

GREENBERG TRAURIG, LLP

J. Rick Taché (AZ Bar No. 024146)

tacher@gtlaw.com

Shaun A. Hoting (to be admitted *pro hac vice*)

hotings@gtlaw.com

Erik C. Squier (to be admitted *pro hac vice*)

squiere@gtlaw.com

Leanna C. Costantini (to be admitted *pro hac vice*)

costantinil@gtlaw.com

3161 Michelson Drive, Suite 1000

Irvine, California 92612

Telephone: (949) 732-6500

Facsimile: (949) 732-6501

Attorneys for Plaintiff

Whitewater West Industries, Ltd.

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

WHITEWATER WEST INDUSTRIES,
LTD., a Canadian corporation,

Plaintiff,

vs.

FUNTIME LLC dba INDOOR
PLAYGROUNDS INTERNATIONAL, an
Arizona corporation; UNIVERSAL
ENTERTAINMENT GROUP LLC dba LUV
2 PLAY,

Defendants.

CASE NO. _____

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

Patent Infringement of U.S. Patent Nos.
6,264,202 and 6,276,353

DEMAND FOR JURY TRIAL

1 Plaintiff Whitewater West Industries, Ltd. (“Whitewater”) complains and alleges as
2 follows against Defendants Funtime LLC dba Indoor Playgrounds International (“Indoor
3 Playgrounds”) and Universal Entertainment Group LLC dba Luv 2 Play (“Luv 2 Play”)
4 (collectively, “Defendants”):

5 **NATURE OF ACTION**

6 1. This is an action for patent infringement arising under the patent laws of the
7 United States, 35 U.S.C. § 1 *et seq.* Plaintiff seeks damages, attorneys’ fees, costs, pre-
8 judgment and post-judgment interest, and preliminary and permanent injunctive relief.

9 **PARTIES**

10 2. Plaintiff Whitewater is a Canadian corporation with a principal place of business
11 at 6700 McMillan Way, Richmond, British Columbia, Canada, V6W 1J7.

12 3. Plaintiff is informed and believes that Defendant Funtime LLC dba Indoor
13 Playgrounds International is an Arizona corporation with a principal place of business at 13260
14 W. Foxfire Drive, Suite #2, Surprise, AZ 85378.

15 4. Plaintiff is informed and believes that Defendant Universal Entertainment Group
16 LLC dba Luv 2 Play is an Arizona corporation with a principal place of business at 13260 W.
17 Foxfire Drive, Suite #2, Surprise, AZ 85378.

18 **JURISDICTION**

19 5. This Court has subject matter jurisdiction over this case pursuant to 35 U.S.C. §
20 271, and 28 U.S.C. §§ 1331 and 1338(a).

21 6. In the alternative, this Court has subject matter jurisdiction over this case under 28
22 U.S.C. § 1332 because there is diversity among the parties and the amount in controversy,
23 without interest and costs, exceeds \$75,000.

24 7. This Court has personal jurisdiction over Defendants because: (a) Defendants’
25 principal place of business is in this District; (b) Defendants transact business in and maintain
26 continuous and systematic contacts with this District and the State of Arizona; and (c)
27 Defendants have committed acts of patent infringement complained of herein and/or contributed
28

1 to or induced those acts of patent infringement by others in this District and elsewhere in
2 Arizona and the United States.

3 8. Venue is proper in the United States District Court for the District of Arizona
4 under 28 U.S.C. §§ 1391(b), 1391(c), 1400(b).

5 **FACTUAL ALLEGATIONS**
6 **BACKGROUND OF ASSERTED PATENTS**

7 9. Whitewater has been providing customers with innovative amusement park
8 designs, attractions, and rides for more than thirty years. With over 4,000 projects completed
9 worldwide and eighteen international offices, Whitewater has established itself as a global
10 leader in park design, attractions, and rides. The pioneering inventions developed by Whitewater
11 have resulted not only in numerous awards and recognition throughout the amusement and
12 waterpark industry, but also an extensive patent portfolio.

13 10. Whitewater is the owner of U.S. Patent No. 6,264,202 (the “’202 Patent”), entitled
14 “Dry Interactive Play Structure Having Recirculating Play Media” and issued by the U.S. Patent
15 and Trademark Office on July 24, 2001. Pursuant to 35 U.S.C. § 282, the ’202 Patent is
16 presumed to be valid.

17 11. Although the invention set forth in the ’202 Patent is best described by its claims,
18 the ’202 Patent is generally directed to a dry interactive play structure involving play media
19 (e.g., foam balls) and associated play elements that interact with the play media (e.g., spilling
20 baskets, projectile launchers, fountains, etc.) with a collection and return system for gathering
21 the play media throughout the play structure together for continuous use by participants. A true
22 and correct copy of the ’202 Patent is attached hereto as Exhibit 1.

23 12. On August 28, 2007, the then assignee of the ’202 Patent, Koala Corporation,
24 assigned Whitewater full ownership of the ’202 Patent. Under the terms of the assignment,
25 Whitewater has the right to enforce the intellectual property rights, including bringing actions
26 for infringement of the ’202 Patent. Accordingly, Plaintiff Whitewater has standing to sue for
27 infringement of the ’202 Patent.

28 13. Whitewater is the owner of U.S. Patent No. 6,276,353 (the “’353 Patent”), entitled

1 “Projectile Launcher” and issued by the U.S. Patent and Trademark Office on August 21, 2001.
2 Pursuant to 35 U.S.C. § 282, the ’353 Patent is presumed to be valid.

3 14. Although the invention set forth in the ’353 Patent is best described by its claims,
4 the ’353 Patent is generally directed to a projectile launcher or launch system for propelling
5 impact-safe projectiles (*e.g.*, foam), typically in the form of a launch tube with a corresponding
6 nozzle that receives compressed air for propelling the projectile.

7 15. On August 28, 2007, the original assignee of the ’353 Patent, Koala Corporation,
8 assigned Plaintiff Whitewater full ownership of the ’353 Patent. Under the terms of the
9 assignment, Whitewater has the right to enforce the intellectual property rights, including
10 bringing actions for infringement of the ’353 Patent. Accordingly, Plaintiff Whitewater has
11 standing to sue for infringement of the ’353 Patent.

12 **DEFENDANTS’ INFRINGING ACTIVITIES**

13 16. Defendant Indoor Playgrounds’ publicly-available webpage
14 (<http://indoorplaygroundsinternational.com/>) contain renderings or photos of Indoor
15 Playgrounds’ past and present products. Whitewater is informed and believes that Indoor
16 Playgrounds makes, has made, imports, uses, offers for sale and/or sells products that infringe
17 one or more claims of the Patents-in-Suit, including but not limited to the “2 Story Ocean
18 Theme Ballistic Playgym,” “3 Level Ocean Theme Ballistic Playscape,” “2 Story Space Theme
19 Ballistic Zone,” and the “3 Level Mixed Theme Ballistic Playground” (collectively, the
20 “Accused Products”).

21 17. Whitewater is informed and believes that Defendant Luv 2 Play is a provider of
22 franchised locations throughout the United States, which use and/or promote the Accused
23 Products.

24 18. The webpage for Indoor Playgrounds’ product “3 Level Ocean Theme Ballistic
25 Playscape” is shown at [http://indoorplaygroundsinternational.com/products/3-level-ocean-](http://indoorplaygroundsinternational.com/products/3-level-ocean-theme-ballistic-playscape/)
26 [theme-ballistic-playscape/](http://indoorplaygroundsinternational.com/products/3-level-ocean-theme-ballistic-playscape/).

1 19. The webpage for Indoor Playgrounds' product "2 Story Ocean Theme Ballistic
2 Playgym" is shown at [http://indoorplaygroundsinternational.com/products/2-story-ocean-theme-](http://indoorplaygroundsinternational.com/products/2-story-ocean-theme-ballistic-playgym/)
3 [ballistic-playgym/](http://indoorplaygroundsinternational.com/products/2-story-ocean-theme-ballistic-playgym/).

4 20. The webpage for Indoor Playgrounds' product "3 Level Mixed Theme Ballistic
5 Playground" is shown at [http://indoorplaygroundsinternational.com/products/3-level-mixed-](http://indoorplaygroundsinternational.com/products/3-level-mixed-theme-ballistic-playground/)
6 [theme-ballistic-playground/](http://indoorplaygroundsinternational.com/products/3-level-mixed-theme-ballistic-playground/).

7 21. The webpage for Indoor Playgrounds' product "2 Story Space Theme Ballistic
8 Zone" is shown at [http://indoorplaygroundsinternational.com/products/2-story-space-theme-](http://indoorplaygroundsinternational.com/products/2-story-space-theme-ballistic-zone/)
9 [ballistic-zone/](http://indoorplaygroundsinternational.com/products/2-story-space-theme-ballistic-zone/).

10 22. The webpage for Indoor Playgrounds' franchise opportunities is shown at
11 <http://indoorplaygroundsinternational.com/franchise/>. It states that Indoor Playgrounds has
12 established Defendant Luv 2 Play as "the first true indoor playground franchise" and invites
13 those interested in pursuing a franchise opportunity with Indoor Playgrounds to visit its "partner
14 site" at Luv2Play.com.

15 23. Defendant Luv 2 Play's publicly available webpage (<http://luv2play.com/>)
16 identifies several Luv 2 Play locations throughout the United States that are either open for
17 business or soon to be open. The website includes a video showcasing Luv 2 Play's indoor play
18 centers, which include products that appear to be identical to the Accused Products.

19 24. The webpage for Luv 2 Play's franchise opportunities is shown at
20 <http://luv2play.com/franchise-opportunity/>. It identifies several benefits of owning a Luv 2 Play
21 franchise, including "custom playground design," "professional installation," and "discounts on
22 equipment."

23 25. Upon information and belief, the '202 Patent includes 49 claims, at least one of
24 these claims objectively having all of its limitations met by at least one of the Accused Products
25 and thus infringing the '202 Patent.

1 26. Upon information and belief, the '353 Patent includes 42 claims, at least one of
2 these claims objectively having all of its limitations met by at least one of the Accused Products
3 and thus infringing the '353 Patent.

4 27. Whitewater is informed and believes that Defendants have and continue to
5 infringe, contributorily infringe, and/or induce infringement of one or more of the Patents-in-
6 Suit by knowingly and actively (1) making, having made, importing, using, offering for sale
7 and/or selling products that infringe one or more claims of the Patents-in-Suit, including, but not
8 limited to the Accused Products, (2) inducing others to do the same, and (3) contributing to the
9 manufacture, import, use, sale, or offer for sale of products that infringe one or more claims of
10 the Patents-in-Suit.

11 **FIRST CLAIM FOR RELIEF**

12 (Infringement of the '202 Patent: Against All Defendants)

13 28. Whitewater incorporates the allegations in the preceding paragraphs as if fully set
14 forth herein.

15 29. Upon information and belief, Defendants have infringed and continue to infringe
16 the '202 Patent by knowingly and actively making, having made, importing, using, offering to
17 sell, or selling products that infringe one or more claims of the '202 Patent, including but not
18 limited to, the 2 Story Ocean Theme Ballistic Playgym, 3 Level Ocean Theme Ballistic
19 Playscape, 2 Story Space Theme Ballistic Zone, and the 3 Level Mixed Theme Ballistic
20 Playground, or components thereof that incorporate, without license, the inventions protected by
21 one or more claims in the '202 Patent, or by knowingly and actively inducing or contributing to
22 the infringement of the '202 Patent by others.

23 30. Plaintiff has complied with 35 U.S.C. § 287.

24 31. Defendants' infringing conduct will continue unless enjoined by this Court.

25 32. As a direct and proximate result of Defendants' infringing activities, Plaintiff has
26 suffered, and will continue to suffer, irreparable injury.

27 33. On information and belief, despite an objectively high likelihood that their actions
28 constituted infringement of the '202 Patent, Defendants have infringed and continue to infringe

1 the '202 Patent with subjective recklessness.

2 **SECOND CLAIM FOR RELIEF**

3 (Infringement of the '353 Patent: Against All Defendants)

4 1. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set
5 forth herein.

6 2. Upon information and belief, Defendants have infringed and continue to infringe
7 the '353 Patent by knowingly and actively making, having made, importing, using, offering to
8 sell, or selling products that infringe one or more claims of the '353 Patent, including but not
9 limited to, the 2 Story Ocean Theme Ballistic Playgym, 3 Level Ocean Theme Ballistic
10 Playscape, 2 Story Space Theme Ballistic Zone, and the 3 Level Mixed Theme Ballistic
11 Playground, or components thereof that incorporate, without license, the inventions protected by
12 one or more claims in the '353 Patent, or by knowingly and actively inducing or contributing to
13 the infringement of the '353 Patent by others.

14 3. Plaintiff has complied with 35 U.S.C. § 287.

15 4. Defendants' infringing conduct will continue unless enjoined by this Court.

16 5. As a direct and proximate result of Defendants' infringing activities, Plaintiff has
17 suffered, and will continue to suffer, irreparable injury.

18 6. On information and belief, despite an objectively high likelihood that their actions
19 constituted infringement of the '353 Patent, Defendants have infringed and continue to infringe
20 the '353 Patent with subjective recklessness.

21 **PRAYER FOR RELIEF**

22 **WHEREFORE**, Plaintiffs respectfully pray that the Court grant the following relief:

23 A. For judgment that Defendants have infringed the Patents-in-Suit;

24 B. For judgment that Defendant has willfully infringed the Patents-in-Suit;

25 C. An award of damages adequate to compensate Plaintiffs for the infringement, as
26 well as prejudgment interest from the date the infringement began, but in no event less than a
27 reasonable royalty as permitted by 35 U.S.C. § 284;

D. An award of treble damages for the period of any willful infringement pursuant to 35 U.S.C. § 284;

E. A finding that this case is exceptional and an award of interest, costs, and attorneys' fees incurred by Plaintiff in prosecuting this action as provided by 35 U.S.C. § 285;

F. A preliminary and permanent injunction prohibiting Defendants, their respective officers, agents, servants, employees and/or all persons acting in concert or participation with them, from engaging in further infringement and/or acts of infringement and inducement of the Patents-in-Suit;

G. For an award of pre-judgment and post-judgment interest as provided by law; and

H. For such other and further relief as this Court or a jury may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues triable by jury.

DATED: October 20, 2016

GREENBERG TRAURIG, LLP

By /s/ J. Rick Taché

J. Rick Taché

Shaun A. Hoting (to be admitted *pro hac vice*)

Erik C. Squier (to be admitted *pro hac vice*)

Leanna C. Costantini (to be admitted *pro hac vice*)

Attorneys for Plaintiff Whitewater West
Industries, Ltd.