

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

HOPKINS

CIV-HURLEY

RESPONSIBLE ME, INC.,
a Florida corporation,

CASE NO.:

06-61736

Plaintiff,

vs.

EVENFLO COMPANY, INC.,
a Delaware corporation;
and JOHN DOES 1-100,

Defendants.

FILED BY: [Signature]
2006 NOV 16 PM 4:11
CLERK OF DISTRICT COURT
S.D. OF FLA.-FT.L.

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

COMES NOW Plaintiff, RESPONSIBLE ME, INC. ("Plaintiff" or "RMI") by and through its undersigned attorneys, and pursuant to Fed. R. Civ. P. 15(a) states as its Complaint for Damages Injunctive Relief, the following:

PARTIES

1. Plaintiff RMI is a corporation formed under the laws of the State of Florida and maintains its principal place of business at 632 East Amelia Street, Orlando, Florida 32803.

2. Defendant EVENFLO, COMPANY, INC. ("EVENFLO") is, upon information and belief, a corporation formed under the laws of Delaware with its principal place of business at Northwoods Business Center 2, 707 Crossroads Court, Vandalia, Ohio, 45377. Upon information and belief, EVENFLO does business and makes sales to retailers and other entities in this federal judicial district and throughout the United States.

3. Defendants JOHN DOES 1-100 upon information and belief do business and make sales to consumers in this federal judicial district and throughout the United States.

JURISDICTION AND VENUE

4. This action arises under the Patent Laws of the United States, that is, Title 35 U.S. Code §271, *et seq.* and as such, this Court has jurisdiction over this cause pursuant to Title 28 U.S. Code § 1338 in that this case involves an infringement of a patent issued by the United States of America Patent and Trademark Office. Moreover, all Defendants engage in a regular course of business in the Southern District of Florida, thereby giving this Court personal jurisdiction over all Defendants.

5. Venue is proper as to EVENFLO pursuant Title 28, U.S. Code § 1391(d).

6. Venue is also proper in this District as to all Defendants pursuant to Title 28, U.S. Code § 1400(b) in that, upon information and belief, all Defendants have manufactured, distributed, sold, caused to be sold, or offered for sale, products which infringe the Patent (as hereinafter defined) and which all parties knew or should have known were to be distributed or sold within this judicial district.

COMMON ALLEGATIONS

7. On November 14, 2006, United States Patent No. 7,134,714 (the "Patent or the '714 Patent"), was duly issued to one Mente Connery, Orlando, Florida by the United States Patent and Trademark Office for highchair helper improvements which can be generally described as a slide away tray device for baby highchair trays. The '714 Patent was filed in November 19, 2002, and is a Continuation-In-Part of U.S. patent application Ser. No. 09/653,879 filed Sep. 1, 2000 now issued as U.S. Pat. No. 6,484,989,

on Nov. 26, 2002 which is a Continuation-In-Part of U.S. patent application Ser. No. 09/138,889 filed Aug. 24, 1998 now issued as U.S. Pat. No. 6,119,996 on Sep. 19, 2000 which claims the benefit of priority to U.S. Provisional Patent Application Ser. No. 60/090,373 filed Jun. 22, 1998.

8. By assignment from said Connery to said RMI dated November 19, 2002, said RMI currently holds all right, title and interest in the Patent.

9. At all times subsequent to November 19, 2002, said RMI has been and is currently the owner of the Patent and all rights appertaining thereto.

10. EVENFLO currently makes, uses, sells, offers to sell or imports the high chairs with the Slide-Away Parent-Organizer Tray, which infringe said Patent of RMI.

11. JOHN DOES currently use, sell, offer to sell or import the high chairs with the Slide-Away Parent-Organizer Tray, which infringe said Patent of RMI.

12. All conditions precedent to the bringing of this action have been satisfied, have occurred, have been waived, or have been excused.

13. As direct and proximate result of Defendants' actions complained of herein, Plaintiff was forced to retain the undersigned law firm and has agreed to pay it a reasonable fee for its services.

COUNT I

PATENT INFRINGEMENT

(AS TO EVENFLO)

14. Plaintiff repeats and realleges each and all of the allegations contained in Paragraphs 1-13 of this Complaint as though set forth fully at length herein.

15. EVENFLO and/or its said subsidiaries and/or its said distributors and

agents set forth in ¶3 above, make, use, sell, and import the high chair products with a Slide-Away Parent-Organizer Tray, as part of its production and sale of various models of highchairs including, but not limited to, the EXPRESSIONS™ HIGH CHAIR, EXPRESSIONS™ PLUS HIGH CHAIR, EXPRESSIONS™ PREMIER HIGH CHAIR, MAJESTIC™ HIGH CHAIR, and MAJESTIC™ DISCOVERY HIGH CHAIR.

16. The sales of high chair models furnished with the slide away tray are facilitated or conveyed thereby.

17. EVENFLO and/or its said subsidiaries and/or its said distributors and agents set forth in ¶3 above have also made, sold, offered for sale, imported and continue to so make and sell said models of the high chair products with a Slide-Away Parent-Organizer Tray.

18. EVENFLO and/or its said subsidiaries and/or its said distributors and agents set forth in ¶3 above have, through said acts, infringed Plaintiff's rights of manufacture and sale.

19. In the absence of injunctive relief, Defendants will continue to violate the Patent Laws of the United States, and to infringe and violate the claims of the '714 Patent to the detriment and injury of the Plaintiff.

20. On information and belief EVENFLO and/or its agents and subsidiaries proceeded with such infringing action subsequent to learning of RMI's patent, therefore, this case is exceptional within the meaning of Title 35, U.S.C. 285, by virtue of Defendants' continuing, willful, and knowing infringement of the Plaintiff's '714 Patent.

21. All prerequisites and conditions precedent to suit have been satisfied or have occurred.

22. By reason of the above-described acts of Defendants, Plaintiff has suffered great harm, including, but not limited to, loss of royalties and past and prospective profits on said models of high chair products with a Slide-Away Parent-Organizer Tray

23. As one consequence thereof, Plaintiff has retained the undersigned attorneys and has agreed to pay them reasonable fees for their services.

COUNT II

PATENT INFRINGEMENT

(AS TO JOHN DOES 1-100)

24. Plaintiff repeats and realleges each and all of the allegations contained in Paragraphs 1-23 of this Complaint as though set forth fully at length herein.

25. On information and belief, JOHN DOES are retailers for EVENFLO and/or one or more of EVENFLO'S said agents/subsidiaries, of said models of high chair products with a Slide-Away Parent-Organizer Tray.

26. JOHN DOES have thereby infringed Plaintiff's exclusive right of sale under the '714 Patent.

27. All prerequisites and conditions precedent to suit have been satisfied or have occurred.

28. By reason of the above-described acts of Defendants, Plaintiff has suffered great harm, including, but not limited to, loss of royalties, past and prospective profits on said models of high chair products with a Slide-Away Parent-Organizer Tray.

COUNT III

UNFAIR PRACTICES IN IMPORT TRADE

Violation of 19 U.S.C. § 1337

(AS TO ALL DEFENDANTS)

29. Plaintiff repeats and realleges each and all of the allegations contained in Paragraphs 1-28 of this Complaint as though set forth fully at length herein.

30. On information and belief, the Defendants imported models of high chairs furnished with the Slide-Away Parent-Organizer Tray into the United States.

31. On information and belief, the Defendants offered for sale of models of the high chairs furnished with the Slide-Away Parent-Organizer Tray after importation.

32. On information and belief, Defendants offered for sale after importation models of high chair products with a Slide-Away Parent-Organizer Tray, which infringes RMI's valid and enforceable '714 Patent.

33. All such trays recited in ¶15 infringed Plaintiff's patent as set forth above.

COUNT IV

**VIOLATION OF FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES
ACT**

(AS TO ALL DEFENDANTS)

34. Plaintiff repeats and realleges each and all of the allegations contained in Paragraphs 1-33 of this Complaint as though set forth fully at length herein.

35. Defendants have engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of a trade or commerce in violation of Sections 501.204(1) and 501.203(3)(c), Florida Statutes by selling models of high chair products with a Slide-Away Parent-Organizer

Tray which unfairly competes with Plaintiff's patent thereby deceiving consumers concerning same.

36. Defendants' unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of trade or commerce described hereinabove is likely to mislead and deceive the public as to the source, sponsorship, approval, or certification of the goods at issue or as to Defendants' affiliation, connection, or association with Plaintiffs.

37. Plaintiff has been aggrieved by Defendants' unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of trade or commerce as described hereinabove.

38. Defendants' actions have been and continue to be intentional, willful, wanton or with reckless disregard for Plaintiff's rights and is detrimental to consumers.

WHEREFORE, Plaintiff prays for judgment as follows:

(a) Awarding the Plaintiff all economic compensatory damages attributable to the infringement including all actual damages suffered by reason of Defendants' wrongful manufacture, importation, sale, and offer of sale of products infringing upon the '714 Patent of Plaintiff and all profits of the Defendants derived therefrom;

(b) Awarding Plaintiff three times the amount of damages pursuant to 35 U.S.C. 284;

(c) Issuing an injunction permanently enjoining Defendants and their agents from any further infringement or violation of Plaintiff's patent;

(d) Declaring this case to be an exceptional one and awarding the Plaintiff its reasonable attorneys' fees and costs in bringing the action, under 35 U.S.C. 285;

(e) Awarding the Plaintiff pre-judgment and post-judgment interest on all damages at the maximum allowable rate;

(f) Declare a violation of 19 U.S.C. § 1337 (d) and direct the articles concerned that were imported by the Defendants to be excluded from entry into United States;

(g) Issue a cease and desist order to Defendants not to violate 19 U.S.C. § 1337 (f);

(h) Pursuant to Section 501.211(1), Florida Statutes, issue a declaratory judgment that Defendants' acts and practices described hereinabove violate the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA") and enjoin by injunction all Defendants who have violated, are violating, or are otherwise likely to violate FDUTPA;

(i) Pursuant to Section 501.211(2), Florida Statutes, award Plaintiff actual damages, plus attorney's fees and court costs as provided in Section 501.2105, Florida Statutes;

(j) Award Plaintiff punitive damages;

(k) All taxable costs;

(l) Award Plaintiff all other relief that this Court may deem just and proper including pre- and post-judgment interest.

DEMAND FOR TRIAL BY JURY

39. Plaintiff demands trial by jury on all issues so triable as a matter of right.

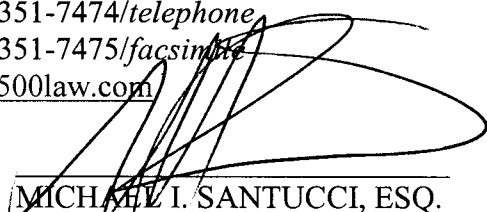
Date: 11/16/06

Respectfully submitted,

Trial Counsel for Plaintiff:

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JS 44 (Rev. 11/05)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

I. (a) PLAINTIFFS

RESPONSIBLE ME, INC., a Florida corporation

(b) County of Residence of First Listed Plaintiff Orange
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Michael I. Santucci, Esq., 500 W. Cypress Creek Rd, Ste 500, Fort Lauderdale, FL 33309, Tel: 954-351-7474

CIV-HURLEY / HOPKINS

DEFENDANTS

EVENFLO COMPANY, INC., a Delaware corporation and JOHN DOES 1-100

County of Residence of First Listed Defendant New Castle
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.

Attorneys (If Known)

06-61736

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Re-filed- (see VI below)
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S).

a) Re-filed Case YES NO
 b) Related Cases YES NO
 (See instructions second page): JUDGE _____ DOCKET NUMBER _____

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

Title 35 U.S. Code §271

LENGTH OF TRIAL via 7 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD

DATE

[Handwritten Signature]

11/16/06

FOR OFFICE USE ONLY

AMOUNT

350.00

RECEIPT #

538738