

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION

CANDYRIFIC, LLC  
a Kentucky Limited Liability Company

Civil Action No. 3-16-CV-418-DJH

Plaintiff

vs.

FRANKFORD CANDY & CHOCOLATE  
CO., INC., a Pennsylvania Corporation; and

FRANKFORD CANDY LLC, a Delaware  
Limited Liability Company

Defendants.

**COMPLAINT**

Plaintiff CandyRific, LLC (“CandyRific”), through its counsel of record, and for its complaint against Frankford Candy & Chocolate Co., Inc., and Frankford Candy LLC (collectively “Frankford” or “Defendants”), states as follows:

## **PRELIMINARY STATEMENT**

1. This is an infringement action brought by CandyRific pursuant to the Patent Laws of the United States, United States Code, Title 35 for damages and to enjoin future unlawful acts by Frankford.

## **JURISDICTION**

2. This Court has original jurisdiction to hear this matter pursuant to 28 U.S.C. §1331 and §1338(a) since the matter in controversy arises under the Patent Laws of the United States, United States Code, Title 35.

## **VENUE**

3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b)(1) and (2) because Defendants do business in Kentucky and in this District, and the consequences of Defendants' infringing acts were suffered by CandyRific in this District.

## **BACKGROUND**

### **PLAINTIFF CANDYRIFIC, LLC**

4. Plaintiff CandyRific, LLC is a limited liability company duly organized and existing under the laws of the Commonwealth of Kentucky with its principal place of business

located at 3738 Lexington Road, Louisville, Kentucky 40207 – within the jurisdiction of the United States District Court for the Western District of Kentucky.

5. CandyRific is an industry leader in the design, manufacture, and distribution of novelty confectionery products .

6. CandyRific distributes its products through many major retailers in the United States and also distributes its products in foreign markets.

7. CandyRific has appeared on the Inc. 500 or Inc. 5000 list of fastest growing companies in the United States in seven of the last ten years.

8. CandyRific has licenses with some of the most well-known brands in the world including, for example, M&M'S®, Skittles®, Star Wars®, Marvel®, Disney®, and DreamWorks®.

9. CandyRific was the first to develop and distribute certain fan products in which a housing is grasped and held by a user, with a fan positioned near a first (or upper) end of the housing and a candy item positioned at the second (or lower) end of the housing.

10. One June 28, 2016, the U.S. Patent and Trademark Office duly, properly, and legally issued to CandyRific U.S. Patent No. 9,377,024 (“the ‘024 Patent”) for a “Novelty Hand-Held Fan and Object Holder, a true and correct copy of which is attached as Plaintiff’s Exhibit 1.

**DEFENDANTS FRANKFORD CANDY & CHOCOLATE CO., INC. AND  
FRANKFORD CANDY LLC**

11. Defendant Frankford Candy & Chocolate Co., Inc. is a corporation duly organized and existing under the laws of the State of Pennsylvania with its principal place of business located at 9300 Ashton Road, Philadelphia, PA 19114.

12. Defendant Frankford Candy LLC is a limited liability company duly organized and existing under the laws of the State of Delaware with its principal place of business located at 1111 Sandringham Road, Bala Cynwyd, PA 19004.

13. Defendants are in the business of manufacturing, selling, and distributing confectionaries nationwide and within the jurisdiction of the United States District Court for the Western District of Kentucky.

**COUNT I – PATENT INFRINGEMENT OF U.S. PATENT NO. 9,377,024**

14. Each of the foregoing paragraphs in this Complaint is hereby incorporated in this Count by reference.

15. The '024 Patent owned by CandyRific is valid and in full force and effect. A true and correct copy of the '024 Patent is attached to this complaint as Plaintiff's Exhibit 1.

16. Frankford advertises, offers to sell, and/or sells on Defendants' website ([www.frankfordcandy.com](http://www.frankfordcandy.com)) products which infringe at least claim 8 of the '024 Patent.

17. Claim 8 of the '024 Patent recites, in its entirety:

8. A hand-held fan and object holder, comprising:
  - a housing that can be readily grasped and held by a user, said housing defining a vertical axis;
  - a fan positioned near an upper end of the housing that, in use, rotates with respect to the housing about a substantially horizontal axis that is oriented substantially perpendicular to the vertical axis defined by the housing, said fan being powered by a motor and power source enclosed within the housing;
  - a sheath extending from a lower end of the housing and defining an internal cavity;
  - a candy item stored in the internal cavity defined by the sheath; and
  - a switch positioned on an exterior surface of the housing between the fan and the sheath, allowing the user to selectively energize the motor and rotate the fan while grasping the housing.

18. One example of such an infringing product found on Defendants' website at <http://www.frankfordcandy.com/seasons/everyday/page/2/> is the "SpongeBob Fan," an image of which is provided below.



19. The “SpongeBob Fan,” as well as other products manufactured by Frankford including, but not limited to, a “Hello Kitty Candy Fan,” a “Teenage Mutant Ninja Turtles Candy Fan,” an “Avengers Candy Fan,” and a “Spiderman Fan Candy Toy,” were also found available for sale on several other websites.

20. Upon information and belief, Defendants advertise, offer for sale, and/or sell the above-referenced products to wholesale businesses, retail businesses, and/or consumers within the jurisdiction of the United States District Court for the Western District of Kentucky.

21. Unless the future occurrence of these actions are enjoined, Plaintiff will suffer irreparable injury for which there is no adequate remedy at law.

### **PRAYER**

WHEREFORE, Plaintiff prays for relief against Defendants as follows:

- A. Trial by jury on all issues so triable;
- B. An Order requiring that Defendants and all of their officers, agents, servants, employees, attorneys, privies, and those persons in active concert or participation with them, be preliminarily and permanently enjoined from the continued infringement of U.S. Patent No. 9,377,024;
- C. An award of damages, not less than a reasonable royalty, adequate to compensate Plaintiff for the infringement of its patent rights, pursuant to 35 U.S.C. §284;

- D. That any damages awarded pursuant to 35 U.S.C. §284 be trebled, as provided by 35 U.S.C. §284, in view of the intentional infringement of the '024 Patent;
- E. An award to Plaintiff of reasonable attorneys' fees due to the exceptional nature of this case, pursuant to 35 U.S.C. §285;
- F. An award to Plaintiff of prejudgment interest on said sums at the legal prejudgment rate and post judgment interest on said sums at the legal judgment rate from date of the judgment;
- G. For costs of suit in this action;
- H. For such other and further relief as the Court deems just and proper; and
- I. Any further relief to which Plaintiff may appear entitled.

Respectfully submitted,

STITES & HARBISON, PLLC

/Joel T. Beres/

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