

John Mansfield, OSB No. 055390

MansfieldLaw

121 SW Morrison Ave., Suite 400

Portland, OR 97204

971.271.8615

john@mansfieldlaw.net

Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

Ozwest, Inc. an Oregon corporation, Plaintiff,

v.

Bed Bath & Beyond, Inc., a New York corporation; The Bon-Ton Stores, Inc. a Pennsylvania corporation; Boscov's Department Store, LLC, a Delaware limited liability company; MerchSource LLC, a Delaware limited liability company; Overstock.com, Inc., a Delaware corporation; Sears Holdings Corporation, a Delaware company; Macy's, Inc., a Delaware corporation; Stein Mart, Inc., a Florida corporation, Defendants

Case No.: 3:14-cv-01779-ST

**FIRST AMENDED
COMPLAINT FOR PATENT
INFRINGEMENT**

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Ozwest, Inc. is an Oregon company known throughout the toy industry for selling innovative toys for active children, many of which are patented. MerchSource is an importer and distributor that has copied the patented Zartz Arrow, one of Ozwest's most popular toys. Defendant MerchSource has shipped these knockoffs to big box and online stores throughout the U.S., including defendants Bed Bath & Beyond, Bon-Ton Stores, Boscov's Department Store, Overstock.com, Sears, Macy's, and Stein Mart, just in time to take advantage of the holiday shopping season. Ozwest files this patent infringement lawsuit to stop Defendants from continuing to profit from Ozwest's innovative products, and to recover damages for the economic losses that Defendants' infringement has caused to Ozwest.

I. PARTIES

1) Ozwest, Inc. is an Oregon company with headquarters in Portland, Oregon that distributes toys throughout the United States. Ozwest is the exclusive U.S. licensee of U.S. Patent No. 8,348,789 (the '789 Patent).

2) Bed Bath & Beyond, Inc. is a New York corporation with its corporate headquarters in New Jersey. Bed Bath & Beyond sells at retail a variety of products including a toy "indoor/outdoor archery set."

3) The Bon-Ton Stores, Inc. is a Pennsylvania corporation with its corporate headquarters in York, Pennsylvania. Bon-Ton, under its own name or the names "Carson's," Herberger's," and "Younkers," sells a variety of products at retail including a toy "indoor/outdoor archery set."

4) Boscov's Department Store, LLC is a Delaware limited liability company, with its corporate offices in Reading, Pennsylvania. Boscov's sells at retail a variety of products including a toy "indoor/outdoor archery set."

5) MerchSource, LLC is a Delaware limited liability company, with its corporate offices in Irvine, California. MerchSource makes, imports, sells, or offers to sell a variety of products including a toy "indoor/outdoor archery set."

6) Overstock.com, Inc. is a Delaware corporation with its corporate headquarters in Salt Lake City, Utah. Overstock.com sells a variety of products at retail including a toy "indoor/outdoor archery set."

7) Sears Holdings Corporation is a Delaware company with its corporate offices in Hoffman Estates, Illinois. Sears sells a variety of products at retail including a toy "indoor/outdoor archery set."

8) Macy's, Inc. is a Delaware corporation with its corporate headquarters in Cincinnati, Ohio. Macy's sells a variety of products at retail including a toy "indoor/outdoor archery set."

9) Stein Mart, Inc. is a Florida corporation with its corporate headquarters in Jacksonville, Florida. Stein Mart sells a variety of products at retail including a toy "indoor/outdoor archery set."

II. VENUE AND JURISDICTION

10) This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

11) Venue is proper in this District under 28 U.S.C. §§ 1391 (b)-(d) and 1400(b) because Defendants are subject to personal jurisdiction in this District, have committed acts of

patent infringement in this District, including, on information and belief, selling or offering to sell infringing products to customers in this District, or have a regular and established place of business in this District.

III. FACTS

12) Ozwest is a toy distributing company located in downtown Portland. Ozwest is a leader in distributing toys that get kids to move, under brand names including Zing, Zing Air®, Air Hunters, Air Huntress, Air Storm, Zing BlastOff and Zing Novelty. For example, Ozwest's Zing brand is described as:

high-quality toys for high-action play. Our mission is to promote a healthy, active lifestyle by compelling kids to turn off their video games or smartphones, get off the couch, and get up to play! Our inventors are kids at heart with safety in mind, bringing you fun in a zillion packages: mini-monsters, boomerangs, and big bows! Soaring rockets, dart blasters, and sticky creatures!

13) Ozwest is known in the toy industry for its innovative toys, and many of its products are covered by patents. For example, AirHunters, one of Ozwest's most popular and exciting brands, has the patented "Zartz" Arrows shown below:



The Zartz Arrow is covered by United States Patent No. 8,348,789, entitled "Throwing Toy With Tail And In-line Tab Grip," which issued on January 8, 2013. A true and correct copy of the '789

Patent is attached as Exhibit A. As shown in Figure 4 below, the arrow comprises a head 10, a flexible shaft 16, with a more flexible portion of the shaft, *i.e.*, a tab, at number 30. This allows the Zartz Arrow to be thrown without an bow, by flinging by the flexible tail as shown in Figure 4, or used with a bow.

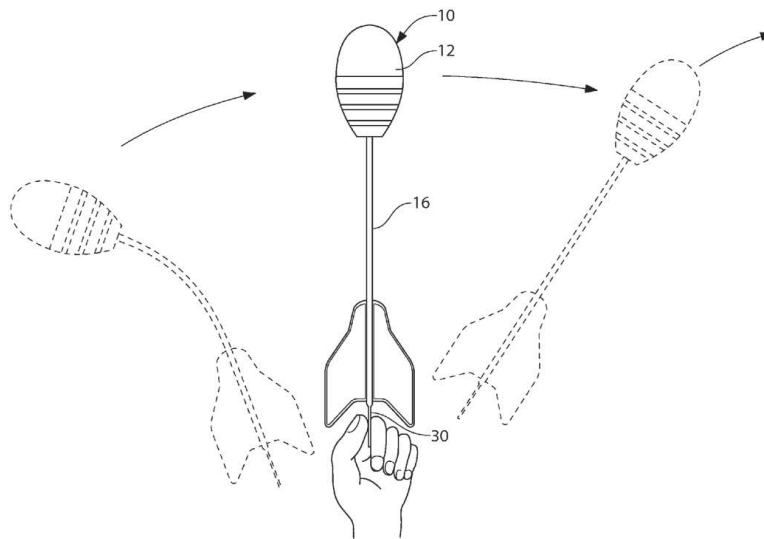


FIG. 4

IV. COUNT I: PATENT INFRINGEMENT

14) Ozwest is the exclusive licensee of the '789 Patent, including all rights to sue for past, present and future infringement.

15) Defendants Bed Bath & Beyond, Bon-Ton Stores, Boscov's Department Store, Overstock.com, Sears, Macy's, and Stein Mart all sell and offer to sell a product called "indoor/outdoor archery set," under various trade names, including "The Black Series" by "Shift 3." All Defendants sell and offer to sell this "indoor/outdoor archery set" throughout the United States by websites, which allow consumers in all states to select, order and pay for the product online, which is then shipped to the consumer's address. This product contains arrows which infringe at least claim 1 of the '789 Patent, literally or by equivalents.

16) On information and belief, some or all Defendants purchase the infringing archery set from defendant MerchSource. MerchSource thus sells, offers to sell, or imports products which infringe at least claim 1 of the ‘789 Patent, literally or by equivalents.

17) The Defendants’ activities have been without express or implied license from Ozwest.

18) The Defendants will continue to infringe the ‘789 Patent unless enjoined by this Court. As a result of the Defendants’ infringing conduct, Ozwest has suffered, and will continue to suffer, irreparable harm for which there is no adequate remedy at law. Ozwest is entitled to preliminary and permanent injunctive relief against such infringement.

19) As a result of the infringement of the ‘789 Patent, Ozwest has been damaged, will be further damaged, and is entitled to be compensated for such damages, pursuant to 35 U.S.C. § 284 in an amount to be determined at trial.

PRAYER FOR RELIEF

Ozwest prays for the following relief:

1) A judgment that Defendants have directly infringed (either literally or under the doctrine of equivalents) one or more claims of the ‘789 Patent;

2) A permanent injunction enjoining each Defendant and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert or participation with it, from infringing the ‘789 Patent;

3) An award of damages resulting from Defendants’ acts of direct and indirect infringement (either literal or under the doctrine of equivalents) in accordance with 35 U.S.C. § 284;

4) A judgment and order requiring Defendants to provide an accounting and to pay

supplemental damages to Ozwest, including, without limitation, prejudgment and postjudgment interest;

5) To the extent that this Court finds this to be an exceptional case, an award of enhanced damages and attorneys' fees; and

6) Any and all other relief to which Ozwest may show itself to be entitled.

JURY TRIAL DEMANDED

Ozwest hereby demands a trial by jury of all issues so triable.

Dated November 20, 2014

/s/ John Mansfield
John Mansfield, OSB No. 055390
MansfieldLaw
121 SW Morrison Ave., Suite 400
Portland, OR 97204
971.271.8615
john@mansfieldlaw.net

Attorney for Plaintiff Ozwest, Inc.