

Larry Miller (LM 8323)
FEDER KASZOVITZ LLP
845 Third Avenue, 11th Floor
New York, New York 10022
Tel: (212) 888-8200
Fax: (212) 888-7776
Attorneys for Plaintiff JAKKS PACIFIC, INC.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

-----	x	
JAKKS PACIFIC, INC.,	:	
	:	
Plaintiff,	:	Civil Action No. _____
	:	
against	:	
	:	
SHELLY CONTE and CINDY REICHMAN,	:	
	:	
Defendants.	:	
	:	
-----	x	

COMPLAINT AND JURY DEMAND

Plaintiff JAKKS Pacific, Inc. (“JAKKS”), by its attorneys, alleges the following for its Complaint against Shelly Conte (“Conte”) and Cindy Reichman (“Reichman”) (collectively, “Defendants”):

NATURE OF ACTION

1. This action seeks relief under the patent laws of the United States, 35 U.S.C. §§ 100, *et seq.*, the trademark laws of the United States, 15 U.S.C. §§ 1051, *et seq.*, the copyright laws of the United States, 17 U.S.C. §§ 101, *et seq.*, and the Declaratory Judgment statute, 28 U.S.C. § 2201, and seeks a declaration that certain products sold by JAKKS, specifically its

HIDE 'N SEEK SECRET BEAR and HIDE 'N SEEK SURPRISE BEAR, do not infringe on any patent, trademark, or copyright owned by Defendants, particularly, their HIDE-N-SEEK HAYLEY® doll, or related products.

2. This action also seeks damages for defamation, tortious interference with contractual relationships, and tortious interference with business relations under the common law of the State of New Jersey.

PARTIES

3. JAKKS is a Delaware corporation, maintaining a principal place of business in Malibu, California. Among other things, JAKKS is in the business of manufacturing and selling toys and toy products nationally and internationally, including to customers in the State of New Jersey.

4. Upon information and belief, Conte is a natural person residing in Fresno, California.

5. Upon information and belief, Reichman is a natural person residing in Fresno, California.

6. Upon information and belief, Defendants are, or were, in the business of developing and selling toys or toy products in the United States.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 (federal question), 1338(a) (for questions involving patents, trademarks, and copyrights), and 1367(a) (supplemental jurisdiction for the related common law claims).

8. This Court has personal jurisdiction over Defendants under the principles of New Jersey's long arm jurisdiction because, as more fully set forth below, Defendants purposefully

caused defamatory material to be published to JAKKS' customers in the State of New Jersey for the sole purpose of interfering with JAKKS' contractual and business relationships.

9. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400, because, as set forth below, Defendants, by virtue of their actions, are deemed to be present in the State of New Jersey.

GENERAL FACTUAL ALLEGATIONS

10. Upon information and belief, in or about December 2002, Defendants were issued United States Patent No. 6,494,457 (the "'457 Patent") for an enhanced hide and seek game and method of playing game. A true and correct copy of the '457 Patent is attached hereto as Exhibit A.

11. Upon information and belief, Defendants exploited the '457 Patent to design and develop toy dolls, *inter alia*, under the mark HIDE-N-SEEK HAYLEY, that allow a child, holding a hand-held transmitter and receiver, to look for the doll and receive verbal clues as to the doll's whereabouts.

12. Defendants claim that they contacted Play Along Toys in September 2003 about licensing the '457 Patent to Play Along Toys.

13. In September 2003, Play Along Toys was a privately held corporation not related to the parties hereto.

14. Upon information and belief, on July 23, 2003, Defendant, through their corporation Shelcin Designs, Inc., filed an application with the United States Patent and Trademark Office (the "PTO") for the mark HIDE-N-SEEK HAYLEY for "Toy and game, namely, electronic interactive doll." In order to obtain registration, Defendants were forced to specifically disclaim the words "HIDE-N-SEEK" as merely descriptive.

15. Registration on the Principal Register issued on January 31, 2006, and the mark was assigned Reg. No. 3056211. A true and correct copy of said registration is attached hereto as Exhibit B.

16. On December 10, 2001, JAKKS filed an application with the PTO for the mark HAYLEY for “dolls.” Registration on the Principal Register issued on December 10, 2002, and the mark was assigned Reg. No. 2660807. A true and correct copy of said registration is attached hereto as Exhibit C.

17. The HAYLEY® mark is valid, and in full force and effect.

18. On or about April 20, 2004, JAKKS announced the acquisition of Play Along Toys and related companies.

19. Upon information and belief, after failing to find a licensee for their HIDE-N-SEEK HAYLEY line of dolls, Defendants manufactured and sold the dolls independently in 2005 and 2006.

20. Upon information and belief, Defendants stopped marketing the HIDE-N-SEEK HAYLEY dolls some time in 2006 due to poor sales.

21. Upon information and belief, the HIDE-N-SEEK HALEY trademark registration issued well after most of the dolls in that line of products had been sold.

22. In 2005, JAKKS’ subsidiary, Play Along Toys, began marketing hide and seek CARE BEAR® dolls under license from the owner of the well-known CARE BEARS® trademark.

23. The CARE BEAR® hide and seek dolls marketed by JAKKS included HIDE ‘N SEEK SECRET BEAR and HIDE ‘N SEEK SURPRISE BEAR (the “JAKKS Products”).

24. The technology used to enable the JAKKS Products is different from that disclosed in the '457 Patent.

25. The use of the words "HIDE 'N SEEK" in the JAKKS Products does not infringe on Defendants' 2006 registered trademark, those words having been specifically disclaimed by Defendants.

26. In 2008, Defendants confided to a reporter their intent to sue JAKKS on unspecified grounds, while admitting that they had consulted a patent attorney in Fresno, California, who told them that in his opinion, JAKKS did not copy the name or the technology used in their line of toys.

27. In 2009, Defendants similarly admitted to a reporter that they consulted with an attorney about the possibility of initiating a lawsuit against JAKKS and Play Along Toys, but that the lawyer, who specialized in such cases, told them that they did not have a strong enough case.

28. On or about December 23, 2009, Defendants filed a lawsuit against JAKKS, and its subsidiary Play Along Toys, in the Superior Court of the State of California, County of Fresno, alleging trade secret misappropriation, unfair competition, patent and trade name infringement, intentional interference with prospective economic advantage, negligent interference with prospective economic advantage, and breach of confidence. A true and correct copy of Defendants' Complaint is attached hereto as Exhibit D.

29. In a newspaper article describing the lawsuit, on or about December 30, 2009, Defendants stated that they were representing themselves in order to save money, and admitted that a lawyer with whom they consulted advised them that their case was weak.

30. On or about February 16, 2010, JAKKS filed a demurrer with respect to Defendants' Complaint.

31. On or about May 18, 2010, the Superior Court issued a tentative ruling sustaining JAKKS' demurrer, without leave to amend, on the ground that jurisdiction over Defendants' patent and trademark claims is exclusive to the federal courts pursuant to 28 U.S.C. § 1338, and since the remaining ancillary claims involve the determination of the patent and trademark claims, the Superior Court could not maintain jurisdiction over them. The Superior Court further advised Defendants to obtain legal counsel before filing their patent and trademark claims in federal court. A true and correct copy of the Superior Court's tentative ruling is attached hereto as Exhibit E.

32. On or about May 26, 2010, the Superior Court entered an order dismissing Defendants' Complaint with prejudice.

33. From the end of May 2010 to the end of December 2010, Defendants took no action to file their claims in federal court, although they apparently retained counsel at some point during this time period.

34. On or about December 22, 2010, Defendants, through counsel, sent a letter to several of JAKKS' customers, including Toys 'R Us, located in Wayne, New Jersey, stating that their HIDE-N-SEEK HAYLEY dolls are patented, trademarked, and copyrighted, and that Defendants are the owners of such patent, trademark, and copyright.

35. The letter further states that the JAKKS Products are "nearly identical to" HIDE-N-SEEK HAYLEY in terms of concept, design, and capabilities.

36. The letter strongly implies that JAKKS is infringing on patents, trademarks, and copyrights owned by Defendants, although it does not specify which such intellectual property is being infringed, or the manner of such infringement.

37. The letter continues by demanding that JAKKS' customers provide Defendants with sales information, including number of units sold and average price, for all JAKKS Products sold from 2005 through 2008.

38. Defendants' demand for sales and revenue information is deliberately calculated to imply to a corporate officer or in-house attorney receiving the letter that there has already been a judicial determination of infringement against JAKKS, and that Defendants are therefore entitled to damages discovery.

39. Defendants' demand is similarly calculated to imply that JAKKS' customers, by reason of their having sold the JAKKS Products at retail, have incurred liability to Defendants, which in turn has damaged JAKKS' reputation among its customers, and impaired its existing and prospective business relationships with them.

40. Defendants know that they have never obtained a judgment of infringement against JAKKS in any forum, and that JAKKS has, in fact, not infringed on any intellectual property owned by Defendants.

41. Defendants know, or reasonably should know, or should have been informed by their attorneys, that, in the absent of a finding of infringement, they are not entitled to damages, or to conduct damages discovery from JAKKS' customers.

42. As a result of receiving Defendants' letters, several of JAKKS' customers have already demanded indemnification and defense from JAKKS, and have made other statements indicating that they tend to believe Defendants' unfounded accusations.

43. Although Defendants, to date, have not filed a patent, trademark, or copyright action in the federal courts, JAKKS has already been damaged by Defendants' unfounded claims, and this matter therefore presents an actual controversy between the parties as to the issue of non-infringement, rendering this matter ripe for adjudication.

44. True and correct copies of Defendants' December 22, 2010 letter are attached hereto as Exhibit F.

**FIRST CLAIM FOR RELIEF
(Declaratory Judgment
Non-Infringement of Patent)**

45. JAKKS repeats and realleges each and every allegation contained in paragraphs 1 through 44 above as if each were fully set forth herein.

46. Defendants, in their 2009 California lawsuit and December 22, 2010 letter, allege that JAKKS has infringed the '457 Patent by using the technology and methods disclosed therein, among other things, to produce the JAKKS Products.

47. In fact none of the JAKKS Products, nor any other product manufactured or sold by JAKKS, utilizes any of the technology or methods claimed by the '457 Patent.

48. By reason of their continuing allegations and accusations, and their apparent attempt to conduct damages discovery from JAKKS' customers, Defendants have created an actual controversy concerning JAKKS' non-infringement of the '457 Patent.

49. JAKKS has no adequate remedy at law.

50. By reason of the facts set forth above, JAKKS is entitled to a judgment from this Court declaring that it has not infringed on Defendants' '457 Patent.

51. JAKKS is also entitled to its costs in bringing this action, and to reasonable attorneys' fees.

SECOND CLAIM FOR RELIEF
(Declaratory Judgment
Non-Infringement of Trademark)

52. JAKKS repeats and realleges each and every allegation contained in paragraphs 1 through 51 above as if each were fully set forth herein.

53. Defendants, in their 2009 California lawsuit and December 22, 2010 letter, allege that JAKKS has infringed their trademark by offering the JAKKS Products for sale.

54. As set forth above, the JAKKS Products do not infringe on Defendants' trademark, Defendants having expressly disclaimed the words "HIDE and SEEK."

55. Moreover, JAKKS began marketing the JAKKS Products well before Defendants obtained their trademark registration.

56. The JAKKS Products do not bear similar names or marks to Defendants' products.

57. By reason of their continuing allegations and accusations, and their apparent attempt to conduct damages discovery from JAKKS' customers, Defendants have created an actual controversy concerning JAKKS' non-infringement of their registered trademark.

58. JAKKS has no adequate remedy at law.

59. By reason of the facts set forth above, JAKKS is entitled to a judgment from this Court declaring that it has not infringed on Defendants' registered trademark.

60. JAKKS is also entitled to its costs in bringing this action, and to reasonable attorneys' fees.

THIRD CLAIM FOR RELIEF
(Declaratory Judgment
Non-Infringement of Copyright)

61. JAKKS repeats and realleges each and every allegation contained in paragraphs 1 through 60 above as if each were fully set forth herein.

62. Defendants, in their December 22, 2010 letter, allege that JAKKS has infringed their copyright rights by offering the JAKKS Products for sale, although Defendants specify neither a registered copyright owned by them, nor the manner of alleged infringement.

63. By reason of their continuing allegations and accusations, and their apparent attempt to conduct damages discovery from JAKKS' customers, Defendants have created an actual controversy concerning JAKKS' non-infringement of their alleged copyright.

64. JAKKS has no adequate remedy at law.

65. By reason of the facts set forth above, JAKKS is entitled to a judgment from this Court declaring that it has not infringed on Defendants' copyright.

66. JAKKS is also entitled to its costs in bringing this action, and to reasonable attorneys' fees pursuant to 17 U.S.C. § 505.

**FOURTH CLAIM FOR RELIEF
(Defamation)**

67. JAKKS repeats and realleges each and every allegation contained in paragraphs 1 through 66 above as if each were fully set forth herein.

68. By sending their December 22, 2010 letter to Toys 'R Us and others, Defendants caused false and defamatory statements about JAKKS to be published in New Jersey and elsewhere.

69. Specifically, the letter falsely implies that JAKKS is guilty of patent, trademark, and copyright infringement; that JAKKS misappropriated Defendants' products, and otherwise interfered with their sales of such products; and that Defendants are entitled to damages from JAKKS. The letter also falsely implies that Defendants obtained a judgment of infringement against JAKKS, and are therefore somehow entitled to damages discovery against JAKKS and its customers.

70. Defendants knew that these statements were false when they made them, or made these statements with reckless disregard of their truth.

71. Defendants made these statements with actual malice for the sole purpose of harming JAKKS' reputation among its customers and within its industry, and interfering with JAKKS' existing and prospective business relationships.

72. As a result of these actions, JAKKS has been damaged in an amount to be proven at trial, but in no event less than \$1 million.

73. Defendants' actions set forth above were wanton and willful, and taken without regard to JAKKS' lawful rights.

74. As a result, JAKKS is entitled to punitive damages in an amount to be determined by the Court.

**FIFTH CLAIM FOR RELIEF
(Interference with Contract)**

75. JAKKS repeats and realleges each and every allegation contained in paragraphs 1 through 74 above as if each were fully set forth herein.

76. Defendants have actual knowledge of existing and prospective contracts between JAKKS and its customers located in the State of New Jersey, including Toys 'R Us.

77. By sending their December 22, 2010 letter to Toys 'R Us and others, Defendants interfered with JAKKS' existing and prospective contracts by damaging JAKKS' reputation among its customers, and inducing its customers to repudiate their existing contractual obligations, and to refrain from engaging in future contractual relations with JAKKS.

78. Defendants sent their letter in complete disregard of JAKKS' legitimate contractual rights, for the express purpose of interfering with JAKKS' relationships with its customers.

79. As a result of these actions, JAKKS has been damaged in an amount to be proven at trial, but in no event less than \$1 million.

80. Defendants' actions set forth above were wanton and willful, and taken without regard to JAKKS' lawful rights.

81. As a result, JAKKS is entitled to punitive damages in an amount to be determined by the Court.

**SIXTH CLAIM FOR RELIEF
(Interference with Business Relations)**

82. JAKKS repeats and realleges each and every allegation contained in paragraphs 1 through 81 above as if each were fully set forth herein.

83. Defendants have actual knowledge of existing and prospective business relations between JAKKS and its customers located in the State of New Jersey, including Toys 'R Us.

84. By sending their December 22, 2010 letter to Toys 'R Us and others, Defendants interfered with JAKKS' existing and prospective business relations by damaging JAKKS' reputation among its customers, and inducing its customers not to continue to do business with JAKKS.

85. Defendants sent their letter in complete disregard of JAKKS' legitimate contractual rights, for the express purpose of interfering with JAKKS' relationships with its customers.

86. As a result of these actions, JAKKS has been damaged in an amount to be proven at trial, but in no event less than \$1 million.

87. Defendants' actions set forth above were wanton and willful, and taken without regard to JAKKS' lawful rights.

88. As a result, JAKKS is entitled to punitive damages in an amount to be determined by the Court.

JURY DEMAND

89. JAKKS hereby demands a trial by jury as to each issue so triable.

WHEREFORE, JAKKS respectfully requests that this Court enter judgment in its favor, and against Defendants, (a) on the First Claim for Relief, declaring that JAKKS has not infringed on the '457 Patent; (b) on the Second Claim for Relief, declaring that JAKKS has not infringed on Defendants' trademark; (c) on the First and Second Claims for Relief, for costs and attorneys' fees; (d) on the Third Claim for Relief, for a declaration that JAKKS has not infringed on Defendants' copyright; (e) on the Third Claim for Relief, for costs in bringing this action, and for attorneys' fees pursuant to statute; (f) on the Fourth Claim for Relief, for damages in an amount to be determined at trial, but in no event less than \$1 million; (g) on the Fourth Claim for Relief, for punitive damages in an amount to be determined by the Court; (h) on the Fifth Claim for Relief, for damages in an amount to be determined at trial, but in no event less than \$1 million; (i) on the Fifth Claim for Relief, for punitive damages in an amount to be determined by the Court; (j) on the Sixth Claim for Relief, for damages in an amount to be determined at trial, but in no event less than \$1 million; (k) on the Sixth Claim for Relief, for punitive damages in an amount to be determined by the Court; (l) on all Claims for Relief, for its costs in maintaining this action; and (m) for such other and further relief as the Court deems just and proper.

CERTIFICATION PURSUANT TO LOCAL CIV. R. 11.2

Plaintiff, by its undersigned counsel, hereby certifies pursuant to Local Civ. R. 11.2 that other than as set forth in paragraphs 28 through 32 above, the matters in controversy are not the

