

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

TINNUS ENTERPRISES, LLC,

and

ZURU LTD.,

and

ZURU INC.,

and

ZURU LLC,

and

ZURU PTY LTD.,

and

ZURU UK LTD.

Plaintiffs,

v.

TELEBRANDS CORP.,

and

BULBHEAD.COM, LLC

Defendants.

Civ. Action No. 6:16-cv-33-RWS-JDL

JURY TRIAL DEMANDED

THIRD AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs Tinnus Enterprises, LLC (“Tinnus”) and ZURU Ltd., ZURU Inc., ZURU LLC, ZURU Pty Ltd., and ZURU UK Ltd. (collectively, “ZURU”), by counsel, file this third amended complaint against Telebrands Corporation (“Telebrands”) and Bulbhead.com, LLC (“Bulbhead”) (collectively, “Defendants”), and in support thereof, plaintiffs state as follows:

NATURE OF THE ACTION

1. Plaintiffs bring this action to enjoin the manufacture, importation, distribution, use, sales, and offers to sell by Defendants of certain products known as “Balloon Bonanza HD,” “Balloon Bonanza HD Color Burst,” “Battle Balloons,” “Battle Balloons Color Combat,” and “Battle Balloons Color Burst” that infringe or contribute toward the infringement of valid and enforceable U.S. Patents owned by Tinnus and licensed to ZURU, as well as for monetary damages for Defendants’ willful infringement.

THE PARTIES

2. Plaintiff Tinnus is a limited liability company organized under the laws of the State of Texas with its principal place of business at 3429 18th Street in Plano, Texas.

3. Plaintiff ZURU Ltd. is a company organized under the laws of Hong Kong, with its principal place of business in Guangzhou, China.

4. Plaintiff ZURU Inc. is a corporation organized under the laws of the British Virgin Islands, with its principal place of business in Kowloon, Hong Kong.

5. Plaintiff ZURU LLC is a limited liability company organized under the laws of Oregon, with offices in Segundo, California.

6. Plaintiff ZURU Pty Ltd. is a business organized under the laws of Australia, with a registered address in Melbourne, Australia.

7. Plaintiff ZURU UK Ltd. is a business organized under the laws of the United Kingdom, with a registered address in Bristol, England.

8. Defendant Telebrands is a corporation organized under the laws of the State of New Jersey with its principal place of business at 79 Two Bridges Road in Fairfield, New Jersey.

9. Defendant Bulbhead is a limited liability company organized under the laws of the State of Delaware with its principal place of business at 79 Two Bridges Road in Fairfield, New Jersey.

JURISDICTION AND VENUE

10. This is a civil action for patent infringement arising under the United States patent statutes, 35 U.S.C. § 1, *et seq.*

11. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a).

12. Defendants are subject to this Court's personal jurisdiction because they do and have done substantial business in this judicial district. In addition, upon information and belief, Defendants (directly and/or through a distribution network) have or intend to regularly place infringing products in the stream of commerce with the knowledge and/or understanding that such products will be sold in Texas and in this district. Defendants are subject to the general jurisdiction of this Court because they have regular and systematic contacts with this forum such that the exercise of jurisdiction over them would not offend traditional notions of fair play and substantial justice.

13. Additionally, on information and belief, Defendants are offering to sell infringing products throughout the United States, including in Texas and this judicial district.

14. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) and (c), as well as under 28 U.S.C. § 1400(b).

THE PATENTS-IN-SUIT

15. On January 26, 2016, the United States Patent and Trademark Office (“USPTO”) duly and legally issued United States Patent No. 9,242,749 (“’749 Patent,” attached as **Exhibit A**), entitled “System and Method for Filling Containers with Fluids” to Tinnus. The ’749 Patent is a continuation of United States Patent No. 9,051,066, which issued to Tinnus on June 9, 2015. The ’749 Patent includes one independent claim.

16. Any required maintenance fees have been paid, and the ’749 Patent has not expired. Tinnus is the owner by assignment of the entire right, title and interest in the ’749 Patent. ZURU is the exclusive licensee of the ’749 Patent, and thus plaintiffs have standing to sue for infringement of the ’749 Patent.

17. On April 19, 2016, the USPTO duly and legally issued United States Patent No. 9,315,282 (“’282 Patent,” attached as **Exhibit B**), entitled “System and Method for Filling Containers with Fluids” to Tinnus. The ’282 Patent is a continuation of United States Patent No. 9,051,066, which issued to Tinnus on June 9, 2015. The ’282 Patent includes one independent claim and two dependent claims.

18. Any required maintenance fees have been paid, and the ’282 Patent has not expired. Tinnus is the owner by assignment of the entire right, title and interest in the ’282 Patent. ZURU is the exclusive licensee of the ’282 Patent, and thus plaintiffs have standing to sue for infringement of the ’282 Patent.

FACTS

19. Josh Malone (“Mr. Malone”) is the founder and sole owner of Tinnus and the sole inventor of the ’749 Patent and ’282 Patent.

20. By early 2014, Mr. Malone, a father and an inventor, had developed a revolutionary new toy product (a product that is now marketed as Bunch O Balloons), which would allow someone to fill as many as 100 water balloons which self-tie themselves in approximately 60 seconds.

21. The device includes a hose attachment with an opposite end that is fitted with multiple flexible tubes that connect to balloons. Versions of the device have included 35 or 37 balloons. When the hose is turned on, the balloons fill and are automatically sealed when released of the hose attachment assembly. A website advertising Mr. Malone’s Bunch O Balloons product can be found at <http://www.buybunchoballoons.com>.

22. In March 2014, Mr. Malone, through Tinnus, began taking steps to manufacture the Bunch O Balloons product using certain contractors. The first batch of product was manufactured in June 2014. Manufacturing of the Bunch O Balloons product has continued since that time.

23. To help raise funds for the manufacture and marketing of the Bunch O Balloons product, Mr. Malone, through Tinnus, launched a Kickstarter campaign on July 22, 2014.

24. Kickstarter is the world’s largest Internet crowdsource funding platform for creative projects.

25. In less than 12 hours, the project was fully funded to its initial \$10,000 goal, and within five days, the project had received over a half of a million dollars in startup funding.

26. To date, that funding has reached nearly \$1 million, and the Kickstarter video featuring the Bunch O Balloons product has had approximately 2.9 million views.

27. The same day Mr. Malone launched the Kickstarter campaign, July 22, 2014, his Bunch O Balloons invention was featured in *Sports Illustrated's* on-line magazine.

28. Two days later, *Time* magazine ran a story about his novel product on its website.

29. That same day, July 24, 2014, Mr. Malone's invention was featured on a nationally-televised broadcast of *Good Morning America*.

30. Shortly thereafter on July 27, *People* magazine covered the Bunch O Balloons product on its website.

31. Then, on July 29, just a week after Mr. Malone began his Kickstarter campaign, Mr. Malone appeared on the *Today Show* with his unique invention during a nationally-televised broadcast.

32. The Bunch O Balloons product went viral on the web, including one YouTube review of Mr. Malone's invention, which currently has in excess of 20 million views.

33. On July 22, 2014, the same day Mr. Malone launched his Kickstarter campaign, he received his first orders from the public for the Bunch O Balloons product, which included 598 orders.

34. Mr. Malone sold out his initial production batch on the first day of his Kickstarter campaign.

35. Mr. Malone received those orders before Telebrands began offering its infringing product.

36. As the publicity surrounding Mr. Malone's invention increased, so too did the interest in his product.

37. On August 21, 2014, Tinnus launched its website, <http://bunchoballoons.com>, to accept increasing numbers of product orders.

38. That website has continually received orders since that time until May, 2015, following which the website provided links for visitors to a purchasing site based in their desired region.

39. On August 29, 2014, Tinnus shipped its first batch of the Bunch O Balloons product to customers located in the U.S. and around the world. Shipping has continued since that time.

40. Also, in August 2014, ZURU and Tinnus began negotiations to partner with each other for the manufacture, marketing, and sale of the Bunch O Balloons product.

41. Effective August 19, 2014, Tinnus and ZURU entered into a license agreement wherein Tinnus granted ZURU an exclusive license to intellectual property rights, including patents, relating to the Bunch O Balloons product.

42. Following execution of the license agreement, ZURU immediately began heavily investing in the development, production, and marketing of the Bunch O Balloons product.

43. To date, ZURU has invested millions of U.S. dollars in production and facilities to ramp up the product output.

44. On information and belief, Telebrands engaged in a scheme to copy and mimic the extremely successful Bunch O Balloons product.

45. On information and belief, Telebrands began offering to sell knock-offs of the Bunch O Balloons product in or around December 2015 and January 2016. Telebrands has marketed these knock-off products under different names, including “Balloon Bonanza HD,” “Balloon Bonanza HD Color Burst,” “Battle Balloons,” “Battle Balloons Color Combat,” and “Battle Balloons Color Burst” (hereinafter collectively referred to as “Balloon Bonanza HD”).

46. Bulbhead is an affiliate of Telebrands. Sometime in 2016, Bulbhead began

offering to sell Telebrands's Balloon Bonanza HD products on its website www.bulbhead.com.

The Bulbhead logo is prominently featured on the Balloon Bonanza HD product packaging.

47. Telebrands is no stranger to litigation, including federal and state investigations and actions arising out of unfair competition and consumer fraud on the part of Telebrands. Public records indicate that since 1983, Telebrands has been sued more than 50 times for infringement of intellectual property rights.

48. Ajit Khubani is the CEO and founder of Telebrands. Mr. Khubani has been referred to as the "Knock-Off King" in the television infomercial industry.

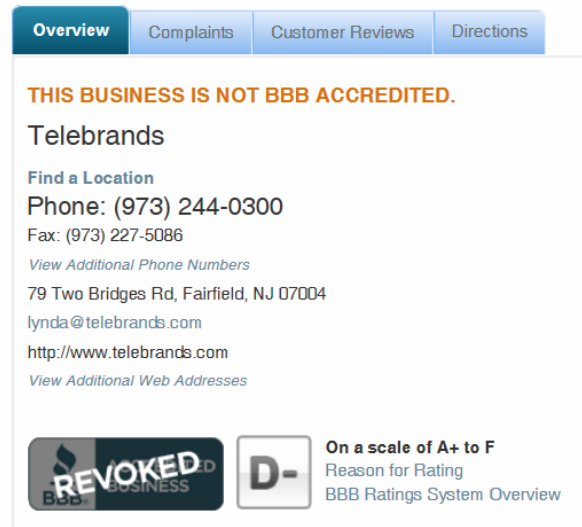
49. In addition, Peter Bieler, the gentleman responsible for successfully marketing the ThighMaster, stated in his book, *This Business Has Legs*: "I was more than familiar with A. J. Khubani. He was a legend in his own time, a knock-off artist par excellence. He had a reputation in the infomercial [sic] business as someone who'd kill your direct response campaign by selling his copies to the retailers, who'd sell them for half the price. Your phones stopped ringing."

50. Further, Mr. Remy Stern wrote in his book, *But Wait ... There's More!*: "Khubani's greatest distinction . . . is that in [the infomercial] industry where almost every new product is a rehash of a previous product and there are precious few true inventions, he has carved out a reputation as one of the most shameless copycats in the business. . . . Creating cheaper versions of other people's products has since become firmly embedded in Telebrands' business plan."

51. In addition, Telebrands has been accused of violating consumer protection laws, the latest being a suit by the New Jersey Attorney General and state Division of Consumer Affairs initiated in August 2014.

52. The nationally-recognized Better Business Bureau’s (“BBB”) Board of Directors revoked Telebrands’s status as an “Accredited Business.” On information and belief, the BBB Board did so because the BBB had received 1,397 complaints relating to Telebrands within the three years prior to the revocation.

BBB Business Review



Overview Complaints Customer Reviews Directions

THIS BUSINESS IS NOT BBB ACCREDITED.

Telebrands

[Find a Location](#)

Phone: (973) 244-0300
Fax: (973) 227-5086

[View Additional Phone Numbers](#)

79 Two Bridges Rd, Fairfield, NJ 07004
lynda@telebrands.com
<http://www.telebrands.com>
[View Additional Web Addresses](#)

REVOKED **D-** **On a scale of A+ to F**
Reason for Rating
[BBB Ratings System Overview](#)

53. Defendants have, among other things, manufactured, imported, used, sold, and/or offered to sell the Balloon Bonanza HD products, which infringe the ’749 Patent and ’282 Patent. Consequently, plaintiffs’ right to relief arises out of the same transaction, occurrence, and/or series of transactions or occurrences relating to the making, using, offering for sale, and/or selling the same infringing products.

COUNT I INFRINGEMENT OF THE ’749 PATENT

54. Plaintiffs reallege and incorporate by reference all of the above paragraphs of this Complaint as if fully set forth herein.

55. Plaintiffs are the owner and exclusive licensee of the entire right, title, and interest in the ’749 Patent.

56. Defendants have manufactured, used, imported, marketed, distributed, offered to sell, and/or sold in the United States the Balloon Bonanza HD products that infringe the '749 Patent. Specifically, Defendants' Balloon Bonanza HD products, including at least those products marketed as Balloon Bonanza HD, Balloon Bonanza HD Color Burst, Battle Balloons, Battle Balloons Color Combat, and Battle Balloons Color Burst, infringe claim 1 of the '749 Patent literally and/or under the doctrine of equivalents. The Balloon Bonanza HD products infringe claim 1 of the '749 Patent at least because the Balloon Bonanza HD products include each and every limitation of claim 1.

57. Upon information and belief, Telebrands was aware that plaintiffs had a pending patent application that matured into the '749 Patent, and Telebrands was aware that the '749 patent would issue as U.S. Patent No. 9,242,749 on January 26, 2016.

58. Telebrands has marketed, distributed, offered to sell, and sold in the United States the Balloon Bonanza HD products, which infringe the '749 Patent at least on its website www.shopping.telebrands.com.

59. Bulbhead has marketed, distributed, offered to sell, and sold in the United States the Balloon Bonanza HD products, which infringe the '749 Patent, on Bulbhead's website, www.bulbhead.com.

60. Defendants have infringed the claim of the '749 Patent by making, using, importing, offering to sell, and/or selling within the United States the Balloon Bonanza HD products.

61. Defendants' infringement of the '749 Patent is willful.

62. Plaintiffs have been damaged and irreparably harmed by Defendants' infringement, which will continue unless Defendants are permanently enjoined by this Court.

**COUNT II
INFRINGEMENT OF THE '282 PATENT**

63. Plaintiffs reallege and incorporate by reference all of the above paragraphs of this Complaint as if fully set forth herein.

64. Plaintiffs are the owner and exclusive licensee of the entire right, title, and interest in the '282 Patent.

65. Defendants have manufactured, used, imported, marketed, distributed, offered to sell, and/or sold in the United States the Balloon Bonanza HD products that infringe the '282 Patent. Specifically, Defendants' Balloon Bonanza HD products, including at least those products marketed as Balloon Bonanza HD, Balloon Bonanza HD Color Burst, Battle Balloons, Battle Balloons Color Combat, and Battle Balloons Color Burst, infringe claims 1 through 3 of the '282 Patent literally and/or under the doctrine of equivalents. The Balloon Bonanza HD products infringe claims 1 through 3 of the '282 Patent at least because the Balloon Bonanza HD products include each and every limitation of claims 1 through 3.

66. Upon information and belief, Telebrands was aware that plaintiffs had a pending patent application that matured into the '282 Patent, and Telebrands was aware that the '282 Patent would issue as U.S. Patent No. 9,315,282 on April 19, 2016.

67. Telebrands has marketed, distributed, offered to sell, and sold in the United States the Balloon Bonanza HD products, which infringe the '282 Patent at least on its website www.shopping.telebrands.com.

68. Bulbhead has marketed, distributed, offered to sell, and sold in the United States the Balloon Bonanza HD products, which infringe the '282 Patent, on Bulbhead's website, www.bulbhead.com.

69. Defendants have infringed the claims of the '282 Patent by making, using, importing, offering to sell, and/or selling within the United States the Balloon Bonanza HD products.

70. Defendants' infringement of the '282 Patent is willful.

71. Plaintiffs have been damaged and irreparably harmed by Defendants' infringement, which will continue unless Defendants are permanently enjoined by this Court.

REQUEST FOR RELIEF

WHEREFORE, plaintiffs respectfully request the following relief against Defendants:

A. A judgment that the '749 Patent and '282 Patent are duly and legally issued, valid, and enforceable;

B. A judgment holding Defendants liable for infringement of the '749 Patent and '282 Patent;

C. A temporary restraining order, preliminary injunction, and permanent injunction against Defendants, their officers, agents, servants, employees, attorneys, parent and subsidiary corporations, assigns and successors in interest, and those persons in active concert or participation with them, enjoining them from continued acts of infringement of the '749 Patent and '282 Patent, including without limitation, an injunction against offers for sale and future sales of the infringing products and colorable imitations thereof;

D. An accounting for damages and an award of compensatory damages resulting from Defendants' infringement of the '749 Patent and '282 Patent, together with pre-judgment and post-judgment interest;

E. A judgment holding that Defendants' infringement of the '749 Patent and '282 Patent is willful and a trebling of damages pursuant to 35 U.S.C. § 284;

- F. A judgment holding that this action is an exceptional case and an award to plaintiffs for their attorney's fees and costs pursuant to 35 U.S.C. § 285 and other authority;
- G. A judgment that plaintiffs be awarded their costs incurred herein; and
- H. Such other relief as the Court deems just and equitable.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38, plaintiffs hereby demand trial by jury.

Dated: August 9, 2017

Respectfully submitted,

/s/ Eric H. Findlay

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that counsel of record who are deemed to have consented to electronic service are being served with a copy of the foregoing document *via* electronic mail and ECF on the 9th day of August 2017.

/s/ Eric H. Findlay
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