

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

CHOON'S DESIGN INC.,
a Michigan corporation,

Plaintiff

Case No.: 2:14-cv-10848-VAR-MAR

v.

JURY TRIAL DEMANDED

TRISTAR PRODUCTS, INC,
a New Jersey corporation,

Defendant

THIRD AMENDED COMPLAINT & JURY DEMAND

NOW COMES Plaintiff Choon's Design Inc. ("Choon"), by and through its attorneys, Carlson, Gaskey & Olds, P.C., and for its Third Amended Complaint¹ against Defendant Tristar Products, Inc. ("Tristar" or "Defendant") states as follows:

PARTIES

1. Choon is a Michigan corporation having its primary place of business at 48813 West Road, Wixom, MI 48393.
2. Tristar is a New Jersey corporation with its primary place of business at 492 U.S. 46, Fairfield, NJ 07004.

¹ Choon's motion for leave to amend the complaint (Doc. # 41) to include counts relating to its recently-issued U.S. Patent No. 8,936,283 was granted (Doc. # 42).

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), and §1338 (patents).

4. Tristar is subject to personal jurisdiction in this Court. In particular, this Court has personal jurisdiction over Tristar 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 Tristar 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 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 introduced the Rainbow Loom by selectively placing it in specialty toy and craft stores. Choon 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. 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 has sold more than five million Rainbow Looms. Of course, Choon 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, Tristar decided to take action, producing and selling its own loom kit, the Bandaloom, that includes a loom, mini loom and hook, rubber bands, and clips, among other things. Tristar also sells the rubber bands separately [**Exhibit 4.**]

15. Tristar sells the Bandaloom and replacement rubber bands on its website (www.bandaloom.com) and through Walmart.

16. Tristar further promotes the Bandaloom through dedicated pages on As Seen on TV, Facebook, Pinterest, and YouTube.

17. Choon owns a U.S. Patent that covers its Rainbow Loom and another patent that covers its mini loom and hook.

18. 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**.

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

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

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

22. Tristar’s Bandaloom infringes one or more of the claims of Choon’s ‘565 patent.

23. Another such patent is United States Patent No. 8,684,420 (“the ‘420 patent”), entitled “Brunnian Link Making Device and Kit,” which was issued on April 1, 2014 by the United States Patent and Trademark Office. A true and correct copy of the ‘420 patent is attached hereto as **Exhibit 6**.

24. The ‘420 patent names Cheong Choon Ng as inventor.

25. Choon is the owner by assignment of all right, title and interest in the ‘420 patent.

26. The ‘420 patent generally relates to, *inter alia*, a novel method and device for creating a linked item.

27. Tristar’s Bandaloom infringes one or more of the claims of Choon’s ‘420 patent.

28. Further, 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 7**.

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

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

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

32. Tristar’s Bandaloom Mini Loom and Hook infringes one or more of the claims of Choon’s ‘441 patent.

33. Finally, Choon owns U.S. Patent No. 8,936,283 (“the ‘283 patent”), entitled “Brunnian Link Making Device and Kit,” which the United States Patent and Trademark Office duly and lawfully issued on January 20, 2015. A true and correct copy of the ‘283 patent is attached hereto as **Exhibit 8**.

34. The ‘283 patent names Cheong Choon Ng as inventor.

35. Choon’s is the owner by assignment of all right, title and interest in the ‘283 patent.

36. The ‘283 patent generally relates to, *inter alia*, a novel method and device for creating a linked item.

37. Tristar's Bandaloom infringes one or more of the claims of Choon's '283 patent.

COUNT I - TRISTAR'S DIRECT INFRINGEMENT OF THE
'565 PATENT

38. Choon incorporates and re-alleges Paragraphs 1 through 37 as though each were fully set forth herein.

39. The '565 patent remains valid, enforceable and unexpired.

40. Upon information and belief, Tristar 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 Bandaloom which is covered by the '565 patent. Tristar may sell other infringing loom products as well.

41. The Bandaloom falls within the scope of one or more claims of the '565 patent. Upon information and belief, Tristar directly infringes claims 1 and 6-18 of the '565 patent. The method claims in the '565 patent are directly infringed by Tristar by its publicly available instructional videos. See Instruction Manual attached as **Exhibit 9** and screenshots of Instructional Videos on Tristar's Bandaloom website attached as **Exhibit 10**.

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

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

COUNT II – CONTRIBUTORY INFRINGEMENT OF THE '565 PATENT

44. Choon incorporates and re-alleges Paragraphs 1 through 43 as each were fully set forth herein.

45. As described in Count I, the Bandaloom and the use of the Bandaloom fall within the scope of at least claims 1 and 6-18 of the '565 patent.

46. Upon information and belief, with knowledge of the '565 patent, Tristar has contributed to and continue to contribute to the infringement of the '565 patent under 35 U.S.C. § 271(c) by selling, offering to sell and/or importing the Bandaloom for use by its customers. Tristar's customers directly infringe the '565 patent by using the Bandaloom to create linked items from elastic bands.

47. Upon information and belief, the Bandaloom is marketed and sold to customers who use it to create linked items for elastic bands. By following the instructions provided by Tristar, customers who use the Bandaloom directly infringe the '565 patent. See Instruction Manual attached as **Exhibit 9** and screenshots of Instructional Videos on Tristar's Bandaloom website attached as **Exhibit 10**.

48. Upon information and belief, Tristar's Bandaloom has no substantial non-infringing use for at least the reason that the Bandaloom can only be used to directly infringe the '565 patent. In other words, when Tristar's instructions are followed, the Bandaloom is only used in an infringing manner, and is only advertised by Tristar for such an infringing use.

49. Upon information and belief, the accused Bandaloom also constitutes a material part of the invention of the '565 patent for at least the reason it is the very product used to practice the invention of the '565 patent.

50. Upon information and belief, Tristar knows that the accused Bandaloom is especially made or especially adapted for use in an infringement of the '565 patent for at least the reason that the Bandaloom is advertised, sold, and/or offered for sale only to create linked items from elastic bands in a manner covered by the '565 patent.

51. Upon information and belief, Tristar has knowledge of the '565 patent and that Tristar's customers' use of the accused Bandaloom directly infringes the claims of the '565 patent. At the very least, this is based on the filing of this lawsuit.

52. Upon information and belief, at the very least, Tristar was willfully blind as to the existence of the '565 patent, and therefore willfully blinded itself to

its customers' direct infringement of the '565 patent resulting from their use of the Bandaloom.

53. As a result of Tristar's contributory infringement, Choon will suffer severe and irreparable harm, unless the infringement is enjoined by this Court, and has suffered substantial damages.

COUNT III – INDUCED INFRINGEMENT OF THE '565 PATENT

54. Choon incorporates and re-alleges Paragraphs 1 through 53 as each were fully set forth herein.

55. Upon information and belief, with knowledge of the '565 patent, Tristar has induced to and continues to induce to the infringement of the '565 patent under 35 U.S.C. § 271(b) by selling, offering to sell and/or importing the Bandaloom and its replacement rubber bands for use by its customers. Tristar's customers directly infringe by using the Bandaloom and the replacement rubber bands to create linked items.

56. Tristar specifically intended its customers to infringe at least claims 1 and 6-18 of the '565 patent and knew that its customers' acts constituted infringement. Upon information and belief, despite a high likelihood that its actions would induce its customers' direct infringement of the '565 patent, Tristar marketed and sold the Bandaloom and replacement rubber bands to its customers to practice the claimed invention. Tristar's customers directly infringe the '565

patent by creating linked articles from elastic bands by following the instructions provided with the Bandaloom and on its website. See Instruction Manual attached as **Exhibit 9** and screenshots of Instructional Videos on Tristar's Bandaloom website attached as **Exhibit 10**.

57. With regards to the rubber bands, Tristar induced people to infringe claims 1 and 6-18 of the '565 patent by selling its rubber bands for use on the Bandaloom and by providing instructional materials.

58. Upon information and belief, Tristar knew that its customers' actions, when performed, would directly infringe the '565 patent. At the very least, this is based on the filing of this lawsuit.

59. Upon information and belief, Tristar has not made any changes to the Bandaloom despite its knowledge of the '565 patent.

60. Upon information and belief, Tristar has not made any changes to any of its publically available instructional materials, despite its knowledge of the '565 patent.

61. Upon information and belief, despite having knowledge of the '565 patent, Tristar continues to actively induce infringement of the '565 patent by continuing to promote the infringing Bandaloom and replacement rubber bands. Tristar intended its customers to directly infringe the '565 patent, or at the very

least, were willfully blind to the fact that Tristar's customers' use of the infringing Bandaloom and replacement rubber bands would directly infringe the '565 patent.

62. Upon information and belief, Tristar has knowledge of the '565 patent. Tristar has this knowledge by virtue of at least the filing of the Complaint.

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

COUNT IV – DIRECT INFRINGEMENT OF THE '420 PATENT

64. Choon incorporates and re-alleges Paragraphs 1 through 63 as each were fully set forth herein.

65. The '420 patent remains valid, enforceable and unexpired.

66. Upon information and belief, Tristar is directly infringing and has directly infringed the '420 patent, including, without limitation, by making, using, selling, offering for sale, and/or importing, without license or authority, the Bandaloom which is covered by the '420 patent.

67. The Bandaloom falls within the scope of one or more claims of the '420 patent. Upon information and belief, Tristar directly infringe claims 1-16 of the '420 patent. The method claims in the '420 patent are directly infringed by Tristar by its publicly available instructional videos. See screenshots of Instructional Videos on Tristar's Bandaloom website attached as **Exhibit 10**.

68. Upon information and belief, Tristar has knowledge of the '420 patent and knowledge of its infringement of the '420 patent.

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

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

COUNT V – CONTRIBUTORY INFRINGEMENT OF THE
'420 PATENT

71. Choon incorporates and re-alleges Paragraphs 1 through 70 as each were fully set forth herein.

72. As described in Count IV, the Bandaloom and the use of the Bandaloom fall within the scope of claims 1-16 of the '420 patent.

73. Upon information and belief, with knowledge of the '420 patent, Tristar has contributed to and continues to contribute to the infringement of the '420 patent under 35 U.S.C. § 271(c) by selling, offering to sell and/or importing the Bandaloom for use by its customers. Tristar's customers directly infringe the '420 patent by using the Bandaloom to create linked items from elastic bands.

74. Upon information and belief, the Bandaloom is marketed and sold to customers who use it to create linked items for elastic bands. By following the instructions provided by Tristar, customers who use the Bandaloom directly

infringe the '420 patent. See Instruction Manual attached as **Exhibit 9** and screenshots of Instructional Videos on Tristar's Bandaloom website attached as **Exhibit 10**.

75. Upon information and belief, Tristar's Bandaloom has no substantial non-infringing use for at least the reason that the Bandaloom can only be used to directly infringe the '420 patent. In other words, when Tristar's instructions are followed, the Bandaloom is only used in an infringing manner, and is only advertised by Tristar for such an infringing use.

76. Upon information and belief, the accused Bandaloom also constitutes a material part of the invention of the '420 patent for at least the reason it is the very product used to practice the invention of the '420 patent.

77. Upon information and belief, Tristar knows that the accused Bandaloom is especially made or especially adapted for use in an infringement of the '420 patent for at least the reason that the Bandaloom is advertised, sold, and/or offered for sale only to create linked items from elastic bands in a manner covered by the '420 patent.

78. Upon information and belief, Tristar has knowledge of the '420 patent and that Tristar's customers' use of the accused Bandaloom directly infringes the claims of the '420 patent. At the very least, this is based on the filing of the Second Amended Complaint.

79. Upon information and belief, at the very least, Tristar was willfully blind as to the existence of the '420 patent, and therefore willfully blinded itself to its customers' direct infringement of the '420 patent resulting from their use of the Bandaloom.

80. As a result of Tristar's contributory infringement, Choon's will suffer severe and irreparable harm, unless the infringement is enjoined by this Court, and has suffered substantial damages.

COUNT VI – INDUCED INFRINGEMENT OF THE '420 PATENT

81. Choon incorporates and re-alleges Paragraphs 1 through 80 as each were fully set forth herein.

82. Upon information and belief, with knowledge of the '420 patent, Tristar has induced to and continues to induce to the infringement of claims 1-16 the '420 patent under 35 U.S.C. § 271(b) by selling, offering to sell and/or importing the Bandaloom for use by its customers. Tristar's customers directly infringe by using the Bandaloom to create linked items.

83. Tristar specifically intended its customers to infringe the claims of the '420 patent and knew that its customers' acts constituted infringement. Upon information and belief, despite a high likelihood that its actions would induce its customers' direct infringement of the '420 patent, Tristar marketed and sold the Bandaloom to its customers to practice the claimed invention. Tristar's customers

directly infringe the '420 patent by creating linked articles from elastic bands by following the instructions provided within the Bandaloom. See Instruction Manual attached as **Exhibit 9** and screenshots of Instructional Videos on Tristar's Bandaloom website attached as **Exhibit 10**.

84. With regards to the rubber bands, Tristar induced third parties to infringe the claims of the '420 patent by selling its rubber bands for use on the Bandaloom and by providing instructional materials.

85. Upon information and belief, Tristar knew that its customers' actions, when performed, would directly infringe the '420 patent. At the very least, this is based on the filing of the Second Amended Complaint.

86. Upon information and belief, Tristar has not made any changes to the Bandaloom despite its knowledge of the '420 patent.

87. Upon information and belief, Tristar has not made any changes to any of its publically available instructional materials, despite its knowledge of the '420 patent.

88. Upon information and belief, despite having knowledge of the '420 patent, Tristar continues to actively induce infringement of the '420 patent by continuing to promote the infringing Bandaloom. Tristar intended its customers to directly infringe the '420 patent, or at the very least, was willfully blind to the fact

that Tristar's customers' use of the infringing Bandaloom would directly infringe the '420 patent.

89. Upon information and belief, Tristar has knowledge of the '420 patent. Tristar has this knowledge by virtue of at least the filing of the Second Amended Complaint.

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

COUNT VII - TRISTAR'S DIRECT INFRINGEMENT OF THE
'441 PATENT

91. Choon incorporates and re-alleges Paragraphs 1 through 90 as though each were fully set forth herein.

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

93. Upon information and belief, Tristar 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 Bandaloom Mini Loom and Hook which are covered by the '441 patent. Tristar may sell other infringing loom products as well.

94. The Bandaloom Mini Loom and Hook fall within the scope of one or more claims of the '441 patent. Upon information and belief, Tristar directly infringes at least claims 1, 2, 5-8, 10-12, 15 and 16 of the '441 patent.

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

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

**COUNT VIII – CONTRIBUTORY INFRINGEMENT OF THE
'441 PATENT**

97. Choon incorporates and re-alleges Paragraphs 1 through 96 as each were fully set forth herein.

98. As described in Count VII, the Bandaloom and the use of the Bandaloom fall within the scope of at least claims 1, 2, 5-8, 10-12, 15 and 16 of the '441 patent.

99. Upon information and belief, with knowledge of the '441 patent, Tristar has contributed to and continues to contribute to the infringement of the '441 patent under 35 U.S.C. § 271(c) by selling, offering to sell and/or importing the Bandaloom for use by its customers. Tristar's customers directly infringe the '441 patent by using the Bandaloom to create linked items from elastic bands.

100. Upon information and belief, the Bandaloom is marketed and sold to customers who use it to create linked items for elastic bands. By following the instructions provided by Tristar, customers who use the Bandaloom directly infringe the '441 patent. See Instruction Manual attached as **Exhibit 9**.

101. Upon information and belief, Tristar's Bandaloom has no substantial non-infringing use for at least the reason that the Bandaloom can only be used to directly infringe the '441 patent. In other words, when Tristar's instructions are followed, the Bandaloom is only used in an infringing manner, and is only advertised by Tristar for such an infringing use.

102. Upon information and belief, the accused Bandaloom also constitutes a material part of the invention of the '441 patent for at least the reason it is the very product used to practice the invention of the '441 patent.

103. Upon information and belief, Tristar knows that the accused Bandaloom is especially made or especially adapted for use in an infringement of the '441 patent for at least the reason that the Bandaloom is advertised, sold, and/or offered for sale only to create linked items from elastic bands in a manner covered by the '441 patent.

104. Upon information and belief, Tristar has knowledge of the '441 patent and that Tristar's customers' use of the accused Bandaloom directly infringes the claims of the '441 patent. At the very least, this is based on the filing of the Complaint.

105. Upon information and belief, at the very least, Tristar was willfully blind as to the existence of the '441 patent, and therefore willfully blinded itself to

its customers' direct infringement of the '441 patent resulting from their use of the Bandaloom.

106. As a result of Tristar's contributory infringement, Choon's will suffer severe and irreparable harm, unless the infringement is enjoined by this Court, and has suffered substantial damages.

COUNT IX – INDUCED INFRINGEMENT OF THE '441 PATENT

107. Choon incorporates and re-alleges Paragraphs 1 through 106 as each were fully set forth herein.

108. Upon information and belief, with knowledge of the '441 patent, Tristar has induced to and continues to induce to the infringement of at least claims 1, 2, 5-8, 10-12, 15 and 16 of the '441 patent under 35 U.S.C. § 271(b) by selling, offering to sell and/or importing the Bandaloom for use by its customers. Tristar's customers directly infringe by using the Bandaloom to create linked items.

109. Tristar specifically intended its customers to infringe the claims of the '441 patent and knew that its customers' acts constituted infringement. Upon information and belief, despite a high likelihood that its actions would induce its customers' direct infringement of the '441 patent, Tristar marketed and sold the Bandaloom to its customers to practice the claimed invention. Tristar's customers directly infringe the '441 patent by creating linked articles from elastic bands by

following the instructions provided within the Bandaloom. See Instruction Manual attached as **Exhibit 9**.

110. With regards to the rubber bands, Tristar induced third parties to infringe the claims of the '441 patent by selling its rubber bands for use on the Bandaloom.

111. Upon information and belief, Tristar knew that its customers' actions, when performed, would directly infringe the '441 patent. At the very least, this is based on the filing of the Complaint.

112. Upon information and belief, Tristar has not made any changes to the Bandaloom despite its knowledge of the '441 patent.

113. Upon information and belief, Tristar has not made any changes to any of its publically available instructional materials, despite its knowledge of the '441 patent.

114. Upon information and belief, despite having actual knowledge of the '441 patent, Tristar continues to actively induce infringement of the '441 patent by continuing to promote the infringing Bandaloom. Tristar intended its customers to directly infringe the '441 patent, or at the very least, was willfully blind to the fact that Tristar's customers' use of the infringing Bandaloom would directly infringe the '441 patent.

115. Upon information and belief, Tristar has actual knowledge of the '441 patent. Tristar has this knowledge by virtue of at least the filing of the Complaint.

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

COUNT X – DIRECT INFRINGEMENT OF THE '283 PATENT

117. Choon incorporates and re-alleges Paragraphs 1 through 116 as each were fully set forth herein.

118. The '283 patent remains valid, enforceable and unexpired.

119. Upon information and belief, Tristar is directly infringing and has directly infringed the '283 patent, including, without limitation, by making, using, selling, offering for sale, and/or importing, without license or authority, the Bandaloom which is covered by the '283 patent.

120. The Bandaloom falls within the scope of one or more claims of the '283 patent. Upon information and belief, Tristar directly infringes claims 1-20 of the '283 patent. The method claims in the '283 patent are directly infringed by Tristar by its publicly available instructional videos. See screenshots of Instructional Videos on Tristar's Bandaloom website attached as **Exhibit 10**.

121. Upon information and belief, Tristar has knowledge of the '283 patent and knowledge of its infringement of the '283 patent.

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

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

**COUNT XI – CONTRIBUTORY INFRINGEMENT OF THE
'283 PATENT**

124. Choon incorporates and re-alleges Paragraphs 1 through 123 as each were fully set forth herein.

125. As described in Count X, the Bandaloom and the use of the Bandaloom fall within the scope of claims 1-20 of the '283 patent.

126. Upon information and belief, with knowledge of the '283 patent, Tristar has contributed to and continues to contribute to the infringement of at least claims 1-3 and 18 of the '283 patent under 35 U.S.C. § 271(c) by selling, offering to sell and/or importing the Bandaloom for use by its customers. Tristar's customers directly infringe the '283 patent by using the Bandaloom to create linked items from elastic bands.

127. Upon information and belief, the Bandaloom is marketed and sold to customers who use it to create linked items for elastic bands. By following the instructions provided by Tristar, customers who use the Bandaloom directly infringe the '283 patent. See Instruction Manual attached as **Exhibit 9** and

screenshots of Instructional Videos on Tristar's Bandaloom website attached as **Exhibit 10**.

128. Upon information and belief, Tristar's Bandaloom has no substantial non-infringing use for at least the reason that the Bandaloom can only be used to directly infringe the '283 patent. In other words, when Tristar's instructions are followed, the Bandaloom is only used in an infringing manner, and is only advertised by Tristar for such an infringing use.

129. Upon information and belief, the accused Bandaloom also constitutes a material part of the invention of the '283 patent for at least the reason it is the very product used to practice the invention of the '283 patent.

130. Upon information and belief, Tristar knows that the accused Bandaloom is especially made or especially adapted for use in an infringement of the '283 patent for at least the reason that the Bandaloom is advertised, sold, and/or offered for sale only to create linked items from elastic bands in a manner covered by the '283 patent.

131. Upon information and belief, Tristar has knowledge of the '283 patent and that Tristar's customers' use of the accused Bandaloom directly infringes the claims of the '283 patent. At the very least, this is based on the filing of the Third Amended Complaint.

132. Upon information and belief, at the very least, Tristar was willfully blind as to the existence of the '283 patent, and therefore willfully blinded itself to its customers' direct infringement of the '283 patent resulting from their use of the Bandaloom.

133. As a result of Tristar's contributory infringement, Choon's will suffer severe and irreparable harm, unless the infringement is enjoined by this Court, and has suffered substantial damages.

COUNT XII – INDUCED INFRINGEMENT OF THE '283 PATENT

134. Choon incorporates and re-alleges Paragraphs 1 through 133 as each were fully set forth herein.

135. Upon information and belief, with knowledge of the '283 patent, Tristar has induced to and continues to induce to the infringement of at least claims 1-3 and 18 the '283 patent under 35 U.S.C. § 271(b) by selling, offering to sell and/or importing the Bandaloom for use by its customers. Tristar's customers directly infringe by using the Bandaloom to create linked items.

136. Tristar specifically intended its customers to infringe the claims of the '283 patent and knew that its customers' acts constituted infringement. Upon information and belief, despite a high likelihood that its actions would induce its customers' direct infringement of the '283 patent, Tristar marketed and sold the Bandaloom to its customers to practice the claimed invention. Tristar's customers

directly infringe the '283 patent by creating linked articles from elastic bands by following the instructions provided within the Bandaloom. See Instruction Manual attached as **Exhibit 9** and screenshots of Instructional Videos on Tristar's Bandaloom website attached as **Exhibit 10**.

137. With regards to the rubber bands, Tristar induced third parties to infringe the claims of the '283 patent by selling its rubber bands for use on the Bandaloom and by providing instructional materials.

138. Upon information and belief, Tristar knew that its customers' actions, when performed, would directly infringe the '283 patent. At the very least, this is based on the filing of the Third Amended Complaint.

139. Upon information and belief, Tristar has not made any changes to the Bandaloom despite its knowledge of the '283 patent.

140. Upon information and belief, Tristar has not made any changes to any of its publically available instructional materials, despite its knowledge of the '283 patent.

141. Upon information and belief, despite having knowledge of the '283 patent, Tristar continues to actively induce infringement of the '283 patent by continuing to promote the infringing Bandaloom. Tristar intended its customers to directly infringe the '283 patent, or at the very least, was willfully blind to the fact

that Tristar's customers' use of the infringing Bandaloom would directly infringe the '283 patent.

142. Upon information and belief, Tristar has knowledge of the '283 patent. Tristar has this knowledge by virtue of at least the filing of the Third Amended Complaint.

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

PRAYER FOR RELIEF

WHEREFORE, Choon requests judgment in its favor against Tristar for the following relief:

- A. An order adjudging that Tristar has infringed the '565, '420, '441, and '283 patents;
- B. An order adjudging Tristar to have willfully infringed the '565, '420, '441, and '283 patents;
- C. A preliminary and permanent injunction enjoining Tristar, its officers, directors, agents, servants, employees, and those persons in active concert or participation with Tristar, from directly or indirectly infringing the '565, '420, '441, and '283 patents in violation of 35 U.S.C. §271;
- D. An award of damages adequate to compensate Choon for Tristar's infringement of the '565, '420, '441, and '283 patents;
- E. An award of damages adequate to compensate Choon 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 Tristar'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 of its attorney fees and its costs and expenses incurred in connection with this action pursuant to 35 U.S.C. §285; and,
- I. 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: January 21, 2015

CARLSON, GASKEY & OLDS, P.C.

/s/ Brian S. Tobin
Theodore W. Olds, III (P42004)
John M. Siragusa (P62573)
Brian S. Tobin (P67621)
Carlson Gaskey & Olds, P.C.
400 W. Maple, Suite 350
Birmingham, Michigan 48009
Telephone: (248) 988-8360
Facsimile: (248) 988-8363
Email: tolds@cgolaw.com
jsiragusa@cgolaw.com
btobin@cgolaw.com

CERTIFICATE OF SERVICE

I certify that on January 21, 2015, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to all attorneys of record.

Dated: January 21, 2015

CARLSON, GASKEY & OLDS, P.C.

/s/ Brian S. Tobin
Brian S. Tobin (P67621)
Carlson Gaskey & Olds, P.C.
400 W. Maple, Suite 350
Birmingham, Michigan 48009
Telephone: (248) 988-8360
Facsimile: (248) 988-8363
Email: btobin@cgolaw.com