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BY FAX

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

14 RANDALL MAY INTERNATIONAL,
15 INC.,
16 Plaintiff,
17 v.
18 PEARL CORPORATION, and PEARL
19 MUSICAL INSTRUMENT COMPANY,
20 Defendants.

Case No. SACV13-00016 JVS (RNBx)
**THIRD AMENDED COMPLAINT
FOR PATENT INFRINGEMENT,
DECLARATORY JUDGMENT,
PERMANENT INJUNCTION AND
DAMAGES**
DEMAND FOR JURY TRIAL

1 For its Complaint against Pearl Corporation and Pearl Musical Instrument Company
2 (collectively “Pearl”), Plaintiff Randall May International, Inc. (“RMI”) alleges as follows:

3 **THE PARTIES**

4 1. RMI is a corporation incorporated and existing under the laws of California, with
5 a principal place of business located at 1402 McGaw Avenue, Irvine, CA 92614, in the
6 County of Orange.

7 2. RMI was founded by Randall May (“May”) in 1981 and he continues to be
8 CED/President of the company. May was an accomplished professional musician and,
9 after starting RMI, devoted himself to improving the equipment used by percussionists.
10 The United States Patent & Trademark Office has recognized the merits of his innovations,
11 awarding him dozens of patents.

12 3. May assigned his patents to RMI, which manufactures and sells products
13 covered by those patents. The patented RMI products include shoulder supported carrier
14 assemblies and related hardware for percussion instruments, particularly drums of all kinds,
15 and these products are widely-used by marching bands and drum corps.

16 4. RMI’s carrier assemblies and hardware are the most advanced and well-designed
17 of such products available. Musicians in college, high school, junior high, club and other
18 marching bands and/or drum corps, in California, the United States and abroad, use RMI’s
19 patented products that enhance ergonomics and comfort. RMI’s patented carrier
20 assemblies and hardware are even used at the highest levels of professional performance.
21 For example, on stage marching band members of international pop star Madonna’s half-
22 time performance at Super Bowl XLVI used RMI’s patented products and a drum line
23 shown using RMI products was features in an ESPN “Bowl Pride Week” commercial
24 alongside Grammy Award winner Nelly.

25 5. RMI sells its carrier assembly products to leading drum manufacturers, who
26 resell them to distributors, dealers, marching bands, and drum corps in combination with
27 drums. RMI’s patented carrier assemblies and hardware, and the percussion instruments
28 made by RMI’s customers are closely associated with each other by both RMI’s customers

1 and the end user musicians and marching bands. RMI's customers typically sell their
2 percussion instruments together with RMI patented carrier assemblies and hardware. The
3 availability of such package deals influences sales considerably.

4 6. On information and belief, Pearl Corporation is a corporation incorporated and
5 existing under the laws of Tennessee, with a principal place of business located at 549
6 Metroplex Drive, Nashville, TN 37211.

7 7. On information and belief, Pearl Musical Instrument Company is a multinational
8 corporation, with a principal place of business located at Yachiyo City, Chiba, Japan. Pearl
9 Corporation is a wholly owned subsidiary of Pearl Musical Instrument Company.

10 8. Pearl is a leading manufacturer and worldwide distributor of percussion
11 instruments and accessories. On information and belief, Pearl maintains authorized dealers
12 and/or distributors within California in furtherance of the sale and distribution of
13 percussion instruments and accessories.

14 9. On information and belief, Pearl's percussion instruments and accessories have
15 been and/or are sold and/or given to marching bands and drum corps throughout California,
16 including the internationally competitive Blue Devil Drum Corp based in Concord, CA; the
17 Riverside Community College Marching Tigers, the Phantom Regiment based out of
18 Rockford, IL; and the Santa Clara Vanguard Drum Corps.

19 10. On information and belief, Pearl has and does exhibit percussion instruments and
20 accessories throughout California, including at the annual National Association of Music
21 Merchants (NAMM) convention in Anaheim, CA.

22 11. On information and belief, Pearl operates a website at www.pearldrums.com
23 through which percussion instruments and accessories are advertised to consumers in
24 California.

25 **JURISDICTION AND VENUE**

26 12. This is a civil action for patent infringement arising under the patent laws of the
27 United States, 35 U.S.C. §§ 1 et seq. This Court has subject matter jurisdiction of such
28 federal question claims pursuant to 28 U.S.C. §§ 1331 and 1338(a).

1 13. This is further a civil action for declaratory judgment of no trademark
2 infringement, unfair competition, misappropriation, false designation, passing off,
3 deceptive trade practices and fraudulent misrepresentation arising under the Declaratory
4 Judgments Act, 28 U.S.C. §§2201 et seq., the Lanham Act, 15 U.S.C. §§1051 et seq, and
5 Tennessee law. This Court has subject matter jurisdiction of the federal question claims
6 pursuant to 28 U.S.C. §§1331, 1338(a), (b) and 15 U.S.C. §1121. This Court has
7 jurisdiction over the claims arising under state law pursuant to 28 U.S.C. §1367.

8 14. Venue is proper under 28 U.S.C. §§ 1391 (a), (b), and (c), and 1400(a), (b) in
9 that the acts and transactions complained of herein were conceived, carried out, made
10 effective, and had effect within the State of California and within this district, among other
11 places. Pearl resides in this judicial district by virtue of its business activities in this district
12 and has committed acts of infringement in this judicial district.

13 **THE PATENTS AT ISSUE**

14 15. RMI alleges that Pearl infringes six RMI patents. The six patents are divided
15 into two groups; five patents are directed to carrier assemblies, and the one other is directed
16 to hardware for coupling percussion instruments to carrier assemblies.

17 16. RMI is the assignee of all right, title, and interest of each of the patents at issue,
18 including, without limitation, the right to sue for infringement.

19 17. At all times, from at least as early as 2006 up to and including the present, RMI's
20 carrier assemblies and hardware have been marked with the associated patent numbers
21 covering those products after the patents issued.

22 **RMI'S Carrier Patents**

23 18. On February 22, 2000, the United States Patent & Trademark Office duly and
24 legally issued Patent No. 6,028,257 ("the '257 Patent"), entitled "Carrier Assembly for
25 Percussion Instruments." A true and correct copy of the '257 Patent is attached as Exhibit
26 A and is incorporated herein by reference.

27 19. The '257 Patent claims generally a shoulder supported harness assembly for
28 supporting percussion instruments.

1 20. On February 3, 2000, the United States Patent & Trademark Office duly and
2 legally issued United States Letters Patent No. 6,323,407 (“the ‘407 Patent”), entitled
3 “Carrier Assembly for Percussion Instruments.” A true and correct copy of the ‘407 Patent
4 is attached as Exhibit B and is incorporated herein by reference.

5 21. The ‘407 patent claims generally a shoulder supported harness assembly for
6 supporting percussion instruments.

7 22. On July 4, 2006, the United States Patent & Trademark Office duly and legally
8 issued United States Letters Patent No. 7,071,401 (“the ‘401 Patent”), entitled “Carrier
9 Assembly for Percussion Instruments.” A true and correct copy of the ‘401 Patent is
10 attached as Exhibit C and is incorporated herein by reference.

11 23. The ‘401 Patent claims generally a receptacle for use with a shoulder supported
12 harness assembly, the receptacle supporting rods or tubes on a supporting harness for
13 percussion instruments.

14 24. On November 8, 2011, the United States Patent & Trademark Office duly and
15 legally issued United States Letters Patent No. 7,394,008 (“the ‘008 Patent”), entitled
16 “Carrier Assembly for Percussion Instruments.” A true and correct copy of the ‘008 Patent
17 is attached as Exhibit D and is incorporated herein by reference.

18 25. The ‘008 Patent claims generally a receptacle for use with a shoulder supported
19 harness assembly, the receptacle supporting rods or tubes on a supporting harness for
20 percussion instruments.

21 26. On July 1, 2008, the United States Patent & Trademark Office duly and legally
22 issued United States Letters Patent No. 8,053,655 (“the ‘655 Patent”), entitled “Carrier
23 Assembly for Percussion Instruments.” A true and correct copy of the ‘655 Patent is
24 attached as Exhibit E and is incorporated herein by reference.

25 The ‘655 Patent claims generally a receptacle for use with a shoulder supported
26 harness assembly, the receptacle supporting rods or tubes on a supporting harness for
27 percussion instruments.

28

1 27. From at least as early as 2006, RMI manufactured carrier assemblies, including
2 MAY Tube Carriers and MAY T-Bar Carriers, having various aspects that are covered by
3 the '257, '407, '401, '008, and '655 Patents.

4 **RMI'S HARDWARE PATENTS**

5 28. On June 11, 2002, the United States Patent & Trademark Office duly and legally
6 issued United States Letters Patent No. RE42,487 ("the Reissue Patent"), entitled "Carrier
7 Assembly for Percussion Instruments." A true and correct copy of the Reissue Patent is
8 attached as Exhibit F and incorporated herein by reference.

9 29. The Reissue Patent claims generally supporting hardware for coupling drums to
10 an external support.

11 30. From at least as early as 2006, RMI manufactured hardware, including Free-
12 Floating Snare Attachments, covered by the Reissue Patent.

13 **PEARL RESOLD RMI'S PATENTED PRODUCTS**

14 31. During about the 1998-2009 time frame, RMI manufactured and sold to Pearl,
15 and Pearl then resold, patented RMI products in combination with Pearl's percussion
16 instruments.

17 **Pearl Resold RMI's Patented Carrier Assemblies**

18 32. Among the RMI patented carrier assemblies resold by Pearl were the MAY-T-
19 Bar Carrier line and the MAY Tube Carrier line, which were prominently displayed and
20 promoted in Pearl advertisements.

21 33. On information and belief, the MAY T-Bar Carrier line and the MAY Tube
22 Carrier line products sold by Pearl were marked with the numbers of RMI's patents,
23 including the '257, '407, '401, '008, and '655 Patents.

24 34. On information and belief, during that same period, Pearl's catalogs, brochures,
25 websites and other advertising materials listed the numbers of RMI's patents, including the
26 '257, '407, '401, '008, and '655 Patents.

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Pearl Resold RMI's Patented Hardware

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2 35. Among the RMI patented hardware resold by Pearl were the Free-Floating Snare
3 Attachments, which were prominently displayed and promoted in Pearl advertisements.

4 36. On information and belief, the Free-Floating Snare Attachments were marked
5 with the numbers of RMI's patents, including the Reissue Patent.

6 37. On information and belief during that same period, Pearls' catalogs, brochures,
7 websites and other advertising materials listed the numbers of RMI's patents, including the
8 Reissue Patent.

9 **PEARL STOPPED SELLING RMI'S PATENTED CARRIER ASSEMBLIES &**
10 **PRODUCTS AND SUBSTITUTED ITS OWN INFRINGING VERSIONS**

11 38. On or about November, 2008, Pearl representatives told RMI that Pearl would no
12 longer purchase RMI products.

13 39. At about this time, Pearl indicated to RMI that Pearl would be manufacturing its
14 own carrier assemblies and hardware. RMI reminded Pearl that the RMI carrier assemblies
15 and hardware were covered by patents known to Pearl. Pearl acknowledged the existence
16 of RMI's patents and assured RMI that Pearl would not sell an infringing product. Pearl
17 agreed to permit RMI to examine Pearl carrier assemblies and hardware for potential
18 infringement of RMI's patents prior to the Pearl products being offered for sale.

19 40. Pearl continued to purchase RMI carriers until on or about May 2009, during
20 which time, on information and belief, Pearl designed infringing products substantially
21 identical and/or based upon RMI's patented products.

22 41. On information and belief, starting as early as May 2009, Pearl made, used
23 and/or offered for sale, through its catalogs and distributors, carrier assemblies and hardware
24 that were not manufactured by RMI including but not limited to Pearls' T-Frame Carrier
25 line, the Tube Carrier line, the Airframe Carrier line, the Snare Attachment, and the Snare
26 Mount ("the Accused Products"). On information and belief, the Accused Products are
27 intended to be used solely in conjunction with percussion instruments and are not intended
28 to be used for their purpose without said percussion instruments.

1 42. Contrary to its word, on or about the time Pearl started offering the Accused
2 Products for sale Pearl withdrew its offer to permit RMI to inspect the Accused Products.

3 43. The Accused Products fall within the scope of one or more claims of the '257
4 Patent, the '407 patent, the '401 Patent, the '008 Patent, the '655 Patent, and the Reissue
5 Patent ("the Asserted Patents").

6 44. As a result of Pearl's infringement RMI has lost sales of its carrier assembly
7 products, and otherwise has been damaged, in an amount to be determined.

8 45. To the extent Pearl made any sales of infringing products that did not reduce
9 RMI's profits for lost sales, Pearl would have paid a premium as a royalty based on both
10 sales of Accused Products and associated percussion instruments sold with the Accused
11 Products.

12 46. RMI's other customers lost sales of drums and other accessories as a result of
13 Pearl's infringement. Such lost sales reduced both the amount of sales of RMI's patented
14 products, and suppressed the price of those products in an amount to be determined.

15 47. The Accused Products are now being sold without authority or consent and
16 without remittance of royalties, and as such are acts of patent infringement by Pearl.

17 **PEARL FILED AN ACTION ALLEGING TRADEMARK INFRINGEMENT BY RMI**

18 48. On March 29, 2013, Pearl filed a Complaint for Trademark Infringement,
19 Preliminary Injunction and Permanent Injunction in the U.S. District Court for the Middle
20 District of Tennessee, Case No. 3:13-cv-00279.

21 **COUNT I – INFRINGEMENT OF RMI'S '257 PATENT**

22 49. Plaintiff incorporates herein by reference the allegations set forth in paragraphs
23 1-48 of the Complaint as though fully set forth herein.

24 50. RMI is the owner of all right, title, and interest in the '257 Patent.

25 51. By making, using, selling, and offering for sale the Accused Products, Pearl has
26 and continues to infringe the '257 Patent under 35 U.S.C. § 271, directly and/or indirectly,
27 contributorily and/or by inducement.

1 52. On information and belief, Pearl will continue to infringe the '257 Patent unless
2 enjoined by this Court.

3 53. On information and belief, Pearl's infringement of the '257 Patent is, and has
4 been, willful and deliberate.

5 54. As a direct and proximate result of Pearl's infringement of the '257 patent, RMI
6 has been and continues to be damaged in an amount yet to be determined.

7 55. Unless a permanent injunction is issued enjoining Pearl and its officers, agents,
8 servants and employees, and all others action on their behalf or in concert with Pearl, from
9 infringing the '257 Patent, RMI will be greatly and irreparably harmed.

10 **COUNT II- INFRINGEMENT OF RMI'S '407 PATENT**

11 56. Plaintiff incorporates herein by reference the allegations set forth in paragraphs
12 1-55 of the Complaint as though fully set forth herein.

13 57. RMI is the owner of all right, title, and interest in the '407 Patent.

14 58. By making, using, selling, and offering for sale the Accused Products, Pearl has
15 and continues to infringe the '407 Patent under 35 U.S.C. § 271, directly and/or indirectly,
16 contributorily and/or by inducement.

17 59. On information and belief, Pearl will continue to infringe the '407 Patent unless
18 enjoined by this Court.

19 60. On information and belief, Pearl's infringement of the '407 Patent is, and has
20 been, willful and deliberate.

21 61. As a direct and proximate result of Pearl's infringement of the '407 patent, RMI
22 has been and continues to be damaged in an amount yet to be determined.

23 62. Unless a permanent injunction is issued enjoining Pearl and its officers, agents,
24 servants and employees, and all others action on their behalf or in concert with Pearl, from
25 infringing the '407 Patent, RMI will be greatly and irreparably harmed.

26 **COUNT III- INFRINGEMENT OF RMI'S '401 PATENT**

27 63. Plaintiff incorporates herein by reference the allegations set forth in paragraphs
28 1-62 of the Complaint as though fully set forth herein.

1 64. RMI is the owner of all right, title, and interest in the '401 Patent.

2 65. By making, using, selling, and offering for sale the Accused Products, Pearl has
3 and continues to infringe the '401 Patent under 35 U.S.C. § 271, directly and/or indirectly,
4 contributorily and/or by inducement.

5 66. On information and belief, Pearl will continue to infringe the '401 Patent unless
6 enjoined by this Court.

7 67. On information and belief, Pearl's infringement of the '401 Patent is, and has
8 been, willful and deliberate.

9 68. As a direct and proximate result of Pearl's infringement of the '401 patent, RMI
10 has been and continues to be damaged in an amount yet to be determined.

11 69. Unless a permanent injunction is issued enjoining Pearl and its officers, agents,
12 servants and employees, and all others action on their behalf or in concert with Pearl, from
13 infringing the '401 Patent, RMI will be greatly and irreparably harmed.

14 **COUNT IV – INFRINGEMENT OF RMI'S '008 PATENT**

15 70. Plaintiff incorporates herein by reference the allegations set forth in paragraphs
16 1-69 of the Complaint as though fully set forth herein.

17 71. RMI is the owner of all right, title, and interest in the '008 Patent.

18 72. By making, using, selling, and offering for sale the Accused Products, Pearl has
19 and continues to infringe the '008 Patent under 35 U.S.C. § 271, directly and/or indirectly,
20 contributorily and/or by inducement.

21 73. On information and belief, Pearl will continue to infringe the '008 Patent unless
22 enjoined by this Court.

23 74. On information and belief, Pearl's infringement of the '008 Patent is, and has
24 been, willful and deliberate.

25 75. As a direct and proximate result of Pearl's infringement of the '008 patent, RMI
26 has been and continues to be damaged in an amount yet to be determined.

1 76. Unless a permanent injunction is issued enjoining Pearl and its officers, agents,
2 servants and employees, and all others action on their behalf or in concert with Pearl, from
3 infringing the '008 Patent, RMI will be greatly and irreparably harmed.

4 **COUNT V – INFRINGEMENT OF RMI'S '655 PATENT**

5 77. Plaintiff incorporates herein by reference the allegations set forth in paragraphs
6 1-76 of the Complaint as though fully set forth herein.

7 78. RMI is the owner of all right, title, and interest in the '655 Patent.

8 79. By making, using, selling, and offering for sale the Accused Products, Pearl has
9 and continues to infringe the '655 Patent under 35 U.S.C. § 271, directly and/or indirectly,
10 contributorily and/or by inducement.

11 80. On information and belief, Pearl will continue to infringe the '655 Patent unless
12 enjoined by this Court.

13 81. On information and belief, Pearl's infringement of the '655 Patent is, and has
14 been, willful and deliberate.

15 82. As a direct and proximate result of Pearl's infringement of the '655 patent, RMI
16 has been and continues to be damaged in an amount yet to be determined.

17 83. Unless a permanent injunction is issued enjoining Pearl and its officers, agents,
18 servants and employees, and all others action on their behalf or in concert with Pearl, from
19 infringing the '655 Patent, RMI will be greatly and irreparably harmed.

20 **COUNT VI – INFRINGEMENT OF RMI'S REISSUE PATENT**

21 84. Plaintiff incorporates herein by reference the allegations set forth in paragraphs
22 1-83 of the Complaint as though fully set forth herein.

23 85. RMI is the owner of all right, title, and interest in the Reissue Patent.

24 86. By making, using, selling, and offering for sale the Accused Products, Pearl has
25 and continues to infringe the Reissue Patent under 35 U.S.C. § 271, directly and/or
26 indirectly, contributorily and/or by inducement.

27 87. On information and belief, Pearl will continue to infringe the Reissue Patent
28 unless enjoined by this Court.

1 88. On information and belief, Pearl's infringement of the Reissue Patent is, and has
2 been, willful and deliberate.

3 89. As a direct and proximate result of Pearl's infringement of the Reissue patent,
4 RMI has been and continues to be damaged in an amount yet to be determined.

5 90. Unless a permanent injunction is issued enjoining Pearl and its officers, agents,
6 servants and employees, and all others action on their behalf or in concert with Pearl, from
7 infringing the Reissue Patent, RMI will be greatly and irreparably harmed.

8 **COUNT VII – DECLARATORY JUDGMENT**

9 91. Plaintiff incorporates herein by reference the allegations set forth in paragraphs
10 1-90 of the Complaint as though fully set forth herein.

11 92. A real and justiciable controversy now exists between RMI and Pearl based on at
12 least the Complaint filed March 29, 2013.

13 93. RMI's activities do not constitute trademark infringement, unfair competition,
14 misappropriation, false designation, passing off, deceptive trade practices, fraudulent
15 misrepresentation or any other cause of action under the Lanham Act or state law.

16 94. RMI is entitled to a judgment declaring that RMI's activities do not constitute
17 trademark infringement, unfair competition, misappropriation, false designation, passing
18 off, deceptive trade practices, fraudulent misrepresentation or any other cause of action
19 under the Lanham Act or state law.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff RMI prays for judgment against Defendant Pearl as follows:

22 (1) For a judicial determination and declaration that Defendant Pearl has
23 infringed United States Letters Patent Nos. 6,028,257; 6,323,407; 7,071,401; 7,394,008;
24 8,053,655; and/or RE42,487.

25 (2) For a judicial determination and decree that Defendant Pearl, its respected
26 subsidiaries, officers, agents, servants, employees, licensees, and all other persons or
27 entities acting or attempting to act in active concert or participation with it or acting on its
28 behalf, be preliminarily and permanently enjoined from further infringement of United

1 States Letters Patent Nos. 6,028,257; 6,323,407; 7,071,401; 7,394,008; 8,053,655; and/or
2 RE42,487.

3 (3) For an award of damages

4 (4) For a judicial declaration that Defendant Pearl's infringement is and continues
5 to be willful, and that Defendant Pearl be ordered to pay enhanced damages of as much as
6 treble actual damages pursuant to 35 U.S.C. § 284;

7 (5) For a judicial declaration that this case is exceptional under 35 U.S.C. § 285
8 and that Defendant Pearl be ordered to pay RMI's costs, expenses, and reasonable
9 attorney's fees pursuant to 35 U.S.C. §§ 284 and 285;

10 (6) For a judicial order awarding to RMI pre-judgment and post-judgment interest
11 on the damages caused to it by Defendant Pearl's infringement; and

12 (7) For a judicial declaration that RMI's activities do not constitute trademark
13 infringement, unfair competition, misappropriation, false designation, passing off,
14 deceptive trade practices, fraudulent misrepresentation or any other cause of action under
15 the Lanham Act or state law.

16 (8) For declaratory judgment with respect to the rights and legal relations of the
17 parties as appropriate under 28 U.S.C. § 2201 et seq.

18 (9) For any such other and further relief as the Court may deem just and proper
19 under the circumstances.

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21 DATED: September 9, 2013

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ONE LLP

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By */s/ Kainoa Asuega*

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Lester J. Savit

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Peter R. Afrasiabi

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Christopher W. Arledge

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Kainoa Asuega

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Attorneys for Plaintiff

Randall May International, Inc.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial pursuant to Rule 38 of the Federal Rules of Civil Procedure as to all issues in this lawsuit.

DATED: September 9, 2013

ONE LLP

By /s/ Kainoa Asuega

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