

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

SASSY, INC.,  
an Illinois Corporation,

Plaintiff,

v.

DONALD P. BERRY, SR.,  
an individual,

Defendant.

DOCKETED

NOV 09 2004

Judge

Case No. **04C 7219**

MAGISTRATE SIDNEY I. SCHENKER

6:05-CV-1402-18KRS

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff SASSY, INC. ("SASSY"), for its Complaint against Defendant DONALD P. BERRY, SR. ("BERRY") alleges:

PARTIES

1. Plaintiff SASSY is a corporation organized and existing under the laws of the State of Illinois, having its headquarters at 2101 Waukegan Road, Ste. 203, Bannockburn IL 60015.
2. Defendant BERRY, on information and belief, is a resident of the State of Florida, residing at 391 Magnolia Place, DeBary, Florida 32713.

JURISDICTION AND VENUE

3. This claim arises under the Declaratory Judgment Act, Title 28 U.S.C. §§ 2201 and 2202 and the United States Patent Laws Title 35 U.S.C. §1 et seq. and this Court has subject matter over this controversy by virtue of Title 28 U.S.C. §1338(a). More particularly, this action is brought for the purpose of determining a question of actual controversy concerning the

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noninfringement, unenforceability and invalidity of United States Patent No. 6,524,272 (“the ‘272 patent”).

4 This Court has personal jurisdiction over BERRY by virtue of him transacting business within the State of Illinois, engaging in tortious acts within the State of Illinois, and/or having contacts with the State of Illinois commensurate with the United States and Illinois constitutions so as to submit himself to the jurisdiction and process of this Court.

5. Venue is proper in this District pursuant to Title 28 U.S.C. §§1391(b) and 1391(c).

### **SASSY’S BUSINESS**

6. SASSY is a leading provider of innovative products for infants and young children, including, among other products, teething and feeding products, bathing and grooming products, soft toys, and developmental toys. SASSY’s products are sold by leading retailers within Illinois and throughout the United States, including Wal-Mart, Target, Toys “R” Us, Babies “R” Us, and Walgreens.

7. This year, SASSY introduced its “Sassy Teething Feeder” product, Model No. 342. The Sassy Teething Feeder is a product which allows children six months of age or older to be given age-appropriate foods, such as fruits and vegetables, via a food-containing mesh bag, and in a manner which helps to reduce the risk of choking. The Sassy Teething Feeder includes many innovations, including a childproof lock, a water-filled handle which may be refrigerated to help keep food chilled, and a storage cap to help keep foods fresh while traveling. Photographs of the Sassy Teething Feeder, and its associated packaging, are attached as Exhibit A.

**BERRY'S BUSINESS**

8. BERRY, on information and belief, is the sole Director, incorporator, registered agent, and majority shareholder and/or holder of all outstanding shares of Designs 2-U, Inc., a Florida for-profit corporation which shares its principal place of business with BERRY's personal residence, 391 Magnolia Place, DeBary, Florida 32713.
9. Designs 2-U Inc., on information and belief, operates as an alter-ego and/or agent of BERRY and, on information and belief, is the exclusive licensee of the '272 patent.
10. BERRY, on information and belief, in his individual capacity and/or through his alter-ego and/or agent Designs 2-U Inc., sells an infant feeding product under the name "Baby Safe Feeder" (the "BERRY feeder"). Photographs of the BERRY feeder, and its associated packaging, are attached as Exhibit B.
11. The BERRY feeder, on information and belief, is sold in significant quantities throughout the United States, including significant quantities within the State of Illinois. On information and belief, the BERRY feeder is sold in direct competition with the Sassy Teething Feeder.
12. On or about November 24, 2003, BERRY, in his individual capacity, filed an application for United States Trademark Registration for the designation "BABY SAFE FEEDER", in association with a "device for administering foods to a infant or impaired adult without danger of choking". A copy of the online records of the United States Patent and Trademark Office ("USPTO") for this currently pending application is attached as Exhibit C. Packaging for the BERRY feeder bear the designation "BABY SAFE FEEDER".

**THE ACTUAL CONTROVERSY OF THE PRESENT ACTION**

13. On February 25, 2003, U.S. Patent No. 6,524,272, entitled “Baby Safe Feeder With Integral Mesh Bag”, issued out of Application No. 09/588,360, which was filed on June 7, 2000. BERRY is the sole named inventor of the ‘272 patent. . A copy of the ‘272 patent is attached as Exhibit D. The online records of the United States Patent and Trademark Office (“USPTO”) do not reflect any recorded assignment of any rights in the ‘272 patent from BERRY. Thus, on information and belief, BERRY is and remains the sole and exclusive owner of the ‘272 patent. A true and correct copy of the results of a recent USPTO online assignment records search is attached as Exhibit E.

14. On August 17, 2004, a letter was sent by BERRY’s counsel to SASSY, charging SASSY with “clear infringement” and “unquestionable infringement” of the ‘272 patent. The letter stated that BERRY was the sole owner of the ‘272 patent, that both BERRY and his counsel had determined the Sassy Teething Feeder to be a “clear infringement of the ‘272 patent, and strongly urged SASSY to “immediately cease importing and marketing” the Sassy Teething Feeder. A copy of this letter is attached as Exhibit F.

15. The ‘272 patent is invalid and/or unenforceable on one or more of the following bases:

(a) the alleged invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the alleged invention thereof by the purported inventor, under 35 U.S.C. Section 102(a);

(b) the alleged invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States, under 35 U.S.C. Section 102(b);

(c) the alleged invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the purported inventor, under 35 U.S.C. Section 102(e);

(d) the purported inventor did not himself invent the subject matter sought to be patented by the '272 patent, under 35 U.S.C. Section 102(f);

(e) before the purported inventor's purported invention thereof, the invention was made in this country by another who had not abandoned, suppressed or concealed it, under 35 U.S.C. Section 102(g);

(f) the patent is invalid for obviousness under 35 U.S.C. Section 103; and/or

(g) the patent is invalid for failing to comply with the requirements of 35 U.S.C. Section 112, for failure to describe the purported invention in such full clear, concise and exact terms as to enable any person skilled in the art to make and use same, and/or for failure to distinctly claim the subject matter which the purported inventor regarded as his invention, as well as for overclaiming.

16. The prior art, relevant in material to the subject matter of the '272 patent so limits and restricts the scope of the claims of the '272 patent, that the Sassy Teething Feeder cannot be regarded as an infringement of the '272 patent. Defendant BERRY is additionally estopped from maintaining that the claims of the '272 patent cover or include the Sassy Teething Feeder in view of the prosecution history of the '272 patent.

17. SASSY has not infringed, either directly, or by contribution or inducement, any enforceable claims of the '272 patent, and cannot therefore be liable for infringement of any such claims.

18. BERRY and/or his counsel know, or should know, that the Sassy Teething Feeder does not infringe any valid, enforceable claim of the '272 patent. BERRY, through his counsel has, nonetheless, deliberately attempted, in bad faith, to unlawfully impede SASSY's efforts to fairly and competitively market and sell its products in the marketplace.

19. The claims and each of them of the '272 patent, as well as the supporting specification are excessively vague, indefinite, and fail to particularly point out and distinctly define the invention claimed.

**PRAYER FOR RELIEF**

WHEREFORE, SASSY prays:

- A. That the Court enter judgment in favor of Plaintiff and against Defendant.
- B. That U.S. Patent No. 6,524,272 be declared invalid, void, unenforceable and of no effect in law.
- C. That U.S. Patent No. 6,524,272 be declared not to be infringed by SASSY, and that SASSY is entitled to continue to make, use, sell, or offer for sale in the United States, or import into the United States the Sassy Teething Feeder, and/or any similar product, without threats, intimidation or other interference of any character by or from either BERRY or his attorneys or agents to Plaintiff SASSY, its affiliated or related companies, or any of their customers.
- D. That BERRY be ordered to pay SASSY's reasonable attorneys' fees pursuant to 35 U.S.C. §285; and

E. For such other and further relief as the Court may deem just.

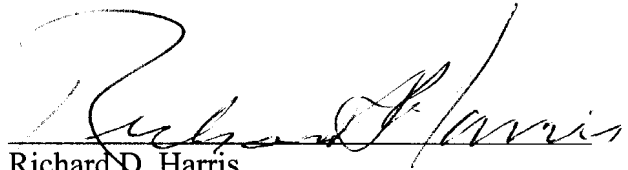
Respectfully submitted,

Sassy, Inc.

Dated: \_\_\_\_\_

11/8/04

By: \_\_\_\_\_



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Attorneys for Plaintiff, Sassy, Inc.

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS**

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**Civil Cover Sheet**

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Northern District of Illinois.

**Plaintiff(s): SASSY, INC., an Illinois Corporation**  
County of Residence: Lake County, Illinois  
Plaintiff's Atty: (see attached)

**Defendant(s): DONALD P. BERRY, SR., an individual**  
County of Residence: Volusia County, Florida  
Defendant's Atty:

**04C 7219**

II. Basis of Jurisdiction: **3. Federal Question (U.S. not a party)**

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EDGE BUCKLE

III. Citizenship of Principal Parties (Diversity Cases Only)

Plaintiff:- N/A  
Defendant:- N/A

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**MAGISTRATE SIDNEY L. SCHENKIER**

IV. Origin : **1. Original Proceeding**

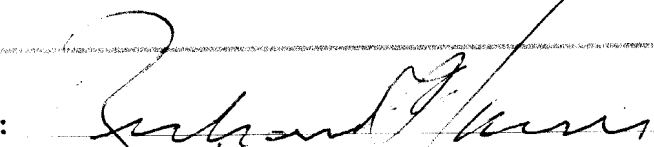
V. Nature of Suit: **830 Patent**

VI. Cause of Action: **28 U.S.C. 2201 and 2202, and 35 U.S.C. 1 et seq. Declaratory Judgment, Patent Noninfringement, Invalidity and Unenforceability**

VII. Requested in Complaint

Class Action:  
Dollar Demand:  
Jury Demand: No

VIII. This case IS NOT a refiling of a previously dismissed case.

**Signature:** 

**Date:** 11-5-04

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, print this form, sign and date it and submit it with your new civil action. **Note: You may need to adjust the font size in your browser display to make the form print properly.** Revised: 06/28/00

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS**

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**Plaintiff(s): SASSY, INC., an Illinois  
Corporation**

**Defendant(s): DONALD P. BERRY, SR.,  
an individual**

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