

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

SAFE-T PRODUCTS, INC.

Plaintiff,

v.

INVICTA PLASTICS, LTD.

Defendant.

JUDGE SHADUR

020 Case No. 1556

MAGISTRATE JUDGE KEYS

JURY TRIAL DEMANDED

FILED-ED4
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U.S. DISTRICT COURT

DOCKETED
MAR 04 2002

COMPLAINT

THE PARTIES

1. Safe-T Products, Inc. ("Safe-T") is an Illinois corporation having its principal place of business at 1142 North Main Street, Lombard, Illinois 60148. Safe-T does business in the State of Illinois within this District and is in the business, among other things, of developing and selling educational materials.

2. Defendant Invicta Plastics, Ltd. ("Invicta") is, on information and belief, a corporation existing under the laws of the United Kingdom and has its principal place of business at Harborough Road, Oadby, Leicester, LE2 4LB. England. Invicta is in the business, among other things, of selling educational materials. Invicta is conducting business within the State of Illinois and within this district.

JURISDICTION AND VENUE

3. This is an action for a declaration that Safe-T's sale of attribute blocks

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does not infringe and has not infringed any alleged trademark or trade dress rights owned by Invicta in:

- blocks in the shapes of circles, triangles, squares, rectangles, and hexagons, in any size or color,
- boxes and lids with apertures shaped to receive the aforesaid circle, triangle, square, rectangle, and hexagon shaped blocks,
- Invicta's trundle wheel (Exh. 1, Ref. No. 0500),
- Invicta's mathematical balance (Exh. 2, Ref. No. 0503).

4. This action also seeks a declaration: that the use of the word "attribute" by Invicta and by Safe-T in connection with educational materials for teaching logic and sorting is generic for such materials.

5. This is also an action for a declaration: that Safe-T is not infringing and has not infringed U.S. Patent No. D383,399, entitled "Measuring Wheel" ("the '399 patent") (Exh. 3).

6. The matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs. This Court has jurisdiction by virtue of 28 U.S.C. §§2201(a), 2202, 1331, 1332 and 1338 (2001). Venue in this district is proper under 28 U.S.C. §1391(d) (2001).

BACKGROUND

ATTRIBUTE BLOCKS

7. Many companies in the business of making and selling manipulative products for teaching mathematics use the terms “attribute” and “attribute blocks” generically to describe their educational products.

8. Cognitively guided mathematics instruction in the early grades focuses on, among other things, the use of manipulative materials such as blocks to teach the mathematical attributes of counting, geometric shapes, sorting, etc. Educators generically refer to such blocks as “attribute blocks,” as demonstrated in the publications in Exhibits 4, 5, 6, 7, 8, and 9.

9. A dictionary definition of “attribute” is “a quality or characteristic inherent in or ascribed to someone or something.” (Exh. 10). When a manipulative product designed to teach the concepts of counting, geometric shapes and sorting is referred to as an “attribute block”, the term “attribute” is being used in its recognized dictionary sense to refer to a block that possesses certain inherent qualities or characteristics, namely qualities or characteristics useful in teaching such concepts.

10. The term “attribute” is accordingly used in this context as a generic term to refer to circles, triangles, squares, rectangles, and hexagons, etc. in different sizes and colors that are used to teach counting, geometric shapes, sorting, etc.

11. Because the terms “attribute” and “attribute blocks” are generic, they cannot function under the Lanham Act or common law as trademarks or other trade

identification for manipulative materials to teach inherent characteristics of sorting and geometric shapes.

12. Invicta cannot have exclusive or prior rights in the terms "attribute" and "attribute blocks" under the Lanham Act or under common law because these terms are generic terms for manipulative materials to teach inherent characteristics of counting, sorting, and geometric shapes.

13. Many companies, not affiliated with Invicta, sell attribute blocks supplied by persons other than Invicta or Safe-T, including, among others, EAI, Inc., World Class Learning, School Specialty, Childcraft, Nasco, Creative Publications, Lakeshore Learning, Educators Outlet, Ideal School Supply.

14. Even companies that carry Invicta's products also advertise and sell their own attribute blocks supplied by persons other than Invicta or Safe-T, including, among others, EAI, Inc., School Specialty, Childcraft, Nasco, and Educators Outlet.

15. Invicta uses the term "attribute" generically in its manual *Learning by Logic* (Invicta Education) (excerpts attached as Exhibit 11), which refers to colour attribute, shape attribute, size attribute, thickness attribute, one attribute difference, two attribute differences, three attribute differences, and four attribute differences. The word "attribute" is not used or identified as a trademark in Invicta's manual.

16. Invicta also uses the term "attribute" generically in its catalog at page 26 where the product "Logic People" (Item 1405) is described as "an interesting change of attribute material." (Exh. 12).

17. Both Invicta and Safe-T make and sell attribute blocks stored in lidded boxes that have apertures corresponding in shape to the geometric shapes of the attribute blocks which are stored in the boxes. The lids thus serve the functions of closing the boxes, of enabling shape and size sorting and of providing a template for drawing geometric shapes. The boxes, the lids and the shapes and dimensions of the apertures in the lids are essential to the use and purpose of attribute blocks and the lid template, namely, educating children about geometric shapes, sorting, and counting, etc. and as such cannot function under the Lanham Act or common law as trademarks or other trade identification of Invicta.

MEASURING WHEEL

18. On September 9, 1997, United States Letters Patent No. Des. 383,399 ("the '399 patent") issued for an ornamental design for a measuring wheel. A copy of the '399 patent is attached hereto as Exhibit 3.

19. The '399 patent was filed March 5, 1996 and claims the benefit of a foreign patent application, which was filed September 18, 1995.

20. On information and belief, Invicta is the owner of the '399 patent.

21. The '399 patent protects the ornamental design for the measuring wheel depicted there. The '399 patent does not protect the functional features of the measuring wheel, such as a removable handle, non-slip tires, or an arm.

22. Measuring wheels (also known as "trundle wheels") having a removable handle, non-slip tires, and an arm have been known since well prior to

September 18, 1994.

23. Measuring wheels having a removable handle, non-slip tires, and an arm have been known since well prior to the date of any invention depicted in the '399 patent.

24. Measuring wheels having a removable handle, non-slip tires, and an arm have been known since well prior to the date Invicta first began selling its measuring wheel (seen in Exhibit 1). On information and belief, two major industrial supply companies, Grainger and McMaster-Carr Supply Co. sell such measuring wheels supplied by persons other than Invicta or Safe-T. (Exh. 16).

MATH BALANCE

25. Invicta sells a math balance, seen in Exhibit 2.

26. Invicta's math balance stand is semi-elliptical, with the upper portion being curved. The upright of Invicta's balance, which connects the stand to the beam or balance arm, includes pins on which the weights can be vertically stored. Invicta's beam is not rectangular, but rather features a series of bumps protruding upwardly. Each bump features numbers. The upright is blue, the weights are yellow, and the arm is white. (Exh. 2).

SAFE-T'S PRODUCTS

27. Safe-T advertises and sells attribute blocks. (Exh. 13).

28. In describing its attribute blocks, Safe-T uses the terms "attribute" and "attribute blocks" in their generic sense.

29. Safe-T sells measuring wheels, also known as trundle wheels. (Exh. 14).

30. Safe-T advertises its trundle wheel as being useful to measure longer distances, and as featuring a wheel yoke and non-slip rubber tires to provide for a sturdy and more accurate reading. Safe-T's measuring wheels also have an easy grip handle that can be removed for storage. (Exh. 14).

31. Safe-T also sells mathematical balances. (Exh. 15).

32. Safe-T advertises its mathematical balance as demonstrating number relationships in a concrete, easily understood way. Safe-T's balance includes twenty 10 gram weights. An additional forty 10 gram weights can be purchased separately. (Exh. 15).

33. Safe-T's balance stand of its mathematical balance is rectangular and includes pins on which the weights can be horizontally stored. Safe-T's beam is likewise rectangular, with the numbers running near the upper portion of the rectangular beam. The balance stand and upright are red, the weights are blue, and the beam is yellow. (Exh. 15).

34. Other companies are selling balances identical to Safe-T's. These companies include, among others, U.S. Toy, Educational Insights and School Specialty Corp. The manufacturer of the balance sold by Safe-T, as well as these other companies, has been producing and selling this item for over ten years. Additionally, a balance with all of the basic features of the Safe-T balance has been sold by a distributor of Invicta's math balance under the name EquaBeam Balance for approximately four

years.

ACTIONS GIVING RISE TO THE ACTUAL CONTROVERSY

35. On October 26, 2001, James B. Brady, Esq. of Young & Basile, P.C., 3001 West Big Beaver Road, Suite 624, Troy, Michigan 48084-3107, wrote Safe-T on behalf of Invicta. This letter is attached as Exhibit 17.

36. In the October 26, 2001 letter, Mr. Brady asserted that Invicta has acquired "certain rights in the trademarks and trade dress associated with [the] products known as Attribute Blocks, Math Balance, and Trundle Wheel." (Exh. 17).

37. Mr. Brady further asserted that "if we do not have written assurance from you . . . that you will stop manufacturing and offering for sale [Attribute Blocks, the Math Balance, and the Trundle Wheel], my client will have no alternative but to evaluate all available options, including litigation." (Exh. 17).

38. On November 7, 2001, Safe-T, through its counsel, responded, denying that Safe-T infringed any valid rights of Invicta. This letter is attached as Exhibit 18.

39. On January 9, 2002, Mr. Brady again wrote Safe-T on behalf of Invicta. This letter is attached as Exhibit 19.

40. In the January 9, 2002 letter, Mr. Brady asserted that Safe-T "is liable for trade dress infringement and Lanham Act sanctions" in relation to its attribute blocks, asserting that "(1) the basic shapes of the blocks are identical, (2) the dimensions of the blocks are virtually identical in length, breadth and depth, (3) the colors of the blocks are the same, i.e. red, yellow and blue, and (4) the lids and boxes contain the same

shape apertures.” (Exh. 19).

41. In the January 9, 2002 letter, Mr. Brady further asserted that Safe-T “has misappropriated [Invicta’s] ‘Math Balance’ trade dress. The size and method of hanging the weights on the pegs of the arms on these products are identical. The weights, and dimensions of said weights, are also identical. In addition, [Safe-T] has marketed the product in the same way, offering extra sets of forty 10g. weights.” (Exh. 19).

42. In the January 9, 2002 letter, Mr. Brady further asserted that Safe-T is “blatant[ly] copying” Invicta’s Trundle Wheel. (Exh. 19).

43. Mr. Brady concluded the January 9, 2002 letter by stating: “While not being litigious by nature, Invicta stands ready to consider that option if necessary.” (Exh. 19).

44. Because Invicta has wrongfully accused Safe-T of infringing Invicta’s trademark and patent rights, Safe-T has a real and reasonable apprehension of suit and an actual controversy exists.

SUBSTANTIVE ALLEGATIONS

COUNT ONE

Declaratory Judgment of No Infringement of Invicta's Alleged Trade Dress And Trademark Rights In Its Attribute Blocks

45. Safe-T incorporates and alleges as if fully set forth herein the allegations contained above in paragraphs 1 through 44.

46. Safe-T hereby requests a declaration that its sale of its attribute blocks (seen in Exhibit 13) does not infringe Invicta's alleged trademark and trade dress rights in its attribute blocks (seen in Exhibit 12).

COUNT TWO

Declaratory Judgment of No Infringement of U.S. Patent No. Des. 383,399

47. Safe-T incorporates and alleges as if fully set forth herein the allegations contained above in paragraphs 1 through 46.

48. Safe-T hereby requests a declaration that the manufacture, use, and sale of its measuring wheel (seen in Exhibit 14) does not infringe Invicta's alleged patent rights in U.S. Patent No. Des. 383,399 (Exh. 3).

COUNT THREE

Declaratory Judgment of No Infringement of Invicta's Alleged Trade Dress And Trademark Rights In Its Measuring Wheel

49. Safe-T incorporates and alleges as if fully set forth herein the allegations contained above in paragraphs 1 through 48.

50. Safe-T hereby requests a declaration that its sale of its measuring wheel (seen in Exhibit 14) does not infringe Invicta's alleged trademark and trade dress rights in its measuring wheel (seen in Exhibit 1).

COUNT FOUR

Declaratory Judgment of No Infringement of Invicta's Alleged Trade Dress And Trademark Rights In Its Math Balance

51. Safe-T incorporates and alleges as if fully set forth herein the allegations contained above in paragraphs 1 through 50.

52. Safe-T hereby requests a declaration that its sale of its math balance (seen in Exhibit 15) does not infringe Invicta's alleged trademark and trade dress rights in its math balance (seen in Exhibit 2).

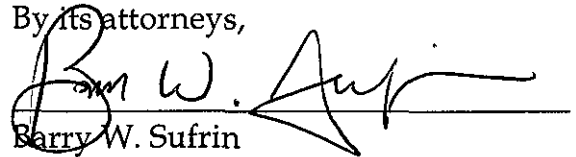
WHEREFORE, Safe-T Products, Inc. prays:

1. That this Court declare that Safe-T does not infringe any trademark or trade dress rights Invicta may have in its attribute blocks.
2. That this Court declare that the term "attribute" is a generic term referring to the inherent characteristics of Invicta's and Safe-T's attribute blocks.
3. That this Court declare that the term "attribute blocks" is a generic term referring to the geometric shapes of Invicta's and Safe-T's attribute blocks.
4. That this Court declare that Safe-T does not infringe the '399 patent.
5. That this Court declare that Safe-T does not infringe any trademark or trade dress rights Invicta may have in its measuring wheel.
6. That this Court declare that Safe-T does not infringe any trademark or trade dress rights Invicta may have in its mathematical balance.
7. That Safe-T be afforded such other and further relief as the Court may deem just.

Respectfully submitted,

Safe-T Products, Inc.,

By its attorneys,



Barry W. Sufrin

Martin L. Stern

William Meunier

MICHAEL BEST & FRIEDRICH LLC

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Suite 1700

Chicago, Illinois 60611

(312) 661-2100

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SEE CASE
FILE FOR
EXHIBITS

CPT 1

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

JUDGE SHADUR

Civil Cover Sheet

MAGISTRATE JUDGE KEYS

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.

**RECORDED
MAR 04 2002**

Plaintiff(s): SAFE-T PRODUCTS, INC.

Defendant(s): INVICTA PLASTICS, LTD.

County of Residence: Du Page

County of Residence: England

Plaintiff's Atty: Barry W. Sufrin
MICHAEL BEST &
FRIEDRICH LLC
401 North Michigan Avenue,
Suite 1900, Chicago, IL 60611
312-661-2100

Defendant's Atty: James B. Brady
YOUNG & BASILE, P.C.
3001 West Big Beaver Road,
Suite 624
248649-3333

020 1556

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

III. Citizenship of Principal Parties (Diversity Cases Only)

Plaintiff:- 1 Citizen of This State
Defendant:- 3 Citizen of Foreign Country

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U.S. DISTRICT COURT

IV. Origin : 1. Original Proceeding

V. Nature of Suit: 830 Patent

VI. Cause of Action: 28 U.S.C. Section 2201(a). Plaintiff seeks a declaratory judgment of non-infringement of alleged patent and trademark rights of Defendant.

VII. Requested in Complaint

Class Action: No
Dollar Demand:
Jury Demand: Yes

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

Signature: _____

Barry W. Sufrin

Date: _____

3/1/02

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

Eastern Division

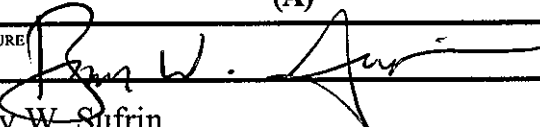
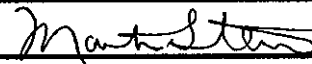
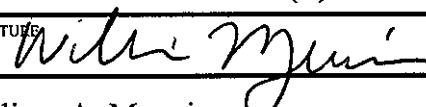
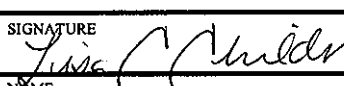
In the Matter of

SAFE-T PRODUCTS, INC.,
Plaintiff,
v.
INVICTA PLASTICS, INC.,
Defendant.

02C 1556
Case Number:

ROCKETED
MAR 04 2002

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR:
SAFE-T PRODUCTS, INC.

(A)		(B)	
SIGNATURE 		SIGNATURE 	
NAME Barry W. Sufrin		NAME Martin L. Stern	
FIRM MICHAEL BEST FRIEDRICH LLC		FIRM MICHAEL BEST FRIEDRICH LLC	
STREET ADDRESS 401 North Michigan Avenue, Suite 1900		STREET ADDRESS 401 North Michigan Avenue, Suite 1900	
CITY/STATE/ZIP Chicago, IL 60611		CITY/STATE/ZIP Chicago, IL 60611	
TELEPHONE NUMBER (312) 661-2100		TELEPHONE NUMBER (312) 661-2100	
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TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
		DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
(C)		(D)	
SIGNATURE 		SIGNATURE 	
NAME William A. Meunier		NAME Lisa C. Childs	
FIRM MICHAEL BEST & FRIEDRICH LLC		FIRM MICHAEL BEST & FRIEDRICH LLC	
STREET ADDRESS 401 North Michigan Avenue, Suite 1900		STREET ADDRESS 401 North Michigan Avenue, Suite 1900	
CITY/STATE/ZIP Chicago, IL 60611		CITY/STATE/ZIP Chicago, IL 60611	
TELEPHONE NUMBER (312) 661-2100		TELEPHONE NUMBER (312) 661-2100	
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DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	

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