintiff's reasonable attorney fees and costs incurred in connection therewith; and

E. Enter judgment granting Plaintiff such other relief as this Court deems appropriate.

Respectfully submitted,

s/ Edward F. McHale

Edward F. McHale (Florida Bar No. 190300)

Brian M. Taillon (Florida Bar No. 678635)

McHALE & SLAVIN, P.A.

2855 PGA Boulevard

Palm Beach Gardens, Florida 33410

Telephone: (561) 625-6575

Facsimile: (561) 625-6572

E-mail: litigation@mchaleslavin.com

Attorneys for Lightning Wheels, LLC