

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

MICHAEL L. MCGINLEY
4504 W. 65th Street
Prairie Village, KS 66208,

and

S.C. PRODUCTS, INC.
4010 Washington, Ste. 201
Kansas City, MO 64111,

Plaintiffs,

vs.

MUNCHKIN, INC.,
16689 Schoenborn Street
North Hills, CA 91343,

Defendant.

Case No. 4: 09-CV-00257-REL

FIRST AMENDED COMPLAINT

Plaintiffs Michael L. McGinley, individually and as the assignee of Brian Lau, and S.C. Products, Inc. state the following for their complaint in this action:

1. Plaintiff Michael L. McGinley (“McGinley”) is an individual residing in Prairie Village, Kansas.
2. Plaintiff S.C. Products, Inc. (“SCP”) is a Missouri corporation with its principal place of business in Kansas City, Missouri. SCP is in good standing with the Missouri Secretary of State.
3. Defendant Munchkin, Inc. (“Munchkin”) is a Delaware corporation with its principal place of business in North Hills, California.
4. Munchkin is subject to the jurisdiction of the Court in that Munchkin has (and has

had) a continuous and systematic presence in and/or contacts with the state of Missouri, and/or pursuant to the provisions of § 506.500 RSMo, having individually and/or through one or more duly authorized agents, acting within the course and scope of their authority, transacted business within Missouri, and/or entered into contracts with numerous Missouri residents, and/or committed multiple acts of infringement causing damage in Missouri, by supplying and selling goods and merchandise, including the infringing shampoo rinse cup product described below, to and through Target Corporation, K Mart Corporation, and other retailers, which sold the products in Missouri.

5. Munchkin may be served with process by serving its registered agent, CT Corporation System, 818 West Seventh Street, Los Angeles, CA 90017.

6. The Court has original and exclusive jurisdiction over the subject matter of this lawsuit under 28 U.S.C. § 1338 in that Plaintiffs' claims arise under the Patent Laws of the United States, specifically 35 U.S.C. §§ 1 et seq.

7. Venue in this judicial district is appropriate pursuant to 28 U.S.C. §§ 1400(b) and 1391(c) since Defendants, and each of them, have committed multiple acts of infringement and/or are subject to personal jurisdiction in this judicial district for the reasons more fully set forth in this complaint.

8. On October 28, 2008, the United States Patent Office duly and legally issued United States Letters Patent No. 7,441,675 (the "'675 Patent") to McGinley and Brian Lau for an invention in a flexible panel pitcher device. A true and accurate copy of the '675 Patent as issued is attached hereto as Exhibit 1.

9. In February 2004, prior to the issuance of the '675 Patent, Brian Lau, for good and valuable consideration, voluntarily sold, assigned, transferred and conveyed, among other

things, all of his right, title and interest in and to what became the '675 Patent and the flexible panel pitcher invention set out therein pursuant to the written assignment attached hereto as Exhibit 2.

10. McGinley is, and has been continuously since October 28, 2008, the owner of the '675 Patent.

11. SCP holds, and at all relevant times has held, an exclusive license to sell the inventions set out in the '675 Patent.

12. SCP actively markets and sells (and at all relevant times has actively marketed and sold) a commercial embodiment of an invention set out in the '675 Patent known as the "*Shampoo Rinse Cup*."

13. Munchkin has infringed and continues to infringe the '675 Patent, literally or pursuant to the doctrine of equivalents, by importing into the United States and/or by making, using, offering to sell and/or selling a shampoo rinse cup device that embodies an invention set out in the '675 Patent, including the shampoo rinse cup device called the "*Shampoo Rinser*."

14. At and before the time of infringement, Munchkin had notice and actual knowledge of the '675 Patent and of Plaintiffs' *Shampoo Rinse Cup* and, despite such notice and actual knowledge, Munchkin imported into the United States, and/or made, used, offered to sell and/or sold the shampoo rinse cup device described above.

15. Munchkin's infringement of the '675 Patent was and continues to be knowing, deliberate and willful.

16. As a direct result of Munchkin's infringement of the '675 Patent, Plaintiffs sustained damages in amounts that have yet to be determined, but which include, without limitation, lost profits and/or other compensation to which Plaintiffs are entitled as damages under federal law.

Plaintiffs further believe that they will continue to sustain significant damages unless Munchkin, and Target Corporation, K Mart Corporation, and all other retailers to which Munchkin sold and/or delivered an infringing product, are preliminarily and permanently enjoined from further infringing the '675 Patent.

WHEREFORE Plaintiffs respectfully pray that the Court enter a judgment against Defendant Munchkin, Inc.:

(a) Declaring that the '675 Patent is not invalid and that Defendant Munchkin, Inc. has infringed the '675 Patent;

(b) Preliminarily and permanently enjoining Defendant Munchkin, Inc., and any persons to which Munchkin, Inc. sold and/or delivered an infringing product, from further infringing the '675 Patent;

(c) Requiring Defendant Munchkin, Inc., at its expense, to provide an accounting of all infringing acts and revenue earned or received as a result of the infringing acts and awarding Plaintiffs such damages as are necessary to compensate Plaintiffs for the infringement of the '675 Patent, including interest, which in no event should be less than a reasonable royalty for the use(s) made of the patented inventions;

(d) Awarding Plaintiffs enhanced damages to the maximum extent allowed by law based on Defendant's conduct, including the deliberate and willful infringement of the patented invention;

(e) Awarding Plaintiffs reasonable attorneys' fees and litigation expenses, together with costs and such other and further relief as the Court deems proper and just.

DEMAND FOR TRIAL BY JURY

Plaintiffs hereby demand a trial by jury in the above-captioned civil action on all issues so triable.

Dated: February 23, 2010

Respectfully submitted,

WALTERS BENDER STROHBEHN
&. VAUGHAN, P.C.

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document was filed electronically with the Clerk of the United States District Court for the Western District of Missouri, Western Division, this 23rd day of February 2010, with notice of case activity to be generated and sent electronically to all designated persons.

 /s/ Kip D. Richards