

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
CHATTANOOGA DIVISION**

PLAYCORE WISCONSIN, INC.,)
)
Plaintiff,)
)
v.)
)
KRAUSS CRAFT, INC.)
d/b/a PLAYCRAFT SYSTEMS)
)
Defendant.)

Civil Action No. 1:14-cv-00136

COMPLAINT

Plaintiff, PlayCore Wisconsin, Inc., for its Complaint against Defendant Krauss Craft, Inc. d/b/a Playcraft Systems, alleges as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 100, *et seq.*

THE PARTIES

2. Plaintiff PlayCore Wisconsin, Inc. (“PlayCore”) is a Wisconsin corporation having its principal place of business at 401 Chestnut Street, Suite 310, Chattanooga, Tennessee 37402.

3. Defendant Krauss Craft, Inc. d/b/a Playcraft Systems (“Krauss”) is an Oregon corporation, having its principal place of business at 123 North Valley Drive, Grants Pass, Oregon 97526. Krauss manufactures Playcraft playground equipment and distributes it throughout the United States.

JURISDICTION AND VENUE

4. This Court has original jurisdiction over this action for patent infringement pursuant to 28 U.S.C. § 1338(a).

5. This Court has personal jurisdiction of Defendant by virtue of its transaction of business within the State of Tennessee and pursuant to Tenn. Code Ann. § 20-2-201(a).

6. Venue is proper in this District as to Defendant pursuant to 28 U.S.C. §§ 1391(b), (c) and (d) in that Defendant has significant contacts with the District both through its infringing acts and through its transaction of business within the District.

FACTUAL BACKGROUND

7. PlayCore is manufacturer of commercial and residential playground equipment and other play-related products.

8. PlayCore is the owner of United States Patent No. 7,874,926 issued January 25, 2011, for an Elevated Hand-Held Merry-Go-Round. A true and correct copy of U.S. Patent No. 7,874,926 is attached as **Exhibit A**.

9. Following an *Inter Parties* Reexamination, the United States Patent Office issued *Inter Parties* Reexamination Certificate (768th) on December 11, 2013 confirming claims 1-13 of Patent No. 7,874,926 and determining that claims 16-20 of Patent No. 7,874,926 were patentable as amended during the *Inter Parties* Reexamination (the “Reexam Certificate”). A true and correct copy of the Reexam Certificate issued for United States Patent No. 7,874,926 on December 11, 2013 is attached as **Exhibit B**. United States Patent No. 7,874,926 and the Reexam Certificate are collectively referred to herein as “the ‘926 Patent.”

10. As the real party in interest pursuant to Federal Rule of Civil Procedure 17, PlayCore is entitled to all the rights and benefits bestowed by the ‘926 Patent.

11. Defendant manufactures and supplies commercial outdoor playground equipment.
12. Defendant has sales representatives who solicit orders for its products throughout the United States within the State of Tennessee, including in person solicitation.
13. Defendant advertises its products on the worldwide web and such advertisements may be accessed in Tennessee and throughout the world.
14. Defendant advertises for sale an elevated merry-go-round product referred to as the "Neutron Spinner."
15. Defendant has advertised for sale the Neutron Spinner product in Tennessee.
16. Upon information and belief, Defendant has shipped the Neutron Spinner product into Tennessee for delivery to Tennessee residents.
17. Upon information and belief, Defendant has made and will continue to make sales in the United States of the Neutron Spinner product, including to residents and businesses located in the State of Tennessee.
18. The Neutron Spinner product being sold and offered for sale by Defendant infringes one or more claims of the '926 Patent directly, indirectly or under the doctrine of equivalents.

CAUSE OF ACTION

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 7,874,926

19. PlayCore hereby realleges and incorporates by reference the allegations of Paragraphs 1 through 18 of this Complaint.
20. Defendant has infringed and continues to infringe one or more claims of the '926 Patent, either directly, indirectly or under the doctrine of equivalents.

21. Defendant is fully aware and has had actual knowledge of the '926 Patent since at least as early as its receipt of a letter from PlayCore's counsel regarding infringement of the '926 Patent sent on February 10, 2011, and that the Neutron Spinner embodies the invention covered by one or more claims of the '926 Patent, and that such unlicensed use and continued use infringes and will continue to infringe on said claims of the '926 Patent.

22. Defendant's infringement of the '926 Patent is willful and deliberate, and Defendant is without a reasonable basis for believing that its conduct is or was lawful.

23. Defendant has made profits from its acts of patent infringement and PlayCore has suffered damages. The extent of such profits and damages are unknown to PlayCore at this time.

24. Defendant's infringement of the '926 Patent has caused and will continue to cause irreparable damage and injury to PlayCore. PlayCore has no adequate remedy at law, and if Defendant's activities are not enjoined, PlayCore will continue to suffer irreparable harm.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff PlayCore respectfully prays the following:

- (A) An order and judgment declaring the claims of United States Patent No. 7,874,926 valid, enforceable and infringed by Defendant;
- (B) An injunction preliminarily and permanently enjoining and restraining Defendant and all its parents, subsidiaries, affiliates, officers, agents, servants, employees, attorneys, and their heirs, successors and assigns, and all persons acting in concert, common control or participation with each of them, from further infringement or contributory infringement of said United States Patent No. 7,874,926;
- (C) An order commanding Defendant to file with this Court and serve upon Plaintiff within thirty (30) days after service upon Defendant of the injunction issued by the Court in this action,

a report in writing under oath, setting forth in detail the manner in which Defendant has complied with such injunction;

(D) An order commanding Defendant to account for all of its sales revenues and profits generated by the acts alleged herein otherwise generated by the sale of its infringing goods;

(E) Damages arising out of Defendant's past and future infringement of United States Patent No. 7,874,926 and an increase of those damages to three times the amount assessed, together with prejudgment interest thereon pursuant to 35 U.S.C. § 284;

(F) An award of Plaintiff's attorneys' fees in this action under 35 U.S.C. § 285;

(G) An award of Plaintiffs' reasonable costs and expenses in this action; and

(H) Such other, further, or different relief as this Court may deem just and proper.

Respectfully submitted this 30th day of April, 2014.

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