

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN**

**CHOON'S DESIGN INC.,**  
a Michigan corporation,

Plaintiff

Case No.:

v.

**QUALITY INNOVATIONS INC.,**  
a California corporation,

Defendant

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**COMPLAINT & JURY DEMAND**

NOW COMES Plaintiff Choon's Design Inc. ("Choon's"), by and through its attorneys, Carlson, Gaskey & Olds, P.C., and for its Complaint against Defendant Quality Innovations Inc. ("Defendant") states as follows:

**PARTIES**

1. Choon's is a Michigan corporation having its primary place of business at 48813 West Road, Wixom, MI 48393.
2. Quality Innovations Inc. is a California corporation with its primary place of business at 12941 Ramona Boulevard, Suite D, Irwindale, CA 91706.

**JURISDICTION AND VENUE**

3. This Court has original subject matter jurisdiction over the claims in this action pursuant to 28 U.S.C. § 1331 (federal question), § 1332 (diversity), § 1338 (patents and trademarks) and § 1367 (supplemental jurisdiction).
4. Defendant is subject to personal jurisdiction in this Court. In particular, this Court has personal jurisdiction over Defendant because it has engaged in continuous, systematic

and substantial activities within this judicial district, including the marketing and sales of products in this judicial district. Furthermore, upon information and belief, this Court has personal jurisdiction over Defendant in this case because it has committed acts giving rise to Choon's claims within and directed to this judicial district.

5. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(b) and (c) and 28 U.S.C. § 1400(b).

### **BACKGROUND**

6. In late 2011, Choon's introduced its Rainbow Loom product – a loom designed to be used with rubber bands to form links for making bracelets, necklaces, and even bags and other items – to the market (“the Rainbow Loom”).

7. Choon's introduced the Rainbow Loom by selectively placing it in specialty toy and craft stores. Choon's did not initially sell the product to any retail chains – although it does now.

8. Notwithstanding, the Rainbow Loom product was, from the get-go, received with great fanfare and accomplished almost immediate and monumental success – even without any relationships with retail chains.

9. The Today show featured Choon's Rainbow Loom as the “Summer's hottest craft craze” in a story aired August 15, 2013.

10. Recently, the Rainbow Loom was selected by the 2014 Toy of the Year Awards as the best toy of the year. **[Exhibit 1.]**

11. The New York Times published an article on the Rainbow Loom's success on August 31, 2013, noting that “600 retailers carry Rainbow Loom, and just over one million units

have been sold at a retail price of \$15 to \$17 each.” **[Exhibit 2.]** Moreover, “[t]he official Rainbow Loom videos [on YouTube] have garnered a total of 4.6 million views.” *[Id.]*

12. The Rainbow Loom’s success was further noted in an article published in Crain’s Detroit Business on December 15, 2013. **[Exhibit 3.]** This article points out that the Rainbow Loom is “flying off the shelves” and is being sold in 1,125 Michaels’ craft stores. *[Id.]* Moreover, it notes that “3.5 million [Rainbow Loom] units [have been] moved this year as the craze to make jewelry, headbands, key chains, and even superheroes out of tiny rubber bands sweeps the tween market.” *[Id.]* Philo Pappas, Michaels’ EVP of Category Management even indicated that “[t]he Rainbow Loom is selling 10 times better than Michaels’ previous best-selling kids products.” *[Id.]*

13. Since its introduction into the market, Choon’s has sold more than five million Rainbow Looms. Of course, Choon’s has also sold large volumes of other complementary products that are used with the Rainbow Loom such as rubber bands and clips (which are used to hold the two ends of a necklace or bracelet together). This tremendous success has led to numerous copycats trying to capitalize on Choon’s hard work.

14. After taking note of Choon’s great success, Defendant decided to produce and sell its own loom kit, the “Deluxe Magic Loom Kit” (herein after “Magic Loom”), which includes a loom, hook, rubber bands, and clips, among other things. **[Exhibit 4.]**

15. Defendant features the Magic Loom on its website ([www.qualityinnovation.net](http://www.qualityinnovation.net)), and sells it online through retailers such as Sears and Amazon. *[Id.]*

16. Choon’s owns a number of U.S. Patents that cover its Rainbow Loom.

17. Specifically, on July 16, 2013, the United States Patent and Trademark Office duly and lawfully issued United States Patent No. 8,485,565 (“the ‘565 patent”), entitled

“Brunnian Link Making Device and Kit.” A true and correct copy of the ‘565 patent is attached hereto as **Exhibit 5**.

18. The ‘565 patent names Cheong Choon Ng as inventor.

19. Choon’s is the owner by assignment of all right, title and interest in the ‘565 patent.

20. The ‘565 patent generally relates to, *inter alia*, a novel method and device for creating a linked item.

21. Defendant’s Magic Loom infringes one or more of the claims of Choon’s ‘565 patent.

22. Additionally, on January 7, 2014, the United States Patent and Trademark Office duly and lawfully issued United States Patent No. 8,622,441 (“the ‘441 patent”), entitled “Hand Held Link Making Device And Kit.” A true and accurate copy of the ‘441 patent is attached hereto as **Exhibit 6**.

23. The ‘441 patent names Cheong Choon Ng as inventor.

24. Choon’s is the owner by assignment of all right, title and interest in the ‘441 patent.

25. The ‘441 patent generally relates to, *inter alia*, a novel method and device for creating an item consisting of a series of links.

26. Defendant’s Magic Loom infringes one or more of the claims of Choon’s ‘441 patent.

27. Choon’s also owns U.S. Trademark Registration No. 4,345,796 for the RAINBOW LOOM mark, and uses this mark in connection with its Rainbow Loom products. A copy of the registration is attached as **Exhibit 7**.

28. The Magic Loom includes a mark having an image of a “rainbow” adjacent the term “loom.” See an annotated picture of a Magic Loom, below:



29. Defendant’s Magic Loom infringes Choon’s RAINBOW LOOM mark.

### **COUNT I - DIRECT INFRINGEMENT OF THE ‘565 PATENT**

30. Choon’s incorporates and re-alleges Paragraphs 1 through 29 as each were fully set forth herein.

31. The ‘565 patent remains valid, enforceable and unexpired.

32. Upon information and belief, Defendant is directly infringing and has directly infringed the ‘565 patent, including, without limitation, by making, using, selling, offering for sale, and/or importing, without license or authority, at least its Magic Loom, which is covered by the ‘565 patent. Defendant may sell other infringing loom products as well.

33. The Magic Loom falls within the scope of one or more claims of the ‘565 patent. Upon information and belief, Defendant directly infringes at least claim 1 of the ‘565 patent.

34. Upon information and belief, Defendant’s infringement has been and continues to be willful and deliberate.

35. As a result of Defendant’s infringement, Choon’s will suffer severe and irreparable harm, unless that infringement is enjoined by this Court, and has suffered substantial damages.

**COUNT II - DIRECT INFRINGEMENT OF THE '441 PATENT**

36. Choon's incorporates and re-alleges Paragraphs 1 through 35 as each were fully set forth herein.

37. The '441 patent remains valid, enforceable and unexpired.

38. Upon information and belief, Defendant is directly infringing and has directly infringed the '441 patent, including, without limitation, by making, using, selling, offering for sale, and/or importing, without license or authority, at least its Magic Loom which is covered by the '441 patent. Defendant may sell other infringing loom products as well.

39. The Magic Loom falls within the scope of one or more claims of the '441 patent. Upon information and belief, Defendant directly infringes at least claim 1 of the '441 patent.

40. Upon information and belief, Defendant's infringement has been and continues to be willful and deliberate.

41. As a result of Defendant's infringement, Choon's will suffer severe and irreparable harm, unless that infringement is enjoined by this Court, and has suffered substantial damages.

**COUNT III – TRADEMARK INFRINGEMENT  
IN VIOLATION OF THE LANHAM ACT, 15 U.S.C. § 1114**

42. Choon's incorporates and re-alleges Paragraphs 1 through 41 as each were fully set forth herein.

43. Defendant has, without Choon's consent, used in commerce a colorable imitation of the RAINBOW LOOM mark in connection with the sale, offering for sale, distribution, and/or advertising of goods or services likely to cause confusion, or to cause a mistake, or to deceive in violation of Section 32(1)(a) of the Lanham Act, 15 U.S.C. § 1114.

44. Choon's federal registration on the Principal Register for the mark RAINBOW LOOM is conclusive evidence of Choon's exclusive right to use this mark, pursuant to the Lanham Act, 15 U.S.C. § 1115.

45. The infringing acts committed by Defendant were committed with knowledge that such imitation was intended to be used to cause confusion, or to cause mistake or to deceive, and have caused, and, unless enjoined, will continue to cause damage to Choon's.

46. As a proximate result of Defendant's actions, Choon's has suffered and will continue to suffer great damage to its business, goodwill, reputation, profits and the strength of its trademarks. The injury is and continues to be ongoing and irreparable. An award of monetary damages alone cannot fully compensate Choon's for its injuries and Choon's lacks an adequate remedy at law.

47. Upon information and belief, the foregoing acts of infringement have been and continue to be deliberate, willful and wanton, making this an exceptional case within the meaning of 15 U.S.C. § 1117.

48. Choon's is entitled to a permanent injunction against Defendant, as well as all other remedies available under the Lanham Act, including, but not limited to, compensatory damages; treble damages; disgorgement of profits; and costs and attorney's fees.

**COUNT IV – TRADEMARK INFRINGEMENT**  
**IN VIOLATION OF THE LANHAM ACT, 15 U.S.C. § 1125(a)**

49. Choon's incorporates and re-alleges Paragraphs 1 through 48 as each were fully set forth herein.

50. Choon's RAINBOW LOOM mark is "famous" within the meaning of Section 43(c)(1) of the Lanham Act, 15 U.S.C. § 1125(c) (the "Anti-Dilution Act").

51. Choon's is the owner of the RAINBOW LOOM mark.

52. Choon's has no control over the quality of the Defendant's web site, advertising, other promotional materials, or products.

53. After Choon's RAINBOW LOOM mark became famous, the Defendant commenced use of a mark in commerce that is likely to cause dilution by impairing the distinctiveness of the RAINBOW LOOM mark, lessening the capacity of the mark to identify and distinguish the products offered by Choon's, and by creating an association arising from the similarity between Defendant's mark and Choon's RAINBOW LOOM mark that harms the reputation of Choon's famous mark.

54. Defendant's unauthorized use of Choon's famous RAINBOW LOOM mark will tend to, and does, dilute the distinctive quality of said mark and will diminish and destroy the public association of said mark with Choon's in violation of 15 U.S.C. § 1125(c).

55. Upon information and belief, Defendant willfully intended to trade on the recognition of Choon's mark and caused dilution of Choon's famous mark.

56. By reason of the acts of Defendant alleged herein, Choon's has suffered, is suffering, and will continue to suffer irreparable damage and, unless said Defendant is restrained from continuing its wrongful acts, the damage will be increased.

57. Choon's has no adequate remedy at law.

**COUNT VIII – VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT**

58. Choon's incorporates and re-alleges Paragraphs 1 through 57 as each were fully set forth herein.

59. Defendant's acts complained of herein violate the Michigan Consumer Protection Act, M.C.L. § 445.903(1), as they constitute unfair, unconscionable, or deceptive methods, acts or practices in the conduct of trade or commerce.



60. Defendant's unfair acts are willful, and have caused, and if not restrained by this Court, will continue to cause Choon's serious and irreparable injury for which it has no adequate remedy at law.

**COUNT IX – UNFAIR COMPETITION IN VIOLATION  
OF MICHIGAN COMMON LAW**

61. Choon's incorporates and re-alleges Paragraphs 1 through 60 as each were fully set forth herein.

62. Defendant's acts complained of herein constitute unfair competition in violation of the common law of Michigan, as they are likely to cause confusion, or to cause mistake, or to deceive the affiliation, connection, or association of Defendant's products with Choon's, or as to the origins, sponsorship or approval of Defendant's goods, services or commercial activity in violation of Choon's rights.

63. Defendant has willfully engaged in acts of unfair competition.

64. Defendant's acts of unfair competition have caused, and if not restrained by this Court, will continue to cause Choon's serious and irreparable injury for which it has no adequate remedy at law.

**PRAYER FOR RELIEF**

WHEREFORE, Choon's requests judgment in its favor against Defendant for the following relief:

- A. An order adjudging that Defendant has infringed the '565 and '441 patents;
- B. An order adjudging Defendant to have willfully infringed the '565 and '441 patents;
- C. A preliminary and permanent injunction enjoining Defendant, its officers, directors, agents, servants, employees and those persons in active concert or

participation with Defendant, from directly or indirectly infringing the '565 and '441 patents in violation of 35 U.S.C. § 271;

- D. An award of damages adequate to compensate Choon's for Defendant's infringement of the '565 and '441 patents;
- E. An award of damages adequate to compensate Choon's for infringement including those damages provided for in 35 U.S.C. § 154(d);
- F. An order for a trebling of damages and/or exemplary damages because of Defendant's willful infringement pursuant to 35 U.S.C. § 284;
- G. An order adjudging that this is an exceptional case;
- H. An award to Choon's of its attorney fees and its costs and expenses incurred in connection with this action pursuant to 35 U.S.C. § 285;
- I. A permanent injunction enjoining Defendants, their employees, agents, officers, directors, attorneys, representatives, successors, affiliates, parents, subsidiaries, licensees, and assigns, and all those in active concert or participation with any of them, from the following acts:
  - a. using, attempting to use, or registering, on or in connection with any business or service, or the sale, offering for sale, distribution, advertising, promotion, labeling or packaging, of any service or any goods, or for any purpose whatsoever: (1) the RAINBOW LOOM mark, or any other name, mark or designation which colorably imitates or is confusingly similar to said name or mark, alone or in combination with any other mark(s), designation(s), word(s), term(s) and or design(s); and (2) any false description or representation or any other thing calculated or likely to cause confusion or mistake in the public

mind or to deceive the public into the belief that Defendant or its products or services are connected to Choon's or that Defendant's products and services come from or are approved or endorsed by Choon's; and

- b. otherwise engaging in acts, either directly or through other entities, of infringement and unfair competition;
- J. An order requiring Defendant to file with the Court and serve upon Plaintiff, within thirty (30) days after the entry of such order or judgment, a report in writing and under oath setting forth in detail the manner and form in which they have complied with the injunction;
- K. A declaration that Defendant's acts of trademark infringement and unfair competition are knowing, willful and "exceptional" within the meaning of 15 U.S.C. § 1117;
- L. Enter judgment that Defendant has injured Choon's business reputation and diluted the distinctive quality of Choon's famous mark in violation of 15 U.S.C. § 1125(c)(1);
- M. Enter judgment that Defendant has injured Choon's business reputation and diluted the distinctive quality of Choon's famous mark in violation of 15 U.S.C. § 1125(c)(1);
- N. An order awarding to Choon's actual damages and an accounting of Defendant's profits, including any statutory enhancements on account of the willful nature of Defendant's acts;
- O. An award of prejudgment and post-judgment interest and costs of this action; and
- P. Such other and further relief that this Court deems just and proper.

**JURY DEMAND**

Pursuant to Fed R. Civ. P. 38(b) and 5(d), Plaintiff demands a trial by jury for all issues so triable.

Dated: March 14, 2014

CARLSON, GASKEY & OLDS, P.C.

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