

NATURE OF THE ACTION

1. This is a patent infringement and Violation of the Texas Uniform Trade Secrets Act, Tex. action to stop Defendant's infringement of Plaintiff's United States Patent No. 8,654,422 (hereinafter, the "'422 patent'"), entitled "HOLOGRAPHIC BUBBLE GENERATING SYSTEM" and United States Patent No. 9,069,243 (hereinafter, the "'243 patent'") entitled "SYSTEM AND METHOD FOR PRODUCING A THREE-DIMENSIONAL IMAGE ON A PRE-PRINTED LINED SUBSTRATE." A copy of the '422 patent is attached hereto as Exhibit A. Sgromo is the inventor and owner of the '422 patent. Plaintiff seeks injunctive relief and monetary damages. A copy of the '243 patent is attached hereto as Exhibit B. Sgromo is the assignee of the '243 patent. Plaintiff seeks injunctive relief and monetary damages.

2. Violation of the Texas Uniform Trade Secrets Act, Tex. Civ. Prac. & Rem. Code Ann. Ch. 134A, based on actual knowledge as to itself and on information and belief as to the defendants' misappropriation of trade secrets. Sgromo is the inventor and owner of the inventions which defendants have marketed various devices under the brand names, Bubble Blitz and Glow Fusion Bubbles.

PARTIES

3. Plaintiff Sgromo is an individual, an inventor, Canadian National, residing at 32600 Bobcat Dr., in the District of Mission, in the Province of British Columbia, in the country of CANADA.

4. Sgromo is the assignee of all title and interest of the '422 and '243 patents. Plaintiff possesses the entire right to sue for infringement and recover past damages.

5. Upon information and belief, Defendant Imperial Toy LLC, is a limited liability company duly organized under the laws of California, with its principal offices at 166641 Roscoe Place, North Hills CA 91343.

6. Upon information and belief, Defendant HEB Grocery Company, LP is a corporation duly organized under the laws of Texas, with its principal offices at River Annex Compliance Building, 646 South Flores Street, San Antonio, TX 78204.

JURISDICTION AND VENUE

7. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 et seq., including 35 U.S.C. §§ 271, 281, 283, 284, and 285. This Court has subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

8. The Court has personal jurisdiction over the Defendant because Defendant has minimum contacts within the State of Texas, and the Eastern District of Texas; Defendant has purposefully availed itself of the privileges of conducting business in the State of Texas and in the Eastern District of Texas; Defendant has sought protection and benefit from the laws of the State of Texas; upon information and belief, each Defendant regularly conducts business within the State of Texas and within the Eastern District of Texas; and, Plaintiff's cause of action arise directly from Defendant's business contacts and other activities in the State of Texas and in the Eastern District of Texas.

9. More specifically, Defendant, directly and/or through intermediaries, ships, distributes, offers for sale, sells, and/or advertises its products in the United States, the State of Texas, and the Eastern District of Texas. Upon information and belief, Defendant has committed patent infringement in the State of Texas and in the Eastern District of Texas, has contributed to patent infringement in the State of Texas and in the Eastern District of Texas and/or has induced others to commit patent infringement in the State of Texas and in the Eastern District of Texas. Defendant solicits customers in the State of Texas and in the Eastern District of Texas. Defendant has many paying customers who are residents of the State of Texas and the Eastern District of

Texas and who each use Defendant's products in the State of Texas and in the Eastern District of Texas.

10. Defendants' infringing products are the economic result of the defendants' breach of contract and violation of the Texas Uniform Trade Secrets Act. Tex. Civ. Prac. & Rem. Code § 134A.002.

11. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §§ 1391(c)(2) and 1400(b).

COUNT I – PATENT INFRINGEMENT- '422 PATENT

12. United States Patent No. 8,654,422 (hereinafter, the "422 patent"), entitled "HOLOGRAPHIC BUBBLE GENERATING SYSTEM," was duly and legally issued by the United States Patent and Trademark Office on February 18, 2014 after full and fair examination. Plaintiff, Sgromo is the assignee of all rights, title, and interest in and to the '422 patent and possesses all rights of recovery under the '422 patent including the right to sue for infringement and recover past damages.

13. Upon information and belief, Imperial and HEB have infringed and continue to infringe one or more claims of the '422 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, a device, such as its Optrix 3D Bubbles (Boy); Optrix 3D Bubbles (Girl); Star Wars 3-D Bubble Tin; and other Licensed Property (Marvel, Disney, Spiderman) 3D Bubbles. Upon information and belief, Bestway has also contributed to the infringement of one or more claims of the '422 patent and/or actively induced others to infringe one or more claims of the '422 patent, in this district and elsewhere in the United States.

14. Defendant's aforesaid activities have been without authority and/or license from Plaintiff.

15. Plaintiff is entitled to recover from the Defendant the damages sustained by Plaintiff as a result of Defendant's wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 3 U.S.C. § 284.

16. Defendant's infringement of Plaintiff's exclusive rights under the '422 patent will continue to damage Plaintiff, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

COUNT II – PATENT INFRINGEMENT- '243 PATENT

17. United States Patent No. 9,069,243 (hereinafter, the "'243 patent'") entitled "SYSTEM AND METHOD FOR PRODUCING A THREE-DIMENSIONAL IMAGE ON A PRE-PRINTED LINED SUBSTRATE," was duly and legally issued by the United States Patent and Trademark Office on June 30, 2015 after full and fair examination. Plaintiff, is the assignee of all rights, title, and interest in and to the '243 patent and possesses all rights of recovery under the '243 patent including the right to sue for infringement and recover past damages.

18. Upon information and belief, Bestway has infringed and continues to infringe one or more claims of the '243 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, a device, such as its Optrix 3D-tivities Velvet Poster Art, 3-D Throw Pillow, and 3-D Car Velvet Poster Art. Upon information and belief, Imperial has also contributed to the infringement of one or more claims of the '243 patent and/or actively induced others to infringe one or more claims of the '243 patent, in this district and elsewhere in the United States.

19. Defendant's aforesaid activities have been without authority and/or license from Plaintiff.

20. Plaintiff is entitled to recover from Defendant the damages sustained by Plaintiff as a result of Defendant's wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 3 U.S.C. § 284.

21. Defendant's infringement of Plaintiff's exclusive rights under the '243 patent will continue to damage Plaintiff, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

**COUNT III – VIOLATION OF THE TEXAS UNIFORM TRADE SECRETS ACT –
TRADE SECRET DESIGNS**

22. Upon information and belief, Imperial and HEB have misappropriated and continue to misappropriate by improper means Plaintiff Sgromo's confidential trade secret design information and used Sgromo's trade secret information without authorization by making, importing, selling, and offering to sell in the Bubble Blitz and Glow Fusion Bubbles devices such as, Bubble Blitz Bubble Flash Blaster, Bubble Blitz Fantasia, Bubble Blitz Light-Up Bubble Blaster, Star Wars Light-Up Wand, Dora Bubble Flurry, Bubble Blitz Bubble Whirl Wind, Glow Fusion Glow Bubble Blaster and Glow Fusion Bubble Sword.

23. The defendants' misappropriation by improper means and unauthorized use of Plaintiff Sgromo's confidential trade secret design information is a violation of the Texas Uniform Trade Secrets Act, Tex. Civ. Prac. & Rem. Code Ann. Ch. 134A.

24. Plaintiff Sgromo has been irreparably injured from the defendants' violation of the Texas Uniform Trade Secrets Act, Tex. Civ. Prac. & Rem. Code Ann. Ch. 134A.

25. Plaintiff Sgromo has suffered damages in an amount yet to be determined, including but not limited to loss of royalties that Sgromo would have earned but for the defendants' violation of the Texas Uniform Trade Secrets Act, Tex. Civ. Prac. & Rem. Code Ann. Ch. 134A.

26. The defendants' violation of the Texas Uniform Trade Secrets Act, Tex. Civ. Prac. & Rem. Code Ann. Ch. 134A was willful.

COUNT IV – TORTUOUS INTERFERENCE

32. Sgromo first entrusted trade secrets to Imperial on or about September 2008, pursuant to a binding Non-Disclosure Agreement (“NDA”) and confidential business relationship between them. Sgromo’s claim for tortious interference would succeed even without a misappropriation of trade secrets. On at least one occasion, Imperial threatened legal action if Sgromo did not license his inventions, such as “Cosmic Bubbles” to them when it learned Sgromo had achieved distribution at retailers like Toys R Us (“TRU”).

33. Upon information and belief, Imperial purposely interfered and has caused others to interfere with Plaintiffs’ contracts for the sole purpose to unfairly compete with plaintiff by employing a “catch and kill” strategy by not launching the items, thereby keeping them from the marketplace and denying plaintiff his right to earn a profit from his trade secrets and patents.

34. Imperial’s tortious interference is a violation of Restatement of Torts § 766 (1939) and Plaintiff’s common law rights.

35. Plaintiff Sgromo has suffered damages in an amount yet to be determined, including but not limited to loss of royalties that Sgromo would have earned but for the defendants’ violation of the Restatement of Torts § 766 (1939) and his common law rights.

36. Plaintiff is entitled to recover from the Defendant the damages sustained by Plaintiff as a result of Defendant’s wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under Plaintiff’s common law rights and Texas case law.

37. Imperial’s violation of the Restatement of Torts § 766 (1939) and Plaintiff’s common law rights was wanton and malicious.

COUNT V – UNFAIR COMPETITION

38. Upon information and belief Defendants' have unfairly competed with Plaintiff beyond misappropriation of trade secrets. Sgromo first entrusted trade secrets to Imperial on or about September 2008, pursuant to a binding Non-Disclosure Agreement ("NDA") and confidential business relationship between them. Sgromo's claim for unfair competition is based on misappropriation of trade secrets, patent infringement, tortious interference with contract, tortious interference with economic relationships, unjust enrichment and copyright infringement.

39. Upon information and belief, Imperial purposely interfered and has caused others to unfairly compete with Plaintiffs' contracts enjoining him from marketing his trade secrets and patents, thereby keeping them from the marketplace and denying plaintiff his right to earn a profit from his trade secrets and patents.

40. Imperial's aforesaid activities are a violation of the Restatement (Third) of Unfair Competition § 39.

41. Plaintiff Sgromo has suffered damages in an amount yet to be determined, including but not limited to loss of royalties that Sgromo would have earned but for the defendants' violation of the Restatement (Third) of Unfair Competition § 39.

42. Plaintiff is entitled to recover from the Defendant the damages sustained by Plaintiff as a result of Defendant's wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under Plaintiff's common law rights and Texas case law.

43. Imperial's violation of the Restatement (Third) of Unfair Competition § 39. and Plaintiff's common law rights was willful.

COUNT VI - UNJUST ENRICHMENT

44. Upon information and belief Defendants' have unfairly competed with Plaintiff beyond misappropriation of trade secrets. Sgromo first entrusted trade secrets to Imperial on or about September 2008, pursuant to a binding Non-Disclosure Agreement ("NDA") and confidential business relationship between them. Sgromo's claim for restitution is based on misappropriation of trade secrets, patent infringement, tortious interference with contract, tortious interference with economic relationships, negligence, unjust enrichment and copyright infringement.

45. Upon information and belief, Imperial purposely interfered and has caused others to unfairly compete with Plaintiffs' contracts enjoining him from marketing his trade secrets and patents, thereby keeping them from the marketplace and denying plaintiff his right to earn a profit from his trade secrets and patents.

46. Imperial's aforesaid activities are a violation of the *quantum meruit* doctrine and all traditional notions of equity.

47. Plaintiff Sgromo has suffered damages in an amount yet to be determined, including but not limited to loss of royalties that Sgromo would have earned but for the defendants' violation of the *quantum meruit* doctrine and all traditional notions of equity.

48. Plaintiff is entitled to recover from the Defendants' inequitable windfall in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under traditional notions of equity and Texas case law.

49. Defendants' have been unjustly enriched by the Plaintiff's accretion and such conduct offends all traditional notions of equity.

JURY DEMAND

50. Plaintiff hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

Plaintiff respectfully requests that the Court find in its favor and against Defendant, and that the Court grant Plaintiff the following relief:

- A. An adjudication that one or more claims of the '422 patent has been infringed, either literally and/or under the doctrine of equivalents, by Defendant and/or by others to whose infringement Defendant has contributed and/or by others whose infringement has been induced by Defendant;
- B. An adjudication that one or more claims of the '243 patent has been infringed, either literally and/or under the doctrine of equivalents, by Defendant and/or by others to whose infringement Defendant has contributed and/or by others whose infringement has been induced by Defendant;
- C. An award to Plaintiff of damages adequate to compensate Plaintiff for the Defendant's acts of infringement together with pre-judgment and post-judgment interest;
- D. That Defendant's acts of infringement be found to be willful from the time that Defendant became aware of the infringing nature of their actions, which is the time of filing of Plaintiff's Original Complaint at the latest, and that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284;

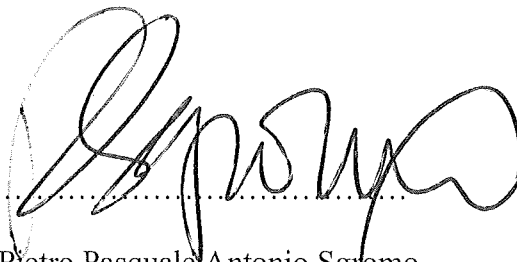
E. A grant of permanent injunction pursuant to 35 U.S.C. § 283, enjoining the Defendant from further acts of (1) infringement, (2) contributory infringement, and (3) actively inducing infringement with respect to the claims of the '422 and '243 patents;

That this Court declare this to be an exceptional case and award Plaintiff restitution damages, reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285; and 15 U.S.C. §§ 1114, 1116, and 1117.

F. Any further relief that this Court deem just and proper.

Dated: February 21, 2019

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'P. Sgromo', is written over a horizontal dotted line. The signature is fluid and cursive.

Pietro Pasquale Antonio Sgromo
(a/k/a Peter Anthony Sgromo)

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**PRO SE FOR PLAINTIFF
P.P.A. SGROMO**