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Attorneys for Plaintiff Infinity Headwear & Apparel, LLC

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH, CENTRAL DIVISION**

INFINITY HEADWEAR & APPAREL, LLC,
an Arkansas limited liability company,

Plaintiff,

vs.

JAY FRANCO & SONS, INC., a New York
corporation and JAY AT PLAY, INT'L HK
Ltd., a Hong Kong limited company,

Defendants.

COMPLAINT

Case No.: 2:14-cv-00923-BCW

Judge: Brooke C. Wells

JURY TRIAL DEMANDED

Plaintiff Infinity Headwear & Apparel, LLC (“Infinity”), by and through its undersigned counsel of record, hereby complains against Defendants Jay Franco & Sons, Inc. (“Franco”) and Jay At Play, Int’l HK Ltd. (“Jay At Play”) (collectively, “Defendants”) as follows.

PARTIES

1. Infinity is an Arkansas limited liability company with its principal place of business in Rogers, Arkansas.

2. Franco is a New York corporation with its principal place of business at 295 Fifth Avenue, Suite 312, New York, New York 10016.

3. Jay At Play is a division or subsidiary of Franco organized under the laws of Hong Kong with a physical address and principal place of business at 295 Fifth Avenue, Suite 312, New York, New York 10016, and a physical address at 1802B-4 Tower 5 China Hong Kong City 33 Canton Road TST Kowloon, Hong Kong.

JURISDICTION AND VENUE

4. This is a civil action for patent infringement under Title 35, United States Code.

5. Subject-matter jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331 and 1338(a).

6. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and 1400(b) as Defendants have committed the acts of patent infringement complained of herein in this District. Defendants have solicited business in the State of Utah, transacted business in the State of Utah, and attempted to derive financial benefit from residents of the State of Utah, including benefits directly related to the instant patent infringement cause of action set forth herein.

7. Defendants have placed their infringing goods, systems, methods, compositions, and/or services, including, without limitation, the JAnimals Wearable Stuffed Animals product (“Infringing Product”), into the stream of commerce throughout the United States, which goods, systems, methods, compositions, and/or services have been offered for sale, sold, and/or used in this District.

8. Defendants, directly or through their subsidiaries, divisions, groups, or distributors, have committed acts of infringement in this District, are subject to personal jurisdiction in this District, and/or are doing business in this District.

FACTUAL BACKGROUND

9. Infinity is a leading manufacturer, merchandiser, and marketer of innovative consumer products.

10. Infinity has over 15 years of experience in designing, developing, and sourcing high quality products for many of the world’s leading retailers and consumer product companies.

11. Among many products, Infinity is the creator of the highly successful and innovative ComfyCritters huggable hooded blanket, available at www.mycomfycritters.com.

12. The ComfyCritters product was first introduced to the market in 2011.

FIRST CLAIM FOR RELIEF

Infringement of United States Patent No. 8,864,544

Against All Defendants

13. On October 21, 2014, U.S. Patent No. 8,864,544 (“the ’544 Patent”), entitled “Hooded Blanket and Stuffed Toy Combination,” a copy of which is attached hereto as Exhibit

A, was duly and legally issued by the United States Patent and Trademark Office. Infinity is the owner of the '544 Patent, including the right to sue for and recover all past, present, and future damages for infringement of the '544 Patent.

14. Upon information and belief, Defendants, directly or through their subsidiaries, divisions, or groups, have infringed and continue to infringe the '544 Patent by making, using, selling, and/or offering to sell, or allowing others to make, use, sell, and/or offer to sell, in the United States and/or this District, goods, systems, methods, compositions, and/or services that are covered by one or more of the claims of the '544 Patent, including, without limitation, the Infringing Product.

15. Defendants are liable for infringement of the '544 Patent under 35 U.S.C. § 271.

16. Defendants' acts of infringement have caused damage to Infinity, and Infinity is entitled to recover from Defendants the damages sustained by Infinity as a result of Defendants' wrongful acts in an amount to be proven at trial.

17. As a consequence of the infringement complained of herein, Infinity has been irreparably damaged to an extent not yet determined and will continue to be irreparably damaged by such acts in the future unless Defendants are enjoined by the Court from committing further acts of infringement.

18. Upon information and belief, one or more of Defendants' acts of infringement have been or will be undertaken with knowledge of the '544 Patent. Such acts constitute willful infringement and make this case exceptional pursuant to 35 U.S.C. §§ 284 and 285, and further entitle Infinity to enhanced damages and reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Infinity prays for judgment as follows:

- A. That Defendants have infringed the '544 Patent;
- B. Defendants account for and pay to Infinity all damages caused by its infringement of the '544 Patent, and to enhance such damages as appropriate, all in accordance with 35 U.S.C. § 284;
- C. Infinity be granted permanent injunctive relief pursuant to 35 U.S.C. § 283, permanently enjoining Defendants, their officers, agents, servants, employees, and those persons in active concert or participation with it from further acts of patent infringement;
- D. That Defendants and their principals, agents, representatives, servants, and employees and any person in active concert or participation with them be ordered to recall and deliver up for destruction all products that infringe the '544 Patent, including, without limitation, the Infringing Product;
- E. Infinity be granted pre-judgment and post-judgment interest on the damages caused to it by reason of Defendants' patent infringement;
- F. The Court declare this an exceptional case and that Infinity be granted its reasonable attorneys' fees in accordance with 35 U.S.C. § 285;
- G. Costs be awarded to Infinity; and
- H. Infinity be granted such other and further relief as the Court may deem just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Infinity hereby demands trial by jury as to all issues in this action triable by jury.

DATED this 22nd day of December, 2014.

Respectfully Submitted,

KIRTON McCONKIE

By /s/ James T. Burton _____

James T. Burton

Joshua S. Rupp

Ryan R. Beckstrom

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Headwear & Apparel, LLC*