

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.

ODYSSEY MARKETING CORPORATION,
a Florida corporation,

Plaintiff,

vs.

COSTCO WHOLESALE CORPORATION, a Washington corporation, and
GUANGDONG SYMA MODEL AIRCRAFT INDUSTRIAL CO., LTD., a Chinese
corporation,

Defendant.

COMPLAINT FOR PATENT INFRINGEMENT AND JURY DEMAND

Plaintiff Odyssey Marketing Corporation (“Odyssey”) states the following complaint against defendants Costco Wholesale Corporation (“Costco”) and Guangdong Syma Model Aircraft Industrial Co., Ltd. (“Syma”).

JURISDICTION AND VENUE

1. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code. Accordingly, the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1338(a).

2. This Court has personal jurisdiction over defendants Costco and Syma because they both transact, or have in the recent past transacted, business in the District of Colorado, and have marketed, manufactured, offered for sale, imported and/or sold infringing product within this district, and have caused Odyssey injury within this district.

3. Venue is proper in this district under 28 U.S.C. §§ 1391(b), (c) and/or 1400(b).

PARTIES

4. Plaintiff Odyssey is a Florida corporation having its principal place of business at 20855 NE 16th Ave, C22, Miami, Florida 33179.

5. Defendant Costco is a Washington corporation having its principal place of business at 999 Lake Drive, Issaquah, Washington 98027.

6. Defendant Syma is a Chinese corporation having its principal place of business at No.2 West Xinye Road, Laimei Industrial Park, Chenghai District, Shantou 515800 Guangdong China.

7. Defendants Costco and Syma may be jointly referred to as “Defendants.”

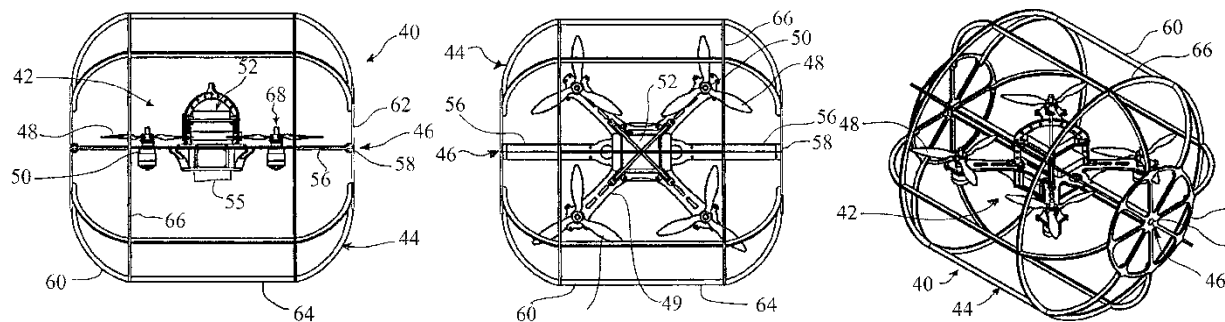
GENERAL ALLEGATIONS

8. Odyssey is an importer and distributor of toy remotely-controlled flying machines (“drones”). To distinguish itself from larger competitors, Odyssey obtains licenses to patents that claim innovative new drone designs and markets drones that incorporate such patented inventions to toy retailers nationwide.

9. Odyssey is the exclusive licensee of United States Patent No. 9,061,558, entitled “HYBRID AERIAL AND TERRESTRIAL VEHICLE,” which issued to the Illinois Institute of Technology (“IIT”) on June 23, 2015 (“the ‘558 patent”). A true and correct copy of the ‘558 patent is attached as Exhibit 1 and incorporated herein by this reference.

10. The invention disclosed by the ‘558 patent was developed by IIT in cooperation with the United States Navy. Drones incorporating the invention are able to travel on the ground using the same propulsion systems they use for flight by virtue of a non-powered rolling

cage that surrounds the drone. During flight, drones must expend considerable energy to counter gravity and remain airborne. But when travelling on the ground using the rolling cage, the drone need only overcome rolling resistance to move. This greatly increases the drone's operating efficiency, enabling it to travel farther and operate longer than when flying. The lightweight cage does not impede the drone's ability to fly, so the drone can fly over any obstacles it encounters on the ground. The cage also serves to prevent damage to the drone when flown into obstacles.



Figures 1, 2, and 3 of the '558 patent

11. Odyssey marks its products with the '558 patent number in accordance with 35 U.S.C. § 287.

12. Costco is a membership-based warehouse retail outlet that sells, advertises, and offers for sale a wide selection of merchandise. It is currently the largest membership-only warehouse club in the United States.

13. Syma is a Chinese manufacturer and exporter of drones that supplies drones to Costco.

14. Odyssey's business is centered on drones. The vast majority of its sales are drones, and many of these sales are of drones incorporating the invention disclosed by the '558 patent.

15. As a much larger company than Odyssey, Syma enjoys lower costs and can sell drones at lower margins. Odyssey's survival therefore depends upon innovation, product differentiation, and enforcement of its patent rights to exclude unauthorized users of the patented technology.

16. Syma manufactures and sells the SkyThunder D63 Drone Runner ("the Infringing Drone Runner"), which practices all of the elements of claims 1-10 and 12-20 of the '558 patent.



Syma's Infringing Drone Runner

17. Syma has made, used, offered for sale, sold and/or imported in the United States the Infringing Drone Runners that infringe claims 1-10 and 12-20 of the '558 patent, including by selling the Infringing Drone Runners to Costco.

18. Costco has made, used, offered for sale, sold and/or imported in the United States the Infringing Drone Runners that infringe claims 1-10 and 12-20 of the '558 patent,

including by purchasing and importing the Infringing Drone Runners from Syma and reselling them in the United States.

19. On October 12, 2015, Odyssey sent a cease and desist letter to Syma wherein Odyssey provided Syma with actual notice of both the '558 patent and of Syma's infringement through sales of the Infringing Drone Runners. Syma's infringement of the '558 patent has therefore been willful since at least that time.

20. On November 24, 2015, Odyssey sent a cease and desist letter to Costco wherein Odyssey provided Costco with actual notice of both the '558 patent and of Costco's infringement through sales of Drone Runners. Costco's infringement of the '558 patent has therefore been willful since at least that time. Odyssey re-sent its cease and desist letter to Costco on January 5, 2016. Costco never responded to Odyssey's letters.

21. On January 12, 2016, Syma's counsel sent a letter to Odyssey stating that Syma would cease sales of the Infringing Drone Runner in the United States. However, Syma has refused to provide Odyssey with any information regarding to whom Syma has sold its Infringing Drone Runners, how many Infringing Drone Runners have been sold in the United States, or how many Infringing Drone Runners remain to be sold.

22. Similarly, neither Costco nor Syma has offered or agreed to compensate Odyssey for their infringing sales of the Infringing Drone Runners.

23. Odyssey has lost customers, sales, market share, and goodwill as a result of Defendants' infringement of the '558 patent.

**FIRST CAUSE OF ACTION
(INFRINGEMENT OF THE '558 PATENT)**

24. Plaintiff incorporates and re-alleges the preceding paragraphs as if fully set forth herein.

25. In violation of 35 U.S.C. § 271(a), Defendants have infringed and are infringing claims 1-10 and 12-20 of the '558 patent by manufacturing, using, offering to sell, and/or selling within the United States, and/or by importing into the United States, certain products, including but not limited to Drone Runners.

26. Specifically and by way of example, the Drone Runner infringes claims 1-10 and 12-20 of the '558 patent as follows:

- a. the Infringing Drone Runner is a terrestrial and aerial vehicle that employs a non-actuated, non-powered rolling cage comprising two opposing hubs and a plurality of rails connected to a flying device by revolute joints, wherein the rolling cage rotates about a shaft and rolls freely about the flying device and against a terrestrial surface;
- b. the Infringing Drone Runner's revolute joints comprise a shaft perpendicular to the axis of the rotors and bearings that connect the shaft's ends to the rolling cage;
- c. the Infringing Drone Runner's rolling cage extends around the flying device and includes circular cross rails at two opposing hubs at the ends of the shaft;

- d. each of the rails in the Infringing Drone Runner's rolling cage includes at least a portion that is parallel to the shaft and that connects the circular cross rails;
- e. the Infringing Drone Runner has four rotor arms within the rolling cage, each including a rotor powered by an actuator motor, wherein the shaft extends outward from the flying device between two of the four rotor arms;
- f. the Infringing Drone Runner's rotors propel both aerial and terrestrial surface locomotion; and
- g. the Infringing Drone Runner includes a controller adapted to receive a wireless control signal.

27. Since at least as early as October 12, 2015, Syma has had actual notice that its Infringing Drone Runners infringe the '558 patent.

28. Since at least as early as November 24, 2015, Costco has had actual notice that its sales of Infringing Drone Runners infringe the '558 patent.

29. Defendants' infringing acts have caused damage to Odyssey.

30. Defendants' infringing acts are willful and Odyssey is therefore entitled to treble damages.

31. Defendants will continue to infringe the '558 patent unless permanently enjoined by this Court. As a result of Defendants' infringing conduct, Odyssey has suffered, and will continue to suffer, irreparable harm for which there is no adequate remedy at law. Odyssey is

therefore entitled to permanent injunctive relief against such infringement pursuant to 35 U.S.C. § 283.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Odyssey requests entry of judgment in its favor and against Defendants Costco and Syma as follows:

- A. A determination that each defendant has infringed claims 1-10 and 12-20 of the '558 patent;
- B. A determination that each defendant's infringement of the '558 patent was willful;
- C. Issuance of a permanent injunction enjoining each defendant, its agents, officers, assigns, and all others acting in concert with them from infringing the '558 patent;
- D. An award of damages to compensate Odyssey for the infringing acts complained of herein, and an award of treble damages under 35 U.S.C. § 284;
- E. A declaration that this case is exceptional under 35 U.S.C. § 285 and an award of attorney fees incurred by Odyssey in connection with this action;
- F. An award of pre-judgment interest and post-judgment interest on the damages awarded; and
- G. Such other and further relief as the Court deems just.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Odyssey hereby demands a trial by jury of all issues so triable.

DATED March 24, 2016.

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