

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

JUMPSPORT, INC.	§	
Plaintiff,	§	
	§	CIV. A. NO. 6:17-cv-414-RWS-JDL
v.	§	(LEAD CONSOLIDATED CASE)
	§	
ACADEMY, LTD d/b/a ACADEMY SPORTS & OUTDOORS;	§	PATENT CASE-JURY
	§	
TARGET CORPORATION, et al.;	§	CIV. A. NO. 6:17-cv-542-RWS-JDL
	§	
LOWE’S HOME CENTERS, LLC;	§	CIV. A. NO. 6:17-cv-606-RWS-JDL
	§	
WAL-MART STORES, INC., et al.;	§	CIV. A. NO. 6:17-cv-645-RWS-JDL
	§	
THE HOME DEPOT, INC., et al.;	§	CIV. A. NO. 6:17-cv-662-RWS-JDL
	§	
DICK’S SPORTING GOODS, INC., et al.; and	§	CIV. A. NO. 6:17-cv-663-RWS-JDL
	§	
AMAZON.COM, INC., et al.,	§	CIV. A. NO. 6:17-cv-666-RWS-JDL
	§	
Defendants.	§	

**PLAINTIFF’S FIRST AMENDED COMPLAINT AND JURY DEMAND
AGAINST TARGET CORPORATION**

JumpSport’s trampoline enclosure technology revolutionized the backyard trampoline market. Target Corporation (“Target” or “Defendant”) is a major seller of trampolines that use JumpSport’s patented enclosure technology. This suit seeks damages for Target’s infringement of U.S. Patent Nos. 6,053,845 and 6,261,207.

PARTIES

1. Plaintiff and patent owner JumpSport, Inc. is a corporation formed under the laws of California with a principal place of business at 1680 Dell Avenue, Campbell, CA

95008.

2. JumpSport pioneered the integration of safety enclosures with trampolines, improving safety and minimizing the risk of injury.

3. Today, JumpSport markets a line of award-winning trampolines featuring their patented safety enclosure system.

4. Defendant Target Corporation is a domestic for-profit corporation with its headquarters at 1000 Nicollet Mall, Minneapolis, Minnesota 55403. Target has been served and has appeared.

5. Target Corporation owns and operates Target stores in this district and throughout Texas, and sell the accused products through the Target website (www.target.com).

JURISDICTION AND VENUE

6. This is an action for patent infringement arising under the Patent Act, 35 U.S.C. § 1 *et seq.*

7. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338 (a).

8. This Court has personal jurisdiction over Defendant under the laws of the State of Texas, due at least to its substantial business in Texas and in this judicial district, including: (a) at least part of its infringing activities alleged herein; and (b) regularly doing or soliciting business, engaging in other persistent conduct, and/or deriving substantial revenue from goods sold and services provided to Texas residents.

9. Venue is proper in this judicial district under 28 U.S.C. § 1400(b).

10. Target operates retail stores in this district including at 7003 S. Broadway Avenue, Tyler, Texas 75703.

11. Target’s retail stores in the district are regular and established physical places of business through which Target transacts business involving the accused products.

12. Target distributes products, including those accused of infringement in this case, to residents of the district who place orders through Target’s website.

13. Target operates distribution centers in Denton and Tyler.

14. Target markets, sells, and delivers products embodying the asserted patents to customers in this district.

15. Customers wishing to return accused products purchased through Target’s website may do so at a Target store.

16. JumpSport has suffered damages in this district due to Target’s infringing conduct.

ACCUSED TARGET PRODUCTS

17. Target carries several brands of trampoline-enclosure systems and at least the following products that embody one or more claims of the ’845 and ’207 Patents:

Skywalker Trampolines 15’ Round Jump-n-Toss Trampoline with Enclosure	091-15-0642
Skywalker 14’ Rectangle Trampoline with Enclosure	091-15-0343
Skywalker Trampolines 12’ Round Jump-N-Toss Trampoline with Enclosure	091-15-1013
Skywalker Trampolines 15’ Rectangle Trampoline and Enclosure	091-15-2186

Skytric 15' Trampoline with Top Ring Enclosure System	091-15-2201
Skywalker Trampolines 17' Oval Trampoline with Enclosure	091-15-0353
Skywalker Trampolines 12' Round Trampoline with Enclosure	091-15-1748
Skywalker Trampolines 13' Square Trampoline with Enclosure	091-15-0989
Skywalker Trampolines 8' Round Jump-n-Toss Trampoline with Enclosure	091-15-0896
Skywalker Trampolines 8' Round Trampoline with Enclosure - Blue	091-15-1749
Skywalker Trampolines 12' Round Jump-N-Toss Trampoline with Enclosure	091-15-1014
Upper Bounce Easy Assemble Mega 9' x 15' Rectangular Trampoline with Fiber Flex Enclosure System	091-15-2205
Upper Bounce® 15' Trampoline and Enclosure Set equipped with the New "Easy Assemble Feature"	091-15-2203
Upper Bounce 16' Trampoline and Enclosure Set	091-15-2204
Upper Bounce 14' Trampoline and Enclosure Set	091-15-2202
Skytric 13' Trampoline with Top Ring Enclosure System	091-15-2200
Skytric 11' Trampoline with Top Ring Enclosure System	091-15-2199
Skytric 8' Trampoline with Top Ring Enclosure System	091-15-2198
13' Airzone Trampoline and Enclosure	091-15-0462
Skywalker Oval Trampoline with Enclosure - Blue (17')	091-15-0348

Skywalker Kids Trampoline Round Jump-N-Toss with Enclosure -12'	091-15-2191
Skywalker Round Kids Trampoline Jump-N-Toss with Enclosure 15'	091-15-0894
Airzone 12' Spring Trampoline and Enclosure	-
Pure Fun Trampoline Combo Set - Silver/ Blue (8')	-
Airzone Trampoline Enclosure Combo - Variflex 8'	091-15-0691
Variflex Trampoline Combo - Blue/Black (12')	-
Pure Fun Trampoline Combo Set - Silver/ Blue (12')	-
Pure Fun Trampoline Combo Set - Silver/ Blue (15')	-

18. These accused products and substantially similar products sold, offered for sale, made, imported, used, or distributed by Target meet each and every limitation of the asserted claims of the '845 and '207 Patents.

19. For example, claim 1 of the '845 Patent recites a trampoline having a frame, rebounding mat coupled to the frame by spring members, independent poles extending above the rebounding mat, and a flexible safety enclosure coupled to the poles and rebounding mat. Each of the Target accused products meets these limitations.

20. Target markets the accused products as trampolines with enclosures and stresses the safety features of the claimed subject matter of the '845 and '207 Patents.

21. The accused products include a frame, rebounding mat (as exemplified below in the pictures of the infringing products), and independent poles extending above the mat

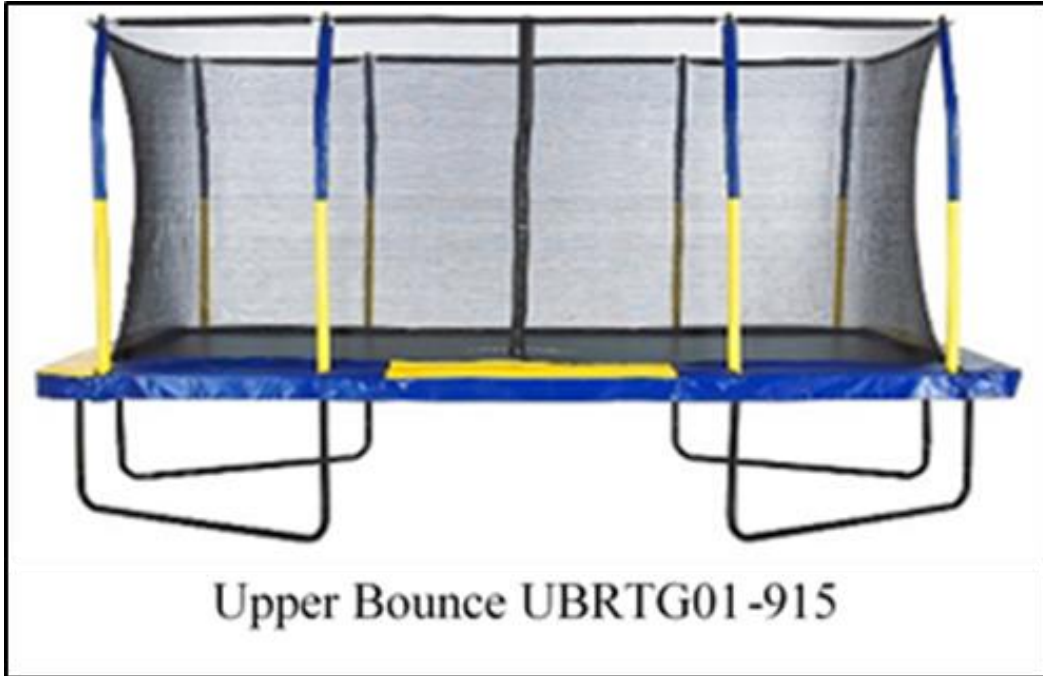
and supporting a safety enclosure.

22. Target sells and markets the following exemplary accused products (Airzone 13'/Bravo Sports ATZB13001-2, Pure Fun 9015TS, Skywalker SWTC1515 15' round trampoline, and Upper Bounce Mega/UBRTG01-915):



Bravo Sports ATZB13001-2





23. To meet the safety standards of the American Society for Testing and Materials (ASTM), sellers must include a safety enclosure when offering a recreational trampoline for sale.

24. Target and each accused product is offered for sale in compliance with ASTM F381-16.

25. ASTM F381-16 provides in part:

4. Included Components

4.1 When a trampoline is offered for sale, it shall include the following: (1) a frame, (2) a bed, (3) a suspension system, (4) frame padding (where the frame is in the plane of the bed), (5) an enclosure in compliance with Safety Specification **F2225**, (6) an information packet, and (7) suitable markings.

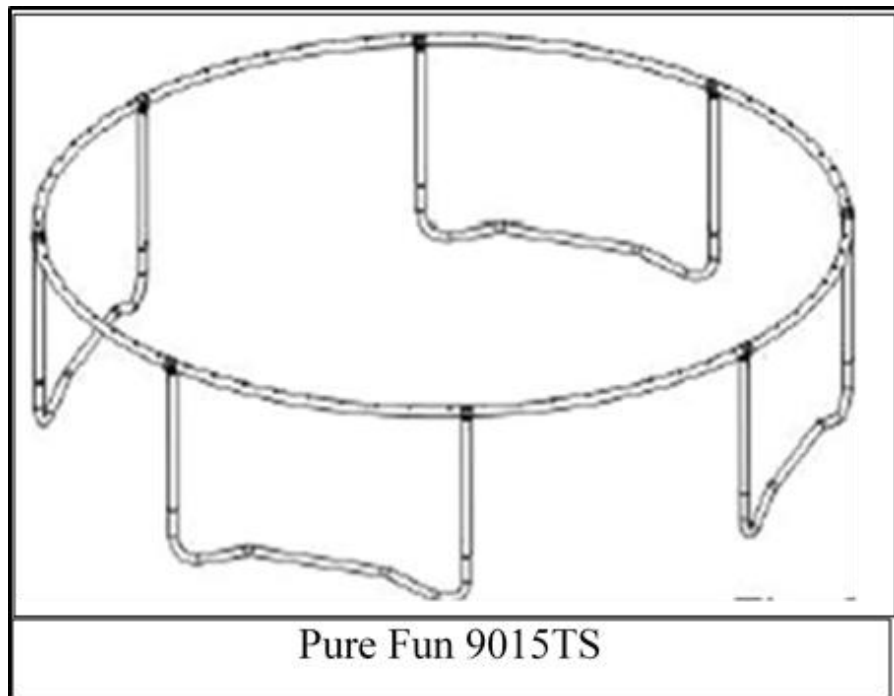
ASTM F381-16

26. ASTM F2225, titled “Standard Safety Specification for Consumer

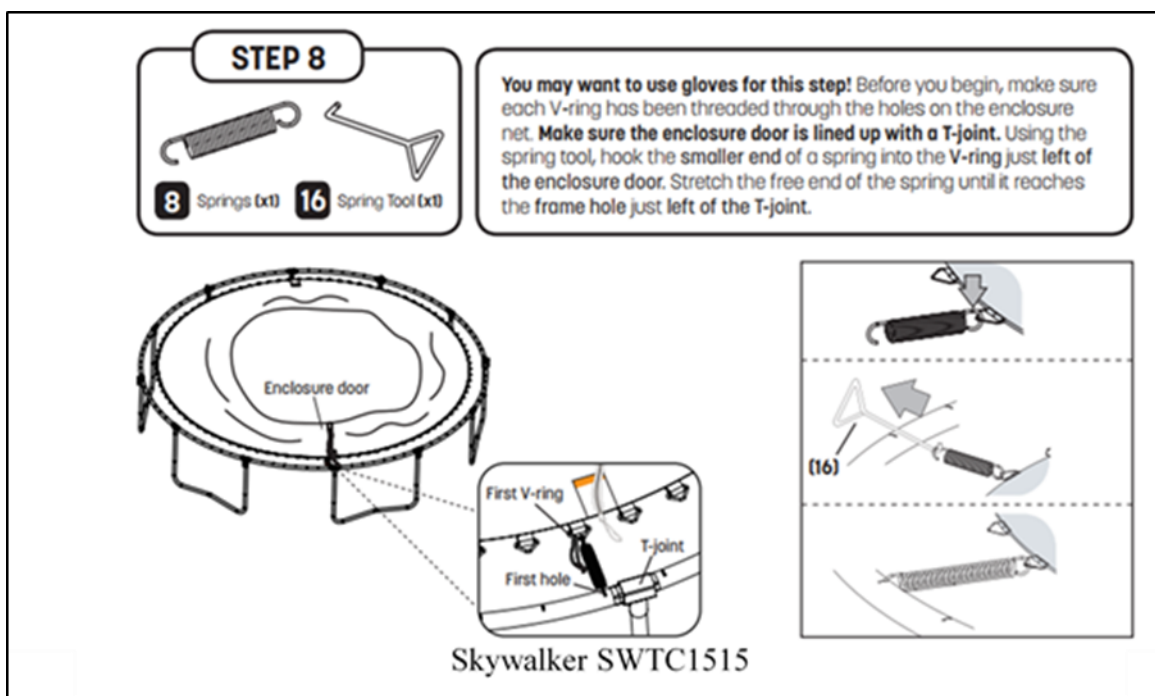
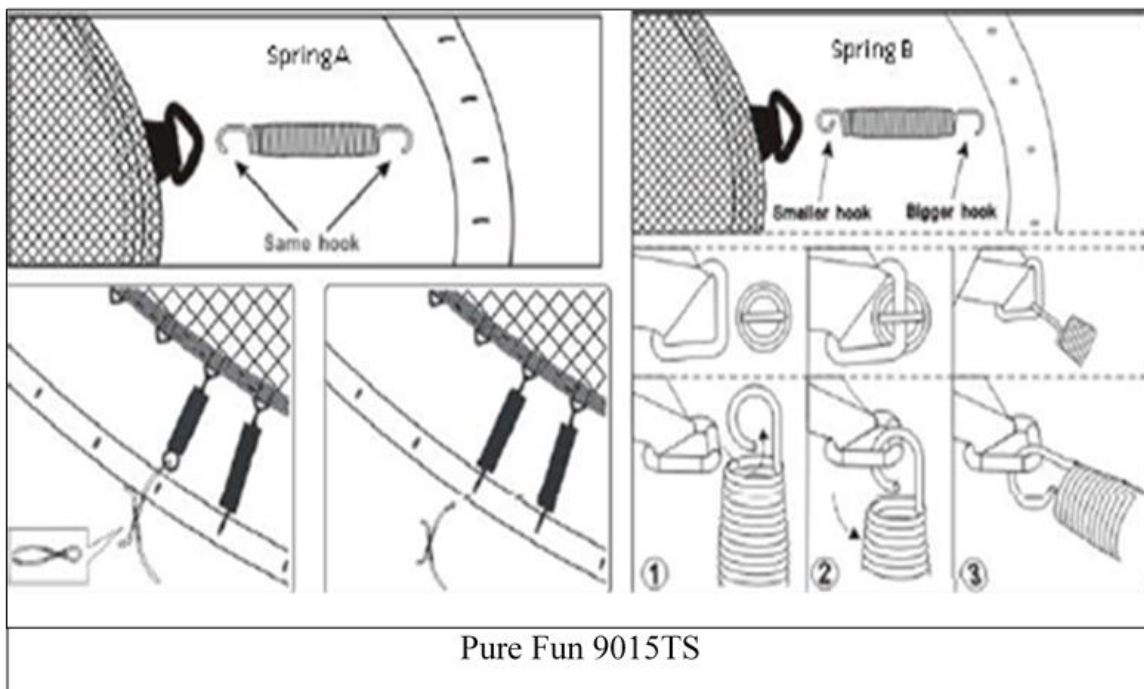
Trampoline Enclosures,” is a companion standard to ASTM F381.

27. The Target accused products purport to comply with ASTM Safety Specification F2225.

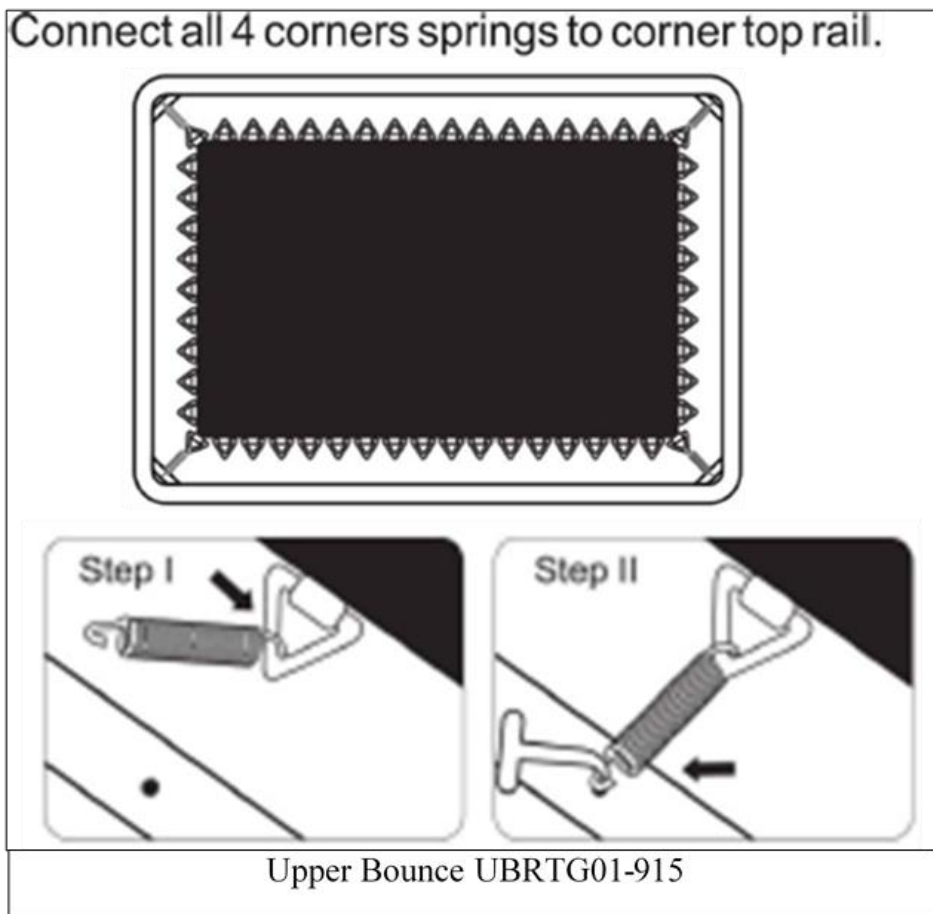
28. The accused products include a safety enclosure to protect against the risk of injury from fall-offs or frame impacts.



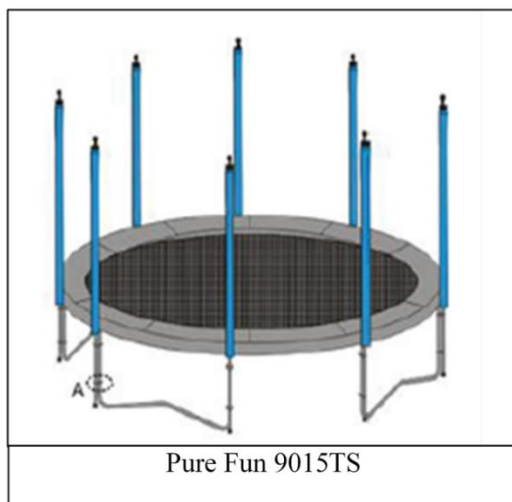
29. In each accused product, the rebounding mat is coupled to the frame by spring members as exemplified below in pictures from the Pure Fun 9015TS and Skywalker SWTC1515 manuals:



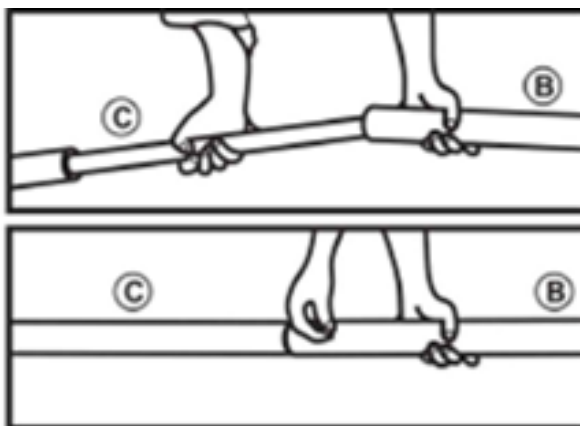
30. In accused products such as shown below, a spring member is coupled to the rebounding mat by an inflexible member (e.g., a D-ring).



31. The accused products include plural independent poles as exemplified by the Pure Fun 9015TS pictured below:



32. Independent poles may be connected to horizontal and leg members via brackets or U-bolts.



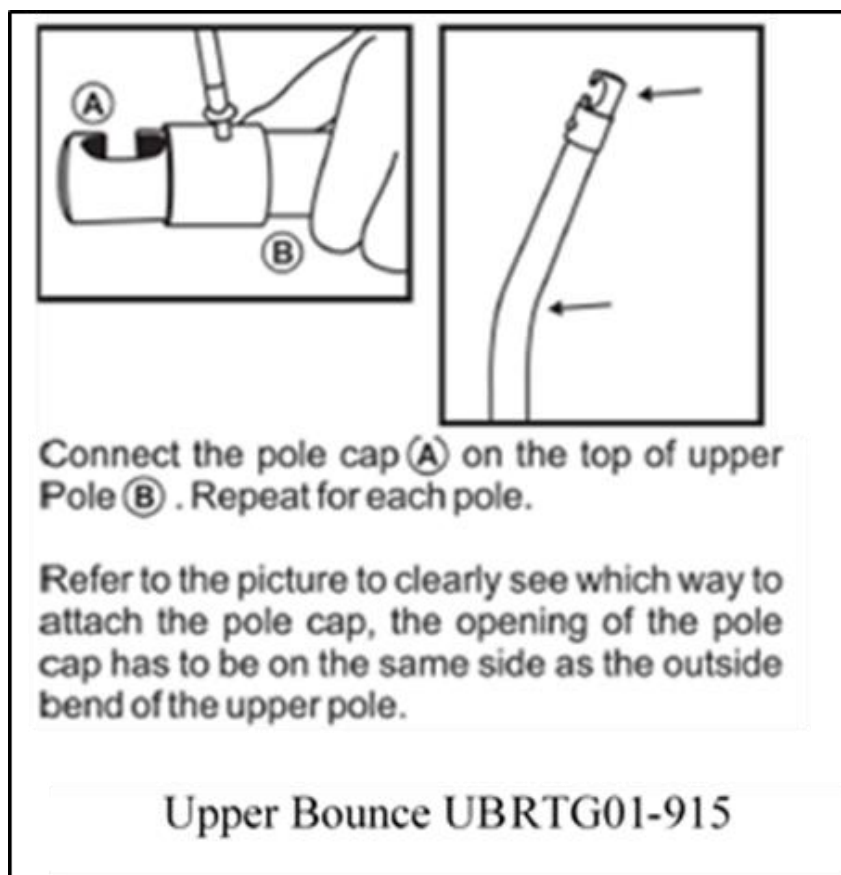
Upper Bounce UBRTG01-915

33. The accused products feature a top line that extends between upper ends of the independent poles as exemplified below:





34. End caps with brackets receive the top line.



35. Target accused products feature a safety enclosure comprising a flexible

material coupled to said independent poles and to the rebounding mat.

36. The safety enclosure is coupled to the independent poles and rebounding mat to help in absorbing impact forces to the enclosure.

37. The Target 9012TS assembly instructions caution end users that “the Safety Net will become very tight as you near completion. It can be helpful to have another adult assist you in completing this process. The Safety Net should be very tight”

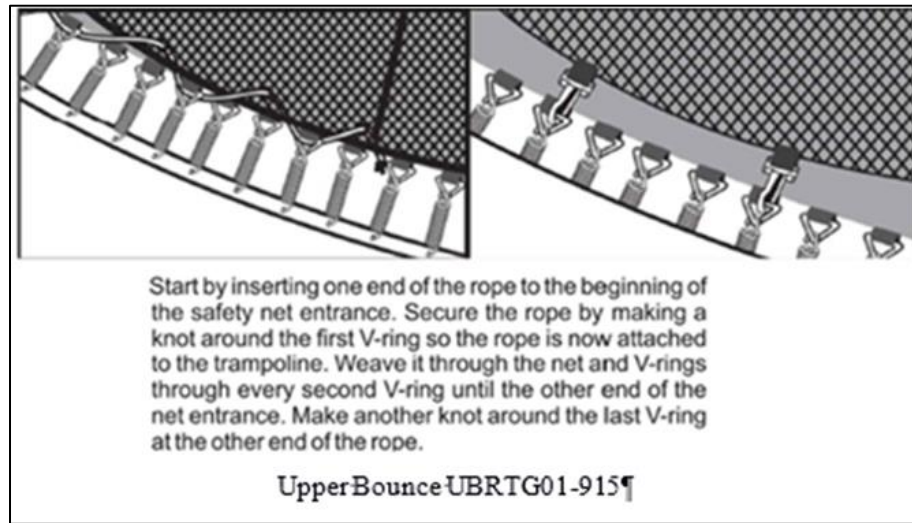
38. If not met literally, asserted claims requiring brackets to receive the top line are infringed under the doctrine of equivalents because ball end caps in the accused products perform the same function (receiving the top line) in substantially the same way (using the tops of the poles to constrain mobility of the top line) to achieve substantially the same result (a firm coupling of the enclosure to the poles and efficient transfer of forces among the enclosure, the poles, and the rebounding mat).

39. Target accused products feature end caps shaped with openings formed in the cap as exemplified below:



40. Target accused products feature a flexible bottom line attached to the enclosure and extending between adjacent poles at a level below the top line.

41. An example of the bottom line in the accused products is shown below:



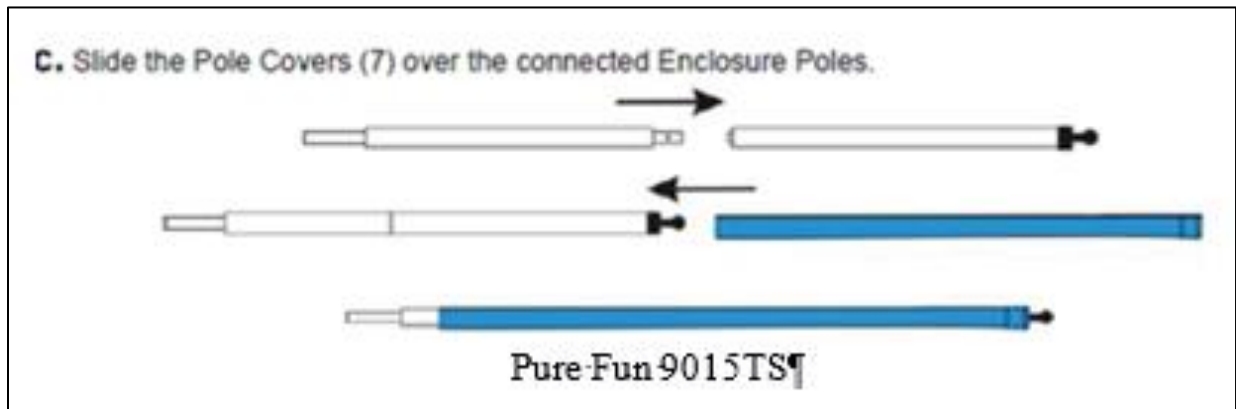
42. Target uses several methods of attaching the safety enclosure to the rebounding mat or other component of the system in the accused products. Shown above is attachment of the flexible enclosure to the V-rings and clips:

43. End caps of the independent poles in the accused products are shaped and made of a material to absorb energy from an impact.

44. Target accused products use T-brackets or U-bolts to couple poles to legs. To the extent the claims reciting at least one U-bolt are not infringed literally, these limitations are met under the doctrine of equivalents because fasteners or fabricated brackets perform substantially the same function as a fastener that includes at least one U-bolt (coupling the poles to the legs) in substantially the same way (harnessing the weight supported by the legs to constrain the lateral mobility of the poles) to achieve substantially the same result (the poles remain securely in place).

45. Resilient sheaths are installed on the accused product poles to absorb impact forces from jumpers.

46. Sleeves made of foam or other material designed to absorb impact energy are resilient sheaths.



4. Cover all the poles with PVC sleeve ©
Upper Bounce UBRTG01-915

47. Flexible enclosure material in the Target accused products is fence netting, typically made of woven material with open spaces between cords or fibers.

48. Circular, oval, or substantially rounded Target accused products meet the '207 claim 9 limitation of a generally cylindrical wall made of a flexible material.

49. The accused products integrate the frame, legs, poles, and enclosure such that they operate as a system to absorb impact energy as recited in the asserted claims.

COUNT 1
(INFRINGEMENT OF U.S. PATENT NO. 6,053,845)

50. JumpSport incorporates paragraphs 1 through 50 herein by reference.

51. JumpSport, Inc., is the owner, by assignment, of U.S. Patent No. 6,053,845 (the "'845 Patent") titled "Trampoline or the Like with Enclosure." A true and correct copy of the '845 Patent is attached as Exhibit A.

52. The '845 Patent claims asserted herein are valid and enforceable.

53. The '845 Patent was duly issued by the United States Patent Office upon finding it fully complied with Title 35 of the United States Code.

54. Target has no consent or authorization to practice the '845 Patent.

55. Target directly infringes one or more claims of the '845 Patent, including at least claims 1, 2, 3, 5, 7, 8, 12, 15, and 17 under 35 U.S.C. § 271(a) by making, using, offering for sale, importing, distributing, and/or selling the accused products having flexible safety enclosures as recited in the asserted claims.

56. By this and the Original Complaint, Target is on notice of the '845 Patent, the products that infringe the '845 Patent, and how they infringe. Target will be liable for contributory and/or inducing infringement if Target's infringing conduct continues.

57. For example, Target will be liable under 35 U.S.C §271(b) when it knowingly induces others to infringe by encouraging, aiding, and abetting the use, assembly, and installation of the accused trampolines and safety enclosures. Enclosure systems of the accused products have no substantial non-infringing use but to infringe the asserted claims.

58. Target specifically intends the enclosure systems to be installed on the accused trampolines to infringe the asserted claims.

59. Target maintains an interactive website upon which prospective customers ask questions that Defendant answers in furtherance of their knowing inducement of others' assembly of the '845 Accused Products.

60. JumpSport has been damaged as a result of Defendant's infringing conduct.

Defendant is thus liable to Plaintiff in an amount that adequately compensates it for Defendant's infringement, which compensation by law cannot be less than a reasonable royalty together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

COUNT 2
(INFRINGEMENT OF U.S. PATENT NO. 6,261,207)

61. JumpSport, Inc. incorporates paragraphs 1 through 61 herein by reference.

62. JumpSport, Inc., is the owner, by assignment, of U.S. Patent No. 6,261,207 (the "'207 Patent") titled "Trampoline or the Like with Enclosure."

63. A true and correct copy of the '207 Patent is attached as Exhibit B.

64. The claims asserted herein of the '207 Patent are valid, enforceable, and the '207 Patent was duly issued by the United States Patent Office upon finding it fully complied with Title 35 of the United States Code.

65. Defendant directly infringes one or more claims of the '207 Patent, including claims 9, 14, 17, 18, 25, 26, 27, 30, 31, 33, and 34 under section 271(a) by making, using, selling, offering for sale, importing, and/or distributing the accused products.

66. Target has no consent or authorization to practice the '207 Patent.

67. By this and the Original Complaint, Target is on notice of the '207 Patent, the products that infringe the '207 Patent, and how they infringe. Target will be liable for contributory and/or inducing infringement if Target's infringing conduct continues.

68. Target encourages, directs, aids, and abets the use, assembly, and installation of these products and the enclosure systems have no substantial non-infringing use.

69. Target specifically intends the accused enclosure systems to be installed and

used to infringe the asserted claims.

70. For example, Target will be liable under 35 U.S.C. §271(b) when it knowingly induces others to infringe by encouraging, aiding, and abetting the use, assembly, and installation of the accused trampolines and safety enclosures. Enclosure systems of the accused products have no substantial non-infringing use but to infringe the asserted claims.

71. Target maintains an interactive website upon which prospective customers ask questions that Defendant answers in furtherance of their knowing inducement of others' assembly of the '207 Accused Products.

72. JumpSport has been damaged as a result of Target's infringing conduct. Target is thus liable to JumpSport in an amount that adequately compensates it for Target's infringement, which compensation by law cannot be less than a reasonable royalty together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

NOTICE AND WILLFULNESS

73. JumpSport has complied with 35 U.S.C. § 287 by marking its products.

74. Defendant Target Corporation was a party to previous litigation between the parties.

75. Defendant Target Corporation was a named defendant in the litigation between *JumpSport, Inc. v. Hedstrom Corporation et. al.*, in United States District Court for the Northern District of California, San Francisco Division, case 4:04-cv-00199-PJH.

76. In the *Hedstrom* litigation, in its Original Complaint for Infringement of Patents dated January 14, 2004, JumpSport asserted claims for infringement and attached

to its complaint U.S. Patent Nos. 6,053,845 and 6,261,207.

77. JumpSport also notified Defendant Target Corporation in writing, on May 20, 2003, that it was selling enclsoures that infringe the JumpSport Patents.

78. Since the filing and Defendant's receipt of the notice in 2003 and Original *Hedstrom* Complaint in 2004, Defendant's infringement of the Asserted Patents has been and continues to be willful.

79. With knowledge and reason to know of facts that would lead a reasonable person to relaize their actions were risky, Defendant continue to commit, direct and undertake to expand the extent of the acts JumpSport contends infringe the Asserted Patents.

80. Defendant has known since notice in 2003 and service of the Original *Hedstrom* Complaint in 2004 the specific conduct that JumpSport contends infringe the Asserted Patents.

81. Since receiving notice, Defendant has made no effort to avoid infringing the Asserted Patents.

82. Since receiving notice, Defendant has continued to promote the products that JumpSport alleges infringe the Asserted Patents.

83. Defendant has detailed knowledge about the specific features and functionality in its products that JumpSport has identified as infringing the asserted claims of the Asserted Patents, and Defendant has had such knowledge since reciept of the notice in 2003 and the service of the Original *Hedstrom* Complaint in 2004.

84. Since receiving notice, Defendant has made no effort to change, or remove

products or components that infringe the Asserted Patent.

85. Since receiving notice, Defendant has promoted and sold products that infringe the Asserted Patents.

86. Enhanced damages under 35 U.S.C. § 285 are appropriate in this case in light of Defendant's willful infringement.

NOTICE OF REQUIREMENT OF LITIGATION HOLD

87. Defendant is hereby notified they are legally obligated to locate, preserve, and maintain all records, notes, drawings, documents, data, communications, materials, electronic recordings, audio/video/photographic recordings, and digital files, including edited and unedited or "raw" source material, and other information and tangible things that Defendant knows, or reasonably should know, may be relevant to actual or potential claims, counterclaims, defenses, and/or damages by any party or potential party in this lawsuit, whether created or residing in hard copy form or in the form of electronically stored information (hereafter collectively referred to as "Potential Evidence").

88. As used above, the phrase "electronically stored information" includes without limitation: computer files (and file fragments), e-mail (both sent and received, whether internally or externally), information concerning e-mail (including but not limited to logs of e-mail history and usage, header information, and deleted but recoverable e-mails), text files (including drafts, revisions, and active or deleted word processing documents), instant messages, audio recordings and files, video footage and files, audio files, photographic footage and files, spreadsheets, databases, calendars, telephone logs, contact manager information, internet usage files, and all other information created,

received, or maintained on any and all electronic and/or digital forms, sources and media, including, without limitation, any and all hard disks, removable media, peripheral computer or electronic storage devices, laptop computers, mobile phones, personal data assistant devices, Blackberry devices, iPhones, video cameras and still cameras, and any and all other locations where electronic data is stored. These sources may also include any personal electronic, digital, and storage devices of any and all of Defendant's agents, resellers, or employees if Defendant's electronically stored information resides there.

89. Defendant is hereby further notified and forewarned that any alteration, destruction, negligent loss, or unavailability, by act or omission, of any Potential Evidence may result in damages or a legal presumption by the Court and/or jury that the Potential Evidence is not favorable to Defendant's claims and/or defenses. To avoid such a result, Defendant's preservation duties include, but are not limited to, the requirement that Defendant immediately notify its agents and employees to halt and/or supervise the auto-delete functions of Defendant's electronic systems and refrain from deleting Potential Evidence, either manually or through a policy of periodic deletion.

JURY DEMAND

JumpSport hereby demands a trial by jury on all claims, issues and damages so triable.

PRAYER

JumpSport prays for the following relief:

That Target be summoned to appear and answer;

That the Court enter an order declaring that Target has infringed the '845 and '207

Patents;

That this is an exceptional case under 35 U.S.C. § 285;

That the Court grant Plaintiff judgment against Target for all actual, consequential, special, punitive, exemplary, increased, and/or statutory damages pursuant to 35 U.S.C. 284 including, if necessary, an accounting of all damages; pre and post-judgment interest as allowed by law; and reasonable attorney's fees, costs, and expenses incurred in this action; and

Such further relief to which JumpSport may show itself justly entitled.

Dated: February 27, 2018

Respectfully submitted,

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By: /s/ Cabrach J. Connor

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on February 27, 2018, this First Amended Complaint was filed electronically via the CM/ECF system with the clerk of the court for the U.S. District Court, Eastern District of Texas, Tyler Division, in compliance with Local Rule CV-5(a). As such this document was served on all counsel who are deemed to have consented to electronic service.

/s/ Cabrach J. Connor
Cabrach J. Connor