

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

PLAY VISIONS, INC., a Washington
corporation

Plaintiff,

v.

DOLLAR TREE STORES, INC., a Virginia
corporation and GREENBRIER
INTERNATIONAL, INC., a Delaware
Corporation,

Defendants.

Civil Action No. C09-1769MJP

FIFTH AMENDED COMPLAINT FOR
COPYRIGHT INFRINGEMENT, PATENT
INFRINGEMENT, FEDERAL AND
STATE UNFAIR COMPETITION,
UNLAWFUL IMPORTATION,
TRADEMARK INFRINGEMENT AND
VIOLATION OF THE LANHAM ACT

JURY TRIAL REQUESTED

Plaintiff Play Visions, Inc. ("Play Visions") hereby alleges the following causes of action
against Defendants Dollar Tree Stores, Inc. and Greenbrier International, Inc.

I. PARTIES

1. Play Visions is a corporation organized and existing under the laws of the state of
Washington, having its principal place of business at 19180 144th Avenue NE, Woodinville,
Washington.

2. Defendant Dollar Tree Store, Inc. ("Dollar Tree") is a Virginia corporation with
its principal place of business at 500 Volvo Parkway, Chesapeake, Virginia 23320 and a wholly
owned subsidiary of Dollar Tree, Inc, also a Virginia corporation with its principal place of
business at 500 Volvo Parkway, Chesapeake, Virginia 23320. Upon information and belief,

1 Dollar Tree Stores is a retailer of, among other things, toys. Dollar Tree Stores operates several
2 stores in King County, Washington.

3 3. Defendant Greenbrier International, Inc. (“Greenbrier”) is a Delaware corporation
4 with its principal place of business at 500 Volvo Parkway, Chesapeake, Virginia 23320. Upon
5 information and belief, Greenbrier is also a wholly owned subsidiary of Dollar Tree, Inc.
6 Greenbrier is a sourcing company which procures and distributes merchandise for retail sale in
7 subsidiaries of Dollar Tree, Inc. including Dollar Tree Stores, Inc.

8 **II. JURISDICTION AND VENUE**

9 4. This action arises under the patent laws of the United States, particularly
10 including 35 U.S.C. § 271 and § 281. Jurisdiction is conferred upon this Court pursuant to
11 28 U.S.C. §§ 1331 and 1338(a); under the copyright laws of the United States, 17 U.S.C. § 501
12 et seq. Jurisdiction is conferred upon this Court pursuant to 17 U.S.C. § 501(a) and 28 U.S.C. §
13 1331; the federal unfair competition laws of the United States, 15 U.S.C. § 1125(a) [Lanham Act
14 § 43(a)]; and under the Washington State Consumer Protection Act R.C.W. 19.86.020, et seq.
15 Thus, this Court has jurisdiction of this civil action under 28 U.S.C. §§ 1338(a) and 1338(b) and
16 supplemental jurisdiction under 28 U.S.C. § 1367(a).

17 5. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c), and
18 1400(a) because the Defendants conduct business within this judicial district, and they or their
19 agents or affiliates can be found in this judicial district. Acts giving rise to this complaint
20 occurred within this judicial district.

21 **III. FACTS COMMON TO ALL COUNTS**

22 6. Play Visions is a manufacturer and wholesale distributor of impulse novelty toy
23 products. Impulse novelty toys are generally single piece physical items susceptible to mass
24 manufacture.

25 7. Play Visions has since at least as early as 1990 made, sold and transported in
26 interstate commerce, and throughout the State of Washington, impulse or novelty toys. Play

1 Vision's retailers for these products include Wal-Mart, Target, Toys R Us, Walgreens, Fred
 2 Meyer, Rain Forest Café, Cost Plus World Market, Inc., Borders Bookstores, Walt Disney
 3 World, Sea World, San Diego Zoo, Monterey Bay Aquarium, The National Aquarium, and many
 4 other retailers around the nation. Play Visions' products are also available online through
 5 "www.playvisions.com" and additionally, through "www.amazon.com" as well as other national
 6 and regional retailers.

7 8. Play Visions' toys have been recognized as leaders in the Novelty Toy market,
 8 including recognition by the trade magazine for the toy, hobby, game and gift industry; toys such
 9 as the "Inside Out Ball" have received recognition throughout the country. TDmonthly listed the
 10 "Inside Out Ball" in 2007 as one of the ten "Most Wanted Novelty Toys." Most specifically, in
 11 the area of forming toys, such as the accused devices, from thermoplastic rubber (TPR) resin,
 12 Play Vision has gained the reputation as the world leader. The motto of Play Visions is
 13 "Innovation not Imitation." The term "thermoplastic rubber" used herein means a block
 14 copolymer of an amorphous polymer (thermoplastic) having a glass transition point of higher
 15 than room temperature and an amorphous polymer (rubber) having a glass transition point of
 16 lower than room temperature. Generally, polystyrene-polybutadiene-polystyrene and polystyrene-
 17 polyisoprene-polystyrene are suitable for use as the thermoplastic rubber.

18 IV. PLAY VISIONS' UTILITY PATENT RIGHTS

19 9. On December 15, 1998, Scott Stillingner was awarded United States Patent No.
 20 5,848,946 (the "'946 Patent"), entitled "Filled, Deformable Bladder Amusement Device With
 21 Infinitely Changeable Pliability And Tactility Characteristics," granting Stillingner patent rights
 22 on "an engageable, manipulable, infinitely configurable deformation structure including a fluid-
 23 impervious bladder-like structure, and a composite filler mixture in the form of plural
 24 independent particles thinly coated with a liquid lubricant disposed in a sealed condition within
 25 the bladder-like structure." Play Visions is the exclusive licensee of all of the '946 Patent rights
 26 including the sole right to bring an infringement action in Play Visions' own name.



1 10. On January 23, 2007, Mark Chernick and Webb T. Nelson were awarded United
 2 States Patent No. 7,165,869 (the “‘869 Patent”), entitled “Internally Illuminated Elastomeric
 3 Novelty Device With External Projections,” granting Chernick and Nelson patent rights on “an
 4 internally illuminated novelty device having an electronics module contained within a
 5 translucent elastic casing.” Play Visions is the exclusive assignee of all of the ‘869 Patent rights
 6 including the sole right to bring an infringement action in Play Visions’ own name.

7 11. On May 29, 2007, Mark Chernick, Webb T. Nelson, Dustin S. Chernick, Adam J.
 8 Chernick, and Martin L. Nelson were awarded United States Patent No. 7,223,150 (the “‘150
 9 Patent”), entitled “Illuminated Elastomeric Flying Disc And Its Method Of Manufacture,”
 10 granting Chernick and Nelson patent rights on “an internally illuminated toy having a flexible
 11 body that is made from an elastomeric gel.” Play Visions is the exclusive assignee of all of the
 12 ‘150 Patent rights including the sole right to bring an infringement action in Play Visions’ own
 13 name.

14 **V. PLAY VISIONS’ DESIGN PATENT RIGHTS**

15 12. On January 17, 2007, Mark Chernick and Webb T. Nelson were awarded United
 16 States Patent No. D 535,341 (the “‘341 Design Patent”), entitled “Elastomeric Tentacle Ball,”
 17 granting Chernick and Nelson patent rights on an “ornamental design for an elastomeric tentacle
 18 ball.” Play Visions is the exclusive assignee of all of the ‘341 Design Patent rights including the
 19 sole right to bring an infringement action in Play Visions’ own name.

20 13. On September 18, 2007, Mark Chernick and Webb T. Nelson were awarded
 21 United States Patent No. D 551,307 (the “‘307 Design Patent”), entitled “Elastomeric Novelty
 22 Ball with Protrusions,” granting Chernick and Nelson patent rights on an “ornamental design for
 23 an elastomeric novelty ball with protrusions.” Play Visions is the exclusive assignee of all of the
 24 ‘307 Design Patent rights including the sole right to bring an infringement action in Play
 25 Visions’ own name.

1 14. On March 4, 2008, Mark Chernick and Webb T. Nelson were awarded United
 2 States Patent No. D 563,493 (the “‘493 Design Patent”), entitled “Elastomeric Ball Having
 3 Protrusions of Stacked Spheres,” granting Chernick and Nelson patent rights on an “ornamental
 4 design for an elastomeric ball having protrusions of stacked spheres.” Play Visions is the
 5 exclusive assignee of all of the ‘493 Design Patent rights including the sole right to bring an
 6 infringement action in Play Visions’ own name.

7 **VI. PLAY VISIONS’ COPYRIGHT RIGHTS**

8 15. Play Visions developed or caused to be developed under its direction or control a
 9 unique and original centipede sculpture (“Elastomeric Centipede” sculpture).

10 16. Play Visions’ “Elastomeric Centipede” sculpture embodies certain idealistic
 11 characteristics of a centipede along with stylized accents to emphasize the item’s aesthetic
 12 appeal, forming a truly unique work of art.

13 17. Play Visions’ “Elastomeric Centipede” sculpture is also a widely successful
 14 novelty item, well-known throughout the United States and internationally.

15 18. On the Effective Date of October 29, 2007, Play Visions was awarded a
 16 registration for a Visual Material Copyright No. VAu 958-361, entitled “Elastomeric Centipede.”

17 **VII. PLAY VISIONS’ IDENTITY IN THE MARKETPLACE**

18 19. Play Visions’ “Elastomeric Centipede” sculpture is primarily non-functional and
 19 visually distinctive, is prominently displayed to Play Visions’ customers and to the purchasing
 20 public through advertising and its presence on the Play Visions web site, and is recognized by
 21 Play Visions’ customers as an indicator of source. Play Visions’ use of the “Elastomeric
 22 Centipede” sculpture design has been exclusive and continuous and has resulted in that product
 23 configuration having acquired a secondary source-indicating significance with Play Visions’
 24 customers. Play Visions has extensively advertised the “Elastomeric Centipede” sculpture
 25 product configuration to its customers and has sold the Elastomeric Centipede in around the
 26 nation including through the Wal-Mart chain of stores.

1 20. Play Visions has sold at least one product through channels of commerce having
2 an ornamental design for an elastomeric tentacle ball; the design is primarily non-functional and
3 visually distinctive, is prominently displayed to Play Visions' customers and to the purchasing
4 public through advertising and its presence on the Play Visions web site, and is recognized by
5 Play Visions' customers as an indicator of source. Play Visions' use of the ornamental design for
6 an elastomeric tentacle ball has been exclusive and continuous and has resulted in that product
7 configuration having acquired a secondary source-indicating significance with Play Visions'
8 customers. Play Visions has extensively advertised the ornamental design for an elastomeric
9 tentacle ball product configuration to its customers.

10 21. Play Visions has sold at least one product through channels of commerce having
11 an ornamental design for an elastomeric novelty ball with protrusions; the design is primarily
12 non-functional and visually distinctive, is prominently displayed to Play Visions' customers and
13 to the purchasing public through advertising and its presence on the Play Visions web site, and is
14 recognized by Play Visions' customers as an indicator of source. Play Visions' use of the
15 ornamental design for an elastomeric novelty ball with protrusions has been exclusive and
16 continuous and has resulted in that product configuration having acquired a secondary source-
17 indicating significance with Play Visions' customers. Play Visions has extensively advertised the
18 ornamental design for an elastomeric novelty ball with protrusions product configuration to its
19 customers.

20 22. Play Visions has sold at least one product through channels of commerce having
21 an ornamental design for an elastomeric ball having protrusions of stacked spheres; the design is
22 primarily non-functional and visually distinctive, is prominently displayed to Play Visions'
23 customers and to the purchasing public through advertising and its presence on the Play Visions
24 web site, and is recognized by Play Visions' customers as an indicator of source. Play Visions'
25 use of the ornamental design for an elastomeric ball having protrusions of stacked spheres has
26 been exclusive and continuous and has resulted in that product configuration having acquired a



secondary source-indicating significance with Play Visions' customers. Play Visions has extensively advertised the ornamental design for an elastomeric ball having protrusions of stacked spheres product configuration to its customers.

VIII. PLAY VISIONS' TRADEMARK RIGHTS

23. On March 22, 2005, Play Visions filed the word mark "Urchin Ball" for registration as a trademark on the Primary Registry of the United States Patent and Trademark Office in the category of "Goods & Services: Novelty Ball Having Elastomeric Protrusions." The mark has been used continuously in commerce since January 15, 2004. On March 21, 2006, the Office granted registration with registration number 3,070,851 after Play Visions disclaimed the exclusive use of the word "ball" apart from "Urchin Ball". The registration has been continuously maintained as a live mark since its registration.



24. On July 27, 2006, Play Visions filed the design mark as pictured for registration as a trademark on the Primary Registry of the United States Patent and Trademark Office in the category of "Goods & Services: Plush Toys and Toy Figures." The mark has been used continuously in commerce since July 27, 2006. On March 21, 2006, the Office granted registration with registration number 3,263,359. The registration has been continuously maintained as a live mark since its registration.

IX. DOLLAR TREE'S INFRINGING ACTS-ACCUSATION OF DEVICES

25. Headquartered in Chesapeake, Virginia, Defendant Dollar Tree is the largest and most successful operator of discount variety stores selling everything for \$1 or less, operating thousands of stores in all 48 contiguous states (operated 3,803 stores in 48 states as of October 31, 2009, with total retail selling square footage of 32.3 million and net sales in 2008 of 4.64 billion dollars) and nine distribution centers. Novelty or impulse toys constitute a significant portion of the annual sales by Dollar Tree.

26. Upon information and belief, during the life of the relevant patents, Dollar Tree has imported, made, offered to sell or sold to consumers, a product known as a Flashing Urchin Ball having a SKU 858447, the Flashing Urchin Ball infringing the '869 Patent and the '341 Design Patent, and the trademarks having registration number 3,070,851 and registration number 3,263,359. Upon further information and belief, Dollar Tree has, without authority, imported, made, used, offered to sell, or sold at least 1,020,432 devices that infringe the '869 Patent and the '341 Design Patent and the trademarks having registration number 3,070,851 and registration number 3,263,359. The tag on the packaging indicates that the Flashing Urchin Ball was distributed by "Greenbrier International, Inc." referring to Greenbrier and upon further information and belief was imported into the United States by Greenbrier.

27. Upon information and belief, during the life of the relevant patents, Dollar Tree has imported, made, offered to sell or sold to consumers, a product known as a Basket Stuffer Light Up UFO having a SKU 937141, the Basket Stuffer Light Up UFO infringing the '150 Patent and the '869 Patent. Upon further information and belief, Dollar Tree has, without authority, imported, made, used, offered to sell, or sold at least 247,968 devices that infringe the '150 Patent and the '869 Patent. The tag on the packaging indicates that the Basket Stuffer Light Up was distributed by "Greenbrier International, Inc." referring to Greenbrier and upon further information and belief was imported into the United States by Greenbrier.

28. Upon information and belief, during the life of the relevant patents, Dollar Tree has imported, made, offered to sell or sold to consumers, a product known as a Stretchy Light Up UFO having a SKU 874036, the Stretchy Light Up UFO infringing the '150 Patent and the '869 Patent. Upon further information and belief, Dollar Tree has, without authority, imported, made, used, offered to sell, or sold at least 201,888 devices that infringe the '150 Patent and the '869 Patent. The tag on the packaging indicates that the Stretchy Light Up UFO was distributed by "Greenbrier International, Inc." referring to Greenbrier and upon further information and belief was imported into the United States by Greenbrier.

29. Upon information and belief, during the life of the relevant design patent, Dollar Tree has imported, made, offered to sell or sold to consumers, a product known as a 2 Tone Blowfish Puffer Ball bearing a label including the legend “safe & soft for ages 3 & up” having a UPC code of 6 39277 41598 1, the 2 Tone Blowfish Puffer Ball infringing the ‘341 Design Patent, and the trademark having registration number 3,263,359. The tag on the packaging indicates that the 2 Tone Blowfish Puffer Ball was distributed by “Greenbrier International, Inc.” referring to Greenbrier and upon further information and belief was imported into the United States by Greenbrier.

30. Upon information and belief, during the life of the relevant design patent, Dollar Tree has imported, made, offered to sell or sold to consumers, a product known as a Flashing Big Bug Eye Buddies having a Dollar Tree Inventory No. 975234 812 and a UPC code of 6 39277 53988 5, the Flashing Big Bug Eye Buddies infringing the ‘869 Utility Patent, the ‘341 Design Patent, and the trademark having registration number 3,263,359. The tag on the packaging indicates that the Flashing Big Bug Eye Buddies was distributed by “Greenbrier International, Inc.” referring to Greenbrier and upon further information and belief was imported into the United States by Greenbrier.

31. Upon information and belief, during the life of the relevant design patent, Dollar Tree has imported, made, offered to sell or sold to consumers, a product known as a Tentacool Ball having a Dollar Tree Inventory No. 975234 812 and a UPC code of 6 39277 53988 5, the Tentacool Ball infringing the ‘493 Design Patent, and the trademark having registration number 3,263,359. The tag on the packaging indicates that the Tentacool Ball was distributed by “Greenbrier International, Inc.” referring to Greenbrier and upon further information and belief was imported into the United States by Greenbrier.

32. Upon information and belief, during the life of the copyright, Dollar Tree has imported, made, offered to sell or sold to consumers, a product known as a Centipede having a Dollar Tree Inventory No. 941143 812 and a UPC code of 6 39277 41143 3, the Centipede

1 infringing the copyright VAu 958-361. The tag on the packaging indicates that the Centipede
2 was distributed by “Greenbrier International, Inc.” referring to Greenbrier and upon further
3 information and belief was imported into the United States by Greenbrier.

4 33. Upon information and belief, during the life of the relevant patents, Dollar Tree
5 has imported, made, offered to sell or sold to consumers, a product known as a Flashing Bead
6 Ball having a Dollar Tree Inventory No. 938931 711 and a UPC code of 6 39012 03080 6, the
7 Flashing Bead Ball infringing the ‘946 Patent and the ‘869 Patent. The tag on the packaging
8 indicates that the Flashing Bead Ball was distributed by “Greenbrier International, Inc.” referring
9 to Greenbrier and upon further information and belief was imported into the United States by
10 Greenbrier.

11 34. Upon information and belief, during the life of the relevant patents, Dollar Tree
12 has imported, made, offered to sell or sold to consumers, a product known as a Flashing Bug Out
13 Ball having a Dollar Tree Inventory No. 939196 711 and a UPC code of 6 39012 37020 9, the
14 Flashing Bug Out Ball infringing the ‘946 Patent and the ‘869 Patent. The tag on the packaging
15 indicates that the Flashing Bug Out Ball was distributed by “Greenbrier International, Inc.”
16 referring to Greenbrier and upon further information and belief was imported into the United
17 States by Greenbrier.

18 35. Upon information and belief, during the life of the relevant patents, Dollar Tree
19 has imported, made, offered to sell or sold to consumers, a first version of a product known as a
20 Flashing Worm Ball having a Dollar Tree Inventory No. 874038 710 and a UPC code of 6 39277
21 74038 0, the Flashing Worm Ball infringing the ‘946 Patent and the ‘869 Patent. The tag on the
22 packaging indicates that the Flashing Worm Ball was distributed by “Greenbrier International,
23 Inc.” referring to Greenbrier and upon further information and belief was imported into the
24 United States by Greenbrier.

25 36. Upon information and belief, during the life of the relevant patents, Dollar Tree
26 has imported, made, offered to sell or sold to consumers, a second version of a product known as

1 a Flashing Worm Ball having a Dollar Tree Inventory No. 874038 610 and a UPC code of
2 6 39277 74038 0, the Flashing Worm Ball infringing the '946 Patent and the '869 Patent. The tag
3 on the packaging indicates that the Flashing Worm Ball was distributed by "Greenbrier
4 International, Inc." referring to Greenbrier and upon further information and belief was imported
5 into the United States by Greenbrier.

6 37. Upon information and belief, during the life of the patent, Dollar Tree has
7 imported, made, offered to sell or sold to consumers, a first version of a product known as a
8 Stress Ball having a Dollar Tree Inventory No. 925026 77 and a UPC code of 6 39277 25026 1,
9 the Stress Ball infringing the '946 Patent. The tag on the packaging indicates that the Stress Ball
10 was distributed by "Greenbrier International, Inc." referring to Greenbrier and upon further
11 information and belief was imported into the United States by Greenbrier.

12 38. Upon information and belief, during the life of the relevant patent, Dollar Tree
13 has imported, made, offered to sell or sold to consumers, a second version of a product known as
14 a Stress Ball having a Dollar Tree Inventory No. 925034 79 and a UPC code of 6 39277 25034 6,
15 the Stress Ball infringing the '946 Patent. The tag on the packaging indicates that the Stress Ball
16 was distributed by "Greenbrier International, Inc." referring to Greenbrier and upon further
17 information and belief was imported into the United States by Greenbrier.

18 39. Upon information and belief, during the life of the relevant patent, Dollar Tree
19 has imported, made, offered to sell or sold to consumers, a product known as a Brainhead Ball
20 having a Dollar Tree Inventory No. 20012 02 0908A 986744 98 and a UPC code of 6 39277
21 86744 5, the Brainhead Ball infringing the '946 Patent. The tag on the packaging indicates that
22 the Brainhead Ball was distributed by "Greenbrier International, Inc." referring to Greenbrier and
23 upon further information and belief was imported into the United States by Greenbrier.

24 40. Upon information and belief, during the life of the relevant design patent, Dollar
25 Tree has imported, made, offered to sell or sold to consumers, a product known as a Mini Urchin
26 Ball, the Mini Urchin Ball infringing the '341 Design Patent and the trademarks having

1 registration number 3,070,851 and registration number 3,263,359. The tag on the packaging
2 indicates that the Mini Urchin Ball was distributed by “Greenbrier International, Inc.” referring
3 to Greenbrier and upon further information and belief was imported into the United States by
4 Greenbrier.

5 41. Upon information and belief, during the life of the relevant design patent, Dollar
6 Tree has imported, made, offered to sell or sold to consumers, a product known as a Lightning
7 Sun Ball having a Dollar Tree Inventory No. 925008 99 and a UPC code of 6 39277 25008 7, the
8 Lightning Sun Ball infringing the ‘307 Design Patent. The tag on the packaging indicates that the
9 Lightning Sun Ball was distributed by “Greenbrier International, Inc.” referring to Greenbrier
10 and upon further information and belief was imported into the United States by Greenbrier.

11 42. Upon information and belief, during the life of the relevant patent, Dollar Tree
12 has imported, made, offered to sell or sold to consumers, a product known as a Creepy Classics
13 Squeeze Skull having a Dollar Tree Inventory No. 925019 86 and UPC code of 6 39277 25019 3,
14 the Creepy Classics Squeeze Skull infringing the ‘946 Patent. The tag on the packaging indicates
15 that the Creepy Classics Squeeze Skull was distributed by “Greenbrier International, Inc.”
16 referring to Greenbrier and upon further information and belief was imported into the United
17 States by Greenbrier.

18 43. Upon information and belief, during the life of the relevant patent, Dollar Tree
19 has imported, made, offered to sell or sold to consumers, a product known as a Squeeze Helmet,
20 the Squeeze Helmet infringing the ‘946 Patent. Upon further information and belief, the Squeeze
21 Helmet was imported into the United States by Greenbrier.

22 44. Upon information and belief, during the life of the relevant patent, Dollar Tree
23 has imported, made, offered to sell or sold to consumers, a product known as a Flashing Puffer
24 Ball having a Dollar Tree Inventory No. 925025 811 and a UPC code of 6 39277 25025 4, the
25 Flashing Puffer Ball infringing the ‘341 Design Patent and the trademark having registration
26 number 3,263,359. The tag on the packaging indicates that the Flashing Puffer Ball was



1 distributed by “Greenbrier International, Inc.” referring to Greenbrier and upon further
2 information and belief was imported into the United States by Greenbrier.

3 45. Upon information and belief, during the life of the relevant patent, Dollar Tree
4 has imported, made, offered to sell or sold to consumers, a product known as a Puffer Ball Glow
5 in the Dark having a Dollar Tree Inventory No. 986737 98 and a UPC code of 6 39277 86737 7,
6 the Puffer Ball Glow in the Dark infringing the ‘341 Design Patent and the trademark having
7 registration number 3,263,359. The tag on the packaging indicates that the Puffer Ball Glow in
8 the Dark was distributed by “Greenbrier International, Inc.” referring to Greenbrier and upon
9 further information and belief was imported into the United States by Greenbrier.

10 46. Upon information and belief, during the life of the relevant patent, Dollar Tree
11 has imported, made, offered to sell or sold to consumers, a product known as a 2 Tone White
12 Puffer Ball Glow in the Dark having a Dollar Tree Inventory No. 986738 96 and a UPC code of
13 6 39277 86738 4, the 2 Tone White Puffer Ball Glow in the Dark infringing the ‘341 Design
14 Patent and the trademark having registration number 3,263,359. The tag on the packaging
15 indicates that the 2 Tone White Puffer Ball Glow in the Dark was distributed by “Greenbrier
16 International, Inc.” referring to Greenbrier and upon further information and belief was imported
17 into the United States by Greenbrier.

18 47. Upon information and belief, during the life of the relevant patent, Dollar Tree
19 has imported, made, offered to sell or sold to consumers, a product described as an Inflatable
20 Spiky Ball, the Inflatable Spiky Ball infringing the ‘341 Design Patent and the trademark having
21 registration number 3,263,359. The tag on the packaging indicates that the Inflatable Spiky Ball
22 was distributed by “Greenbrier International, Inc.” referring to Greenbrier and upon further
23 information and belief was imported into the United States by Greenbrier.

24 48. Upon information and belief, during the life of the relevant patent, Dollar Tree
25 has imported, made, offered to sell or sold to consumers, a product known as a Squeeze Foam
26 Ball having a Dollar Tree Inventory No. 953991 94 and a UPC code of 39277 53991 5, the

1 Squeeze Foam Ball infringing the '946 Patent. The tag on the packaging indicates that the
 2 Squeeze Foam Ball was distributed by "Greenbrier International, Inc." referring to Greenbrier
 3 and upon further information and belief was imported into the United States by Greenbrier.

4 49. Upon information and belief, during the life of the relevant patent, Dollar Tree
 5 has imported, made, offered to sell or sold to consumers, a product known as a Yucky Skull
 6 Bead Ball having a Dollar Tree Inventory No. 986741 96 and a UPC code of 6 39277 86741 4,
 7 the Yucky Skull Bead Ball infringing the '946 Patent. The tag on the packaging indicates that the
 8 Yucky Skull Bead Ball was distributed by "Greenbrier International, Inc." referring to
 9 Greenbrier and upon further information and belief was imported into the United States by
 10 Greenbrier.

11 **X. DEFENDANTS HAVE A HISTORY FROM WHICH THIS COURT CAN INFER AN INTENT TO**
 12 **INFRINGE**

13 50. Dollar Tree and Greenbrier have demonstrated an intent to violate Intellectual
 14 Property Rights. In the last decade, Dollar Tree and Greenbrier have not had any program in
 15 place to avoid the purchase and sale of infringing devices. This is true even where the acquisition
 16 of those items has been from parties having a reputation for infringement. An exemplary but not
 17 limiting collection of the instances where third parties have asserted an infringement of
 18 intellectual property follows:

19 51. In 1999, Department 56 sued Defendants for Trade Dress Infringement, Copyright
 20 Infringement, and Unfair Competition. Defendants ultimately paid money to settle the matter
 21 leading to the dismissal prior to judgment.

22 52. In 2000, American Home Products sued Defendants for Trademark Infringement
 23 and Unfair Competition. Defendants ultimately paid money to settle the matter leading to the
 24 dismissal prior to judgment.

25 53. In 2000, Carlisle threatened to Defendants for Patent Infringement. Defendants
 26 ultimately paid money to settle the matter prior to the threatened filing of a lawsuit.

1 54. In 2000, Carvajal threatened to sue Defendants for Trademark and Trade Dress
2 Infringement. Defendants ultimately paid money to settle the matter prior to the threatened filing
3 of a lawsuit.

4 55. In 2000, Home & Nature threatened to sue Defendants for Design Patent
5 Infringement. Defendants ultimately paid money to settle the matter prior to the threatened filing
6 of a lawsuit.

7 56. In 2001, Hoberman Designs threatened to sue Defendants for Patent Infringement.
8 Defendants ultimately paid money to settle the matter prior to the threatened filing of a lawsuit.

9 57. In 2001, J. J. International threatened to sue Defendants for Design Patent
10 Infringement. Defendants ultimately paid money to settle the matter prior to the threatened filing
11 of a lawsuit.

12 58. In 2001, Powermatic threatened to sue Defendants for Trademark Infringement.
13 Defendants ultimately paid money to settle the matter prior to the threatened filing of a lawsuit.

14 59. In 2002, Fun Time International threatened to sue Defendants for Utility and
15 Design Patent Infringement. Defendants ultimately paid money to settle the matter prior to the
16 threatened filing of a lawsuit.

17 60. In 2002, General Housewares sued Defendants for Patent Infringement.
18 Defendants ultimately paid money to settle the matter leading to the dismissal prior to judgment.

19 61. In 2002, P & M Products sued Defendants for Patent Infringement and Unfair
20 Competition. Defendants ultimately paid money to settle the matter leading to the dismissal prior
21 to judgment.

22 62. In 2002, Raymond Geddes threatened to sue Defendants for Patent Infringement.
23 Defendants ultimately paid money to settle the matter prior to the threatened filing of a lawsuit.

24 63. In 2002, the World Wrestling Federation threatened to sue Defendants for
25 Trademark Infringement and Unfair Competition. Defendants ultimately paid money to settle the
26 matter prior to the threatened filing of a lawsuit.

64. In 2003, Blue Path Industries threatened to sue Defendants for Trademark Infringement. Defendants ultimately paid money to settle the matter prior to the threatened filing of a lawsuit.

65. In 2003, Coleman sued Defendants for Trade Dress Infringement and Design Patent Infringement. Defendants ultimately paid money to settle the matter leading to the dismissal prior to judgment.

66. In 2003, Fisher-Price sued Defendants for Trademark Infringement. Defendants ultimately paid money to settle the matter leading to the dismissal prior to judgment.

67. In 2003, FWJ Plastics Packaging threatened to sue Defendants for Design Patent and Patent Infringement. Defendants ultimately paid money to settle the matter prior to the threatened filing of a lawsuit.

68. In 2003, K & A Design Group sued Defendants for Patent Infringement. Defendants ultimately paid money to settle the matter leading to the dismissal prior to judgment.

69. In 2003, Mag Instruments sued Defendants for Patent, Trade Dress, and Trademark Infringement. Defendants ultimately paid money to settle the matter leading to the dismissal prior to judgment.

70. In 2003, MAPED sued Defendants for Design Patent Infringement. Defendants ultimately paid money to settle the matter leading to the dismissal prior to judgment.

71. In 2003, Simtec sued Defendants for Design Patent and Trademark Infringement. Defendants ultimately paid money to settle the matter leading to the dismissal prior to judgment.

72. In 2004, U.S. Playing Card Company sued Defendants for Trademark Infringement. Defendants ultimately paid money to settle the matter leading to the dismissal prior to judgment.

73. In 2004, Swanson Tool Company, Inc. sued Defendants for Trademark Infringement and Unfair Competition under the Lanham Act and under the Illinois Deceptive

1 Trade Practices Act. Defendants ultimately paid money to settle the matter leading to dismissal
2 prior to judgment.

3 74. In 2004, Betras threatened to sue Defendants for Design Patent and Trade Dress
4 Infringement. Defendants ultimately paid money to settle the matter prior to the threatened filing
5 of a lawsuit.

6 75. In 2004, R. F. Thompson Company (Umbra) threatened to sue Defendants for
7 Trademark Infringement. Defendants ultimately paid money to settle the matter prior to the
8 threatened filing of a lawsuit.

9 76. In 2004, World Kitchen sued Defendants for Patent Infringement. Defendants
10 ultimately paid money to settle the matter leading to the dismissal prior to judgment.

11 77. In 2006, Lanard Toys sued Defendants for False Designation of Origin, Trade
12 Dress, and Trademark Infringement and Unfair Competition. Defendants ultimately paid money
13 to settle the matter leading to the dismissal prior to judgment.

14 78. In 2009, Sun Hill sued Defendants for Patent Infringement and Unfair
15 Competition. Defendants ultimately paid money to settle the matter leading to the dismissal prior
16 to judgment.

17 79. Defendants Authorized Representative, Thomas Sawyer, Divisional Merchandise
18 Manager, in his role as a purchaser for Defendants, observed the success of Play Visions TPR
19 toys in the consumer toy market. Sawyer further noted that the toys asserted as protected herein
20 enjoyed particular success in the consumer toy market.

21 80. In his role as purchaser, Sawyer met with a number of Trading Companies
22 including but not limited to trading companies located in Tapei such as Tamnex Corporation;
23 Four Star Trading Group, and Lucky Star (collectively "trading companies"). As a result of those
24 meetings, Sawyer entered into agreements on behalf of Defendants to import infringing devices
25 into the United States for resale by Defendants into the United States consumer market.
26 Infringing devices as used herein shall refer to any device the sale of which within the United

1 States violates one or more of the asserted patent, design patent, copyright, trade dress or trade
2 mark rights alleged above.

3 81. Because Dollar Tree Stores only sells merchandise for a retail price of one dollar
4 per unit, the infringing devices are made from ingredients that are inferior to those that constitute
5 the products Play Visions makes.

6 82. By way of nonlimiting example, various of the infringing devices have been
7 tested and some that have included water as an ingredient have not been suitably sterile as
8 required by the United States regulations relating to such toys. Sterile water is expensive to either
9 produce or purchase in the mainland factories. Play Visions does so, manufacturers from which
10 Greenbrier purchases toys do not. For example, one product included a total combined yeast and
11 mould count of 6,500 colony-forming units, well in excess of the 5,000 colony-forming units
12 allowed under United States Pharmacopeia (USP)-National Formulary (NF) chapters 61 and 62.
13 It was also infected with anaerobic microbial count of 1,400 colony-forming units.

14 83. A thermoplastic is a polymer that turns to a liquid when heated and freezes to a
15 very glassy state when cooled sufficiently. To meet the sub-dollar price point, the trading
16 companies or their suppliers use thermoplastic resins that are based on the use of less expensive
17 petrochemicals to form the amorphous polymer in the thermoplastic rubber resin. Selecting an
18 inexpensive and volatile petrochemical to form the amorphous polymer produces much weaker
19 bonds in the matrix allowing the volatile solvents to readily outgas from the matrix and, thus,
20 lends a kerosene-like smell to the resulting toy. As such, the toys so made tend to be very
21 flammable, capable of ignition by means of common matches and propagating the flame at rates
22 in excess of those rates set forth in reference to the Consumer Product Safety Improvement Act
23 (CPSIA).

24 84. Dollar Tree Stores sold the infringing devices provided by the Trading Companies
25 within the United States and profited thereby. Greenbrier procured the toys and imported them
26 into the United States. Toys constructed by such means are rapidly consumed by flames and

1 generate temperatures in excess of 600 degrees Fahrenheit, sufficient to autoignite many
 2 common wood types used in home construction, to melt the toy itself, and to inflict third-degree
 3 burns. The infringing products are dangerous and are markedly inferior to those made by Play
 4 Visions.

5 85. Nonetheless, Dollar Tree and Greenbrier in an enterprise with one or more
 6 Taiwanese trading companies were successful in selling large quantities of infringing goods to
 7 the benefit of Dollar Tree, Greenbrier, and the various Taiwanese trading companies and to the
 8 detriment of Play Visions. Sawyer, on behalf of Dollar Tree and Greenbrier, selected the
 9 infringing goods because of their proven success in the United States consumer market.

10 86. To reward Sawyer and Defendants for these sales, the various Taiwanese trading
 11 companies did provide at least money in the form of cash to Sawyer, thereby to encourage
 12 Defendants to continue the enterprise relationship between Defendants and such of the
 13 Taiwanese trading companies as profited by selling infringing goods to Greenbrier for Dollar
 14 Tree Stores resale to the consumers in the United States. For example, Tamnex directly profited
 15 from the sale of the Flashing Bug Out Ball and the Flashing Bead Ball, described herein, to
 16 Greenbrier for resale to consumers in the United States through Dollar Tree Stores.

17 87. By way of non-limiting example, Mr. Sawyer received cash. He, in turn paid cash
 18 to contractors to erect improvements to his residence including an elaborate out-building of at
 19 least \$300,000 in cost. In order to avoid drawing attention to source of the cash that enabled the
 20 exorbitant expenditures Sawyer dealt in cash with the contractors, in exchange for goods and
 21 services thereby preserving the value without using the regulated banking industry. Dollar Tree
 22 did profit by the ongoing sales of infringing goods to consumers within the United States.

23 **XI. FIRST CAUSE OF ACTION—COPYRIGHT INFRINGEMENT**

24 88. Defendants have willfully committed copyright infringement under 17 U.S.C.
 25 § 501 et seq., directly, by inducement, or by way of contributory liability, by knowingly aiding,
 26 causing, or committing, the unauthorized practice or execution of one or more exclusive rights

owned by Play Visions as those rights are set forth in 17 U.S.C. § 106, said exclusive rights having been perfected by U.S. Copyright Registration No. VAu 958-361, entitled “Elastomeric Centipede.”

XII. SECOND CAUSE OF ACTION—UTILITY PATENT INFRINGEMENT

89. Defendants have willfully committed patent infringement under 35 U.S.C. § 101 et seq., directly, by knowingly aiding, causing, or committing, the unauthorized practice or execution of one or more exclusive rights owned by Play Visions as those rights are set forth in 35 U.S.C. § 271(a), said exclusive rights having been perfected by the award of one or more of:

- United States Patent No. 5,848,946 (the “‘946 Patent”), entitled “Filled, Deformable Bladder Amusement Device With Infinitely Changeable Pliability And Tactility Characteristics,”
- United States Patent No. 7,165,869 (the “‘869 Patent”), entitled “Internally Illuminated Elastomeric Novelty Device With External Projections,” and
- United States Patent No. 7,223,150 (the “‘150 Patent”), entitled “Illuminated Elastomeric Flying Disc and Its Method of Manufacture.”

90. Play Visions’ goods were marked indicating their patent rights. Defendants were, at the very latest date, placed on notice of Play Visions’ patent rights, by letter dated August 19, 2008, receipt of which John L. Deal, Corporate Counsel for Dollar Tree acknowledged in a letter dated August 22, 2008. On information and belief, Dollar Tree continued to sell the accused products thereafter. Play Visions is entitled to and therefore demands damages, costs and attorney’s fees as allowable under 35 U.S.C. §§ 284, 285 and 289, including a trebling of any award.

91. This is an exceptional case for purposes of awarding monetary damages, costs and attorney’s fees.

92. Upon information and belief, as a result of the acts of Defendants, Play Visions has suffered, and will continue to suffer, monetary damages in an amount yet to be determined. Additionally, Play Visions has incurred and will incur liability for costs and attorney's fees.

XIII. THIRD CAUSE OF ACTION—DESIGN PATENT INFRINGEMENT

93. Defendants have willfully committed patent infringement under 35 U.S.C. § 101 et seq., directly, by knowingly aiding, causing, or committing, the unauthorized practice or execution of one or more exclusive rights owned by Play Visions as those rights are set forth in 35 U.S.C. § 271(a), said exclusive rights having been perfected by the award of one or more of:

- United States Patent No. D 535,341 (the “341 Design Patent”), entitled “Elastomeric Tentacle Ball,”
- United States Patent No. D 551,307 (the “307 Design Patent”), entitled “Elastomeric Novelty Ball With Protrusions,” and
- United States Patent No. D 563,493 (the “493 Design Patent”), entitled “Elastomeric Ball Having Protrusions Of Stacked Spheres.”

94. Play Visions' goods were marked indicating their patent rights. Defendants were, at the very latest date, placed on notice of Play Visions' patent rights, by letter dated August 19, 2008, receipt of which John L. Deal, Corporate Counsel for Dollar Tree acknowledged in a letter dated August 22, 2008. On information and belief, Dollar Tree continued to sell the accused products thereafter. Play Visions is entitled to and therefore demands damages, costs and attorney's fees as allowable under 35 U.S.C. §§ 284, 285 and 289, including a trebling of any award.

95. This is an exceptional case for purposes of awarding monetary damages, costs and attorney's fees.

96. Upon information and belief, as a result of the acts of Dollar Tree, Play Visions has suffered, and will continue to suffer, monetary damages in an amount yet to be determined. Additionally, Play Visions has incurred and will incur liability for costs and attorney's fees.

XIV. FOURTH CAUSE OF ACTION—UNFAIR COMPETITION IN WASHINGTON STATE

97. On information and belief, Defendant Dollar Tree offered to sell products substantially identical in appearance to at least the following configurations:

- Play Visions’ “Elastomeric Centipede” sculpture,
- Play Visions’ “Ornamental Design For An Elastomeric Tentacle Ball,”
- Play Visions’ “Ornamental Design For An Elastomeric Novelty Ball With Protrusions,”
- Play Visions’ “ornamental design for an elastomeric ball having protrusions of stacked spheres.”

98. The above described acts of Defendants constitute an unfair or deceptive act or practice and an unfair method of competition in the conduct of trade or commerce in violation of R.C.W. 19.86.020 et seq. which thereby injured Play Visions in its business and property.

99. Defendants’ aforesaid acts have been knowing, willful and without Plaintiff’s permission and have been intended to trade on Play Visions’ goodwill in the State of Washington.

100. Upon information and belief, as a result of the acts of Defendants, Play Visions has suffered, and will continue to suffer, monetary damages in an amount yet to be determined. Additionally, Play Visions has incurred and will incur liability for costs and attorney’s fees.

XV. FIFTH CAUSE OF ACTION—FEDERAL UNFAIR COMPETITION

101. Defendants’ aforesaid products mimic the well-known products of Play Visions lending to the mind of the public a false designation of origin, which is likely to confuse the public into believing that there is an affiliation, connection or association between the source of the Defendant Dollar Tree’s aforesaid product, and the source of Play Visions’ products.

102. Play Visions is likely to be damaged by such confusion as to affiliation, connection or association of the type described. Defendants’ aforesaid products are of an inferior quality to the well-known products of Play Visions.

103. The Defendants' aforesaid acts have been knowing, willful and without Play Visions' prior knowledge or consent and are therefore a violation of the Plaintiff's rights under 15 U.S.C. § 1125(a) [§ 43(a) of the Lanham Act].

104. Upon information and belief, as a result of the acts of Defendants, Play Visions has suffered, and will continue to suffer, monetary damages in an amount yet to be determined. Additionally, Play Visions has incurred and will incur liability for costs and attorney's fees.

**XVI. SIXTH CAUSE OF ACTION—COMMON LAW TRADEMARK INFRINGEMENT OF
TENTACLED TPR TOYS**

105. By reason of Play Visions' continuous use and promotion of toys configured as tentacled TPR toys, as well as the distinctiveness of that mark, consumers associate and recognize toys configured in accord with that mark as representing a single, even if anonymous source or sponsor of goods, and therefore the configuration of tentacle TPR toys is a protectable mark at common law.

106. Play Visions owns and enjoys common law trademark rights in the overall commercial impression and presentation of tentacled TPR toys which are superior to any rights that Dollar Tree may claim in and to the tentacled TPR toys. Play Visions characteristics of the tentacled TPR toys are inherently distinctive, nonfunctional, and have acquired a secondary meaning with the trade and consuming public or they have become distinctive in the minds of purchasers in that the tentacled TPR toys are associated with Play Visions.

107. Defendants' aforesaid products mimic the well-known tentacle TPR toy products of Play Visions to confuse the public into believing that there is an affiliation, connection or association between the source of the Defendants' aforesaid product, and the source of Play Visions' products.

108. Play Visions is likely to be damaged by such confusion as to affiliation, connection or association of the type described. Defendants' aforesaid products are of an inferior quality to the well-known products of Play Visions.

1 109. The Defendants' aforesaid acts have been knowing, willful and without Play
2 Visions' prior knowledge or consent and are therefore a violation of the Plaintiff's rights under
3 Chapter 19.86 RCW Unfair Business Practices — Consumer Protection

4 110. Upon information and belief, as a result of the acts of Defendants, Play Visions
5 has suffered, and will continue to suffer, monetary damages in an amount yet to be determined.
6 Additionally, Play Visions has incurred and will incur liability for costs and attorney's fees.

7 **XVII. SEVENTH CAUSE OF ACTION-UNLAWFUL IMPORTATION**

8 111. The Defendant Greenbrier has imported products on Defendant Dollar Tree
9 Store's behalf that mimic the well-known products of Play Visions lending to the mind of the
10 public a false designation of origin, which is likely to confuse the public into believing that there
11 is an affiliation, connection or association between the source of the Defendants' aforesaid
12 products, and the source of Play Visions' products.

13 112. Play Visions is likely to be damaged by such confusion as to affiliation,
14 connection or association of the type described. Defendants' aforesaid products are of an inferior
15 quality to the well-known products of Play Visions.

16 113. The Defendants' aforesaid acts have been knowing, willful and without Play
17 Visions' prior knowledge or consent and are therefore a violation of the Plaintiff's rights under
18 15 U.S.C. § 1124 [§ 42 of the Lanham Act].

19 114. Upon information and belief, as a result of the acts of Dollar Tree Stores and
20 Greenbrier, in concert and separately, Play Visions has suffered, and will continue to suffer,
21 monetary damages in an amount yet to be determined. Additionally, Play Visions has incurred
22 and will incur liability for costs and attorney's fees.

23 **XVIII. EIGHTH CAUSE OF ACTION—FEDERAL TRADEMARK INFRINGEMENT**

24 115. Upon information and belief, Dollar Tree provided registered product
25 configurations to others not in privity with Play Visions so as to confuse the relevant purchasing
26

1 public as to the source, sponsorship, or affiliation of Play Visions' products and offered for sale
2 and sold the configuration in commerce regulated by Congress.

3 116. Dollar Tree's actions in providing offering for sale and selling the registered
4 product configuration were without the prior knowledge, permission, or consent of Play Visions
5 and there violate Play Visions' exclusive rights under 15 U.S.C. § 1115.

6 117. In accord with 15 U.S.C. §§ 1116 and 1117, Play Visions is entitled to an
7 injunction against further infringement and an award for actual damages it has suffered and all
8 profits, gains, and advantages derived by Dollar Tree as a result of infringement of Play Visions'
9 rights under the registered trademarks.

10 118. Upon information and belief, as a result of the acts of Dollar Tree, Play Visions
11 has suffered, and will continue to suffer, monetary damages in an amount yet to be determined.
12 Additionally, Play Visions has incurred and will incur liability for costs and attorney's fees.

13 **XIX. EIGHTH CAUSE OF ACTION—TRADEMARK DILUTION**

14 119. Upon information and belief, Dollar Tree sales, advertising, distribution of toys
15 which have a shape, style, and overall appearance that is the same as or confusingly similar to
16 that of Play Visions' "Urchin Ball" for registration as a trademark on the Primary Registry of the
17 United States Patent and Trademark Office in the category of "Goods & Services: Novelty Ball
18 Having Elastomeric Protrusions" with registration number 3,070,851 and Play Visions filed the
19 design mark as pictured for registration as a trademark on the Primary Registry of the United
20 States Patent and Trademark Office in the category of "Goods & Services: Plush Toys and Toy
21 Figures" with registration number 3,263,359 causes dilution by lessening the capacity of the
22 trademarks to identify the Play Visions' products in the marketplace.

23 120. Dollar Tree's actions in providing offering for sale and selling the registered
24 product configuration were without the prior knowledge, permission, or consent of Play Visions
25 and there violate Play Visions' exclusive rights under 15 U.S.C. § 1115.

1 121. Upon information and belief, Dollar Tree has and will continue to be unjustly
2 enriched by profits made in connection with their marketing and sale of Dollar Tree toys bearing
3 a shape, style, and overall appearance which is confusingly similar to one or the other of the
4 registered marks.

5 122. Upon information and belief, as a result of the acts of Dollar Tree, Play Visions
6 has suffered, and will continue to suffer, monetary damages in an amount yet to be determined.
7 Additionally, Play Visions has incurred and will incur liability for costs and attorney's fees.

8 **XX. PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff Play Visions prays for the following relief:

10 A. An order entering judgment in favor of Play Visions and awarding damages to
11 Play Visions in the amount of Play Visions' actual damages and any profits accruing to the
12 Defendants attributable to the infringing acts alleged herein, consistent with 17 U.S.C. §§
13 504(a)(1) and (b).

14 B. An order finding that Defendants have infringed Play Visions' copyright and
15 entering judgment in favor of Play Visions and enjoining any further acts of infringement of the
16 copyrights in the Play Visions' "Elastomeric Centipede" sculpture, and further ordering the
17 destruction of all articles used (such as molds or data models) in the acts of infringement,
18 consistent with remedies available under 17 U.S.C. § 503;

19 C. An order preliminarily and permanently enjoining and restraining Defendants,
20 either of their respective agents, servants, employees, attorneys, and all other persons in active
21 concert or in participation with the Defendants, from importing, making, using, selling or
22 offering to sell any product which infringes any claim of the asserted patents, awarding damages,
23 together with interest, to compensate Plaintiff for the past infringement by the Defendants of the
24 asserted patents, and that such award be trebled, and for an award to Plaintiff of all of its costs
25 and reasonable attorney's fees with respect thereto in accordance with 35 U.S.C. §§ 284 and 285,
26

1 and for all of the profits made by the Defendants as a result of its infringing activity in
2 accordance with 35 U.S.C. § 289;

3 D. An order finding that the Defendants have violated the Washington State
4 Consumer Protection Act, R.C.W. 19.86.020 et seq. and an award of damages, together with
5 interest, to compensate the Plaintiff for the Defendants' past acts of unfair competition and
6 misidentification of origin, and that such an award be trebled, and for an award to Plaintiff of all
7 of its costs and attorney's fees with respect thereto in accordance with R.C.W. 19.86.090;

8 E. An order finding that the Defendants have violated § 43(a) of the Lanham Act and
9 preliminarily and permanently enjoining and restraining Defendants, either of their respective
10 agents, servants, employees, attorneys and all other persons in active concert or in participation
11 with the Defendants from making any false designation of origin which is likely to confuse the
12 public, or cause mistake, or to deceive the public as to believing that there is an affiliation,
13 connection or association or the Defendants with the Plaintiff by virtue of a similarity between
14 the Defendants' products and the Plaintiff's impulse or novelty toys and awarding damages in
15 accordance with 15 U.S.C. § 1117(a) including all of the Defendants' profits, damages sustained
16 by the Plaintiff, and the costs of the action including a trebling of such damages and that the
17 court determine that this is an exceptional case and award the Plaintiff its reasonable attorney's
18 fees, and an order pursuant to 15 U.S.C. § 1116 requiring the Defendants to produce all toys
19 made or used in violation of Plaintiff's ornamental design, and of all molds or other articles by
20 means of which such toys may be reproduced for destruction and file and serve a report in
21 writing under oath setting forth in detail the manner and form in which the defendant has
22 complied with the injunction;

23 F. An order finding that the Defendants have violated exclusive trademarks and
24 preliminarily and permanently enjoining and restraining the Defendants, either of their respective
25 agents, servants, employees, attorneys and all other persons in active concert or in participation
26 with the Defendants from violating Play Visions' registered trademarks which is likely to

1 confuse the public, or cause mistake, or to deceive the public as to believing that there is an
 2 affiliation, connection or association or the Defendants with the Plaintiff by virtue of a similarity
 3 between the Defendants' products and the Plaintiff's impulse or novelty toys and awarding
 4 damages in accordance with 15 U.S.C. § 1117(a) including all of the Defendants' profits,
 5 damages sustained by the Plaintiff, and the costs of the action including a trebling of such
 6 damages and that the court determine that this is an exceptional case and award the Plaintiff its
 7 reasonable attorney's fees, and an order pursuant to 15 U.S.C. § 1116 requiring the Defendants
 8 to produce all toys made or used in violation of Plaintiff's exclusive trademark, and of all molds
 9 or other articles by means of which such toys may be reproduced for destruction and file and
 10 serve a report in writing under oath setting forth in detail the manner and form in which the
 11 defendant has complied with the injunction;

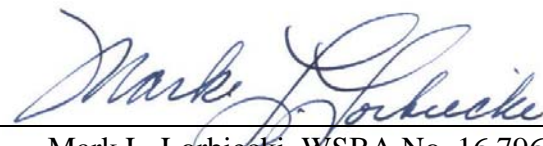
12 G. For other and further relief as is provided by law and that this court deems just
 13 and equitable.

14 **XVII. JURY DEMAND**

15 Plaintiff Play Visions demands a trial by jury of all issues so triable.

16
 17 RESPECTFULLY SUBMITTED this 4th day of June, 2010.

18 BLACK LOWE & GRAHAM^{PLLC}

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 20
 21 

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Attorneys for Play Visions, Inc.

CERTIFICATE OF SERVICE

I certify that on June 4, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Warren Rheaume
DAVIS WRIGHT TREMAINE
1201 Third Avenue, Suite 2200
Seattle, WA 98101

s/ Sarah Gist