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U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

SPANGENBERG, SHIBLEY & LIBER LLP • CLEVELAND, OHIO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DEBORAH D'ANDREA, ET AL

Plaintiffs

v.

SIMON & SCHUSTER, INC., ET AL

Defendants

) Case No. 5:01CV2182
)
) Judge Polster
) Magistrate Judge Gallas

) **FIRST AMENDED COMPLAINT**
)
)

FIRST CLAIM FOR RELIEF

1. This is an action for patent infringement arising under the Patent Act, 35 U.S.C. §1 *et. seq.* This Court has subject matter jurisdiction under 28 U.S.C. §1331 and 1338(a) as hereinafter more fully appears.

2. Defendants are subject to personal jurisdiction in this district because they have caused injury in this district by act both within and outside of the district, and regularly solicit business in this district and/or derive substantial revenue from sales of goods, including infringing goods, in this district.

3. On September 11, 2001, United States Patent No. RE37,362E (hereinafter "the '362 patent," a copy of which is attached hereto as Exhibit A) entitled "Book

Including Edible Articles Such As Candy as a Part of the Pages," was duly and legally issued to plaintiff Deborah D'Andrea as patentee. At all times relevant hereto, plaintiff Deborah D'Andrea was a principal of and was employed by plaintiff Playhouse Publishing, Inc., hereinafter "PPI," an Ohio corporation, with its principal place of business in Akron, Ohio, and was acting in the course and scope of said employment.

4. At all times relevant hereto there existed a licensing agreement between the plaintiffs whereby plaintiff Deborah D'Andrea extended to plaintiff PPI the exclusive right to utilize and derive revenue from the '362 patent.

5. The defendants are infringing the '362 patent by making, selling, offering for sale, and using books embodying the patented invention, and are inducing others to infringe, and/or are committing acts of contributory infringement of one or more claims of the '362 patent, all in violation of 35 U.S.C. §271, and will continue to do so unless enjoined by this Court.

6. The infringing articles made, sold, or offered for sale by the defendants include, but are not limited to, the following books:

- The Cheerios Animal Play Book
- The Cheerios Play Book
- The Cheerios Christmas Play Book
- Cheerios El Libro de Jugar
- The Cheerios Halloween Play Book
- The M&M's Christmas Gift Book
- M&M's Halloween Treat Book
- The M&M's Easter Egg Hunt
- The M&M's Valentine Book
- The M&M's Brand Birthday Book
- Pepperidge Farm Goldfish Fun Book
- Pepperidge Farm Goldfish Counting Fun
- Kellogg's Froot Loops Counting Fun Book
- Kellogg's Froot Loops Color Fun Book
- Sun-Maid Raisins Play Book

7. As a result of the defendants' infringing activities, plaintiffs have been damaged. Consequently, plaintiffs are entitled to compensation for these damages from defendants pursuant to 35 U.S.C. §284 in an amount that cannot be presently quantified, but will be ascertained at trial.

WHEREFORE, plaintiffs pray for judgment against the defendants in an amount in excess of Seventy Five Thousand Dollars (\$75,000.00), together with the costs of this action, which will fully, fairly, and adequately compensate for damages sustained by plaintiffs by reason of the defendants' infringing activities.

A TRIAL BY JURY OF THE MAXIMUM NUMBER OF JURORS ALLOWABLE IS HEREBY DEMANDED AS TO ALL ISSUES SO TRIABLE.



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CERTIFICATE OF SERVICE

A copy of the foregoing has been sent by regular U.S. Mail this 15th day of October, 2001 to the following:

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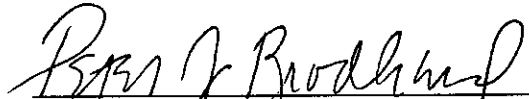
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A handwritten signature in cursive script, appearing to read "Peter J. Brodhead", is written over a horizontal line.

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