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8 Attorney for Plaintiff, MAJOR LEAGUE TOSS INC.

9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **WESTERN DIVISION – LOS ANGELES**

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15 MAJOR LEAGUE TOSS INC., a
16 corporation,
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18 Plaintiff,
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20 vs.
21 JEFFREY MONTENARE, an individual,
22 and DOES 1-10
23 Defendants.

Case No.: 2:21-cv-7753

District Judge: Hon.

COMPLAINT FOR DECLARATORY JUDGMENT

23 **NATURE OF THE ACTION**

24 This is a Complaint for a Declaratory Judgment against Defendant Jeffrey Montenare that
25 Plaintiff Major League Toss Inc. (“MLT”), does not infringe on any valid claim of United States
26 Patent No. D760353 nor United States Patent No. D706355. For its complaint, MLT, by and
27 through his attorneys, National Choice Lawyers, avers as follows:

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COMPLAINT FOR DECLARATORY JUDGMENT

THE PARTIES

- 1
- 2 1. MLT is a corporation organized under the laws of the State of California, with its
- 3 principal place of business in Encino, California, which is within the Central District of
- 4 California. MLT is, and was at all material times herein, qualified to do business in
- 5 California. MLT provides sports-themed bean bag toss games for sale.
- 6 2. The design patents in dispute are held in the name of Mark Wolters, a principal of MLT.
- 7 3. MLT is licensed by Mr. Wolters to market, distribute and sell the sport-based bean bag
- 8 toss games.
- 9 4. Defendant Jeffrey Montenare (“Defendant”) is an individual believed to be residing in the
- 10 State of North Carolina. MLT is not aware of any business activities conducted by
- 11 Defendant to promote and sell his games in any jurisdiction in the United States.

VENUE AND JURISDICTION

- 12
- 13 5. Jurisdiction is proper in this court because this litigation arises under federal law, namely
- 14 17 U.S.C., s. 1051 et seq. (*Lanham Act*). The Court has jurisdiction over this action under
- 15 28 U.S.C., s. 1331 (federal question), and 28 U.S.C., s. 2201 (*Declaratory Judgment Act*).
- 16 6. This Court has personal jurisdiction over Defendant because Defendant is a citizen of the
- 17 United States, residing in North Carolina, who is in a dispute with a California company.
- 18 7. Venue is proper in this district under 28 U.S.C., ss. 1391(b) and 1391(c).
- 19 8. An actual case or controversy has arisen between the parties. Defendant has threatened
- 20 litigation against MLT and has asserted that MLT’s sale of sports-themed bean bag toss
- 21 games constitutes patent infringement. These statements threaten injury to MLT.

GENERAL ALLEGATIONS

- 22
- 23 9. MLT sells several sports-themed bean bag toss games. Presently, MLT sells a baseball
- 24 and a football-themed game.
- 25 10. MLT applied for design patents for both games.
- 26 11. MLT’s baseball game design patent was granted on January 23, 2018 (D808,465).

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1 12. MLT's football game design patents were granted on December 26, 2017 (D806,172) and
2 February 25, 2020 (D876,548).

3 13. Defendant filed three design patents for dissimilar sports-based bean bag toss games,
4 which were granted in 2013.

5 14. In both cases, when the examiner of MLT's patent applications reviewed the prior art, all
6 three of Defendant's design patents were reviewed and considered.

7 15. However, given the dissimilarity in the designs, MLT's design patent applications were
8 granted.

9 **THE PRESENT DISPUTE**

10 16. On or about September 15, 2021, MLT received a letter from Blake Hunt, an attorney at
11 Tuggle, Duggins, counsel to Defendant. A true and correct copy of that letter is attached
12 to this complaint as **Schedule "A"**.

13 17. Mr. Hunt claims that MLT's football and baseball games infringe on Defendant's patents
14 and that the games 'appear to be a [sic] nearly identical replicas' of Defendant's patents.

15 18. MLT believes its games are dissimilar to the designs patented by Defendant, such that
16 here is no infringement.

17 **CLAIMS FOR RELIEF**

18 **(Declaratory Judgment of Non-Infringement of Design Patent Nos. D760353 and D760355)**

19 19. MLT incorporates by reference the allegations contained in paragraphs 1 to 16, inclusive.

20 20. Defendant has claimed MLT's sale of its game boards constitutes patent infringement and
21 has threatened to bring a lawsuit against MLT on this basis.

22 21. An actual, present and justiciable controversy has arisen between MLT and Defendant
23 concerning MLT's right to sell its game boards to the public.

24 22. MLT seeks declaratory judgment from this court that MLT's current game boards do not
25 infringe on Defendant's patents.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, MLT respectfully requests this court:

28 1. Enter judgment according to the declaratory relief sought;

COMPLAINT FOR DECLARATORY JUDGMENT

2. Award MLT its costs in this action; and
3. Enter such further or other relief to which MLT may be entitled as a matter of law or equity, or which the Court determines to be just and proper.

Date: September 29, 2021

NATIONAL CHOICE LAWYERS



KOOROSH K. SHAHROKH, ESQ.
Attorney for Major League Toss Inc.

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SCHEDULE “A”

(Letter from Blake P. Hunt, dated September 14, 2021)

TUGGLE  DUGGINS
ATTORNEYS AT LAW

Blake P. Hurt
bhurt@tuggleduggins.com
Telephone: 336-271-5229

14 September 2021

Major League Toss, Inc.
Attn: Mark Wolters, President
6345 Balboa Blvd., Ste. 273
Encino, California 91316

Via Email to: Contact@MajorLeagueToss.com

Re: Infringement of U.S. Design Patent Nos. D760353 and D706355

Dear Mr. Wolters:

This firm represents Mr. Jeffrey Montenare of High Point, North Carolina (herein “Montenare”) with certain intellectual property matters and it has been brought to our client’s attention that the “Football Game Set” (see Exhibit 1 attached herewith) and the “Baseball Game Set” (see Exhibit 2 attached herewith) beanbag toss games sold by your company Major League Toss, Inc. (herein “MLT”) sold at MLT’s e-commerce website at www.majorleaguettoss.com appear to be a nearly identical replicas of the beanbag toss games disclosed in the above-identified U.S. patents. Montenare filed these U.S. design patent applications on 08 May 2013 which issued on 03 June 2014 (copies enclosed as Exhibits 3 and 4, respectively) and it is the considered opinion of this firm that the aforementioned “Football Game Set” and “Baseball Game Set” beanbag toss games sold by MLT are infringing the claims of the ‘353 and ‘355 patents, respectively.

35 U.S. Code § 271 states whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefor, infringes the patent. The fact that you may have been issued U.S. design patents of your own is not conclusive evidence that you do not infringe Montenare’s senior rights in these designs.

Montenare therefore demands you cease and desist from making, using, importing, offering for sale, selling, and/or distributing beanbag toss boards which are identical to, or are substantially similar to Montenare’s beanbag toss boards by **15 October 2021**. Montenare also requests that written confirmation of termination of the sales of these beanbag toss boards by MLT, as well as any commercial partners or distributors of the same, be sent to the address below no later than **15 October 2021**. Failure to cease and desist all infringing actions within this time period will likely serve as evidence of “willful infringement” which will expose MLT to enhanced monetary damages and injunctive relief should litigation become necessary. Electronic confirmation in the form of an email to the email address above will be deemed permissible acceptance of these terms.

Tugle Duggins P.A.
Attorneys at Law

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P.O. Box 2888
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Mr. Mark Wolters
14 September 2021
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If no response is received by **15 October 2021** then Montenare will be forced to consider further action under the law as necessary to protect its proprietary interests. We look forward to a swift and amicable resolution to this matter.

Cordially yours,

A handwritten signature in black ink, appearing to read 'Blake P. Hurt'.

Blake P. Hurt

BPH:pd
Enclosures