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Attorney for the Plaintiff

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

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UNIQUE INDUSTRIES, INC.	:
a corporation of Pennsylvania	:
	:
Plaintiff,	:
	:
	Civil Action No.:
	04cv7648
	Judge Buchwald
-against-	:
	:
THE BEISTLE COMPANY	:
a corporation of Pennsylvania	:
	:
and	:
	:
THE MEADOWLANDS MALL INC.	:
dba The Meadowlark Party Shoppe	:
a corporation of Pennsylvania	:
	:
Defendants	:
-----X	

COMPLAINT

Plaintiff for its Complaint against the Defendants, respectfully alleges as follows:

The Parties

1. Plaintiff, Unique Industries, Inc. (hereinafter "Unique") is a corporation

organized and existing under the laws of the Commonwealth of Pennsylvania and has a principal place of business at 2400 S. Weccacoe Avenue, Philadelphia, PA 19148.

2. Plaintiff is informed and believes, and on that basis alleges that Defendant The Beistle Company is a business corporation of the Commonwealth of Pennsylvania believed to have a place of business at 1 Beistle Plaza, Shippensburg, PA and a place of business within this judicial district at 200 Fifth Avenue, Room 458, New York, New York.

3. Plaintiff is informed and believes, and on that basis alleges that Defendant the Meadowlands Mall Inc. dba The Meadowlark Party Shoppe is a business corporation of the Commonwealth of Pennsylvania believed to have place of business at 2 Beistle Plaza, Shippensburg, PA .

4. Plaintiff is informed and believes and on that basis alleges, that Defendants The Beistle Company and The Meadowlands Mall Inc. dba The Meadowlark Party Shoppe are commonly owned and controlled and have transacted business in the State of New York by offering for sale or selling within this Judicial District balloon weights infringing the patent rights of Plaintiff Unique asserted herein.

Jurisdiction and Venue

5. The first and second claims herein are for infringement of Unique's patent rights under the Patent Laws of the United States, 35 U.S.C. § 271, and jurisdiction is conferred by virtue of 28 U.S.C. §§ 1331(a) and 1338(a).

6. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c), 1400 §(b).

COUNT I: INFRINGEMENT OF UNITED STATES PATENT 6,523,798

7. Plaintiff Unique develops and markets within this judicial district and throughout the United States supplies for use at parties. Among the products developed by Unique for use at parties are balloon weights for holding one or more buoyant party balloons in a desired position on a tabletop or the like.

8. On February 25, 2003 the United States Patent and Trademark Office duly issued United States Patent No. 6,523,798 to Unique (the “ ‘798 patent”) for a decorative balloon holder. A true and correct copy of the ‘798 patent is attached hereto as Exhibit A.

9. Plaintiff is informed and believes, and therefore avers that subsequent to the issuance of the ‘798 patent the Defendant The Meadowlands Mall Inc. dba The Meadowlark Party Shoppe has infringed upon the ‘798 patent by, inter alia, offering for sale through the internet decorative balloon weights infringing the ‘798 patent, without the permission or authorization of Unique. Attached hereto as Exhibit B is a true and correct copy of an internet page offering infringing balloon weights by The Meadowlark Party Shoppe

10. Defendant The Meadowlands Mall Inc. dba The Meadowlark Party Shoppe through its related company The Beistle Company has been notified of the ‘798 patent and, upon information and belief, has continued to committed its acts of offering for sale through the internet decorative balloon weights infringing the ‘798 patent with knowledge

of the '798 patent. Such infringement is, therefore, wilful, knowing and deliberate.

11. Plaintiff Unique has suffered substantial damages as a result of the activities of the Defendant The Meadowlands Mall Inc. dba The Meadowlark Party Shoppe; and such damages are irreparable and are likely to continue unless enjoined by this court.

COUNT II: INFRINGEMENT OF UNITED STATES PATENT 6,688,939

12. As a second and complete ground of relief, the plaintiff hereby charges the Defendants The Beistle Company and The Meadowlands Mall Inc. dba The Meadowlark Party Shoppe with infringement of United States Patent 6,688,939; and hereby re-alleges the allegations of paragraphs 1 through 7 as though fully set forth herein.

13. On February 10, 2004 the United States Patent and Trademark Office duly issued United States Patent No. 6,688,939 to Unique (the " '939 patent") for a decorative balloon holder. A true and correct copy of the '939 patent is attached hereto as Exhibit C.

14. Plaintiff is informed and believes, and therefore avers that subsequent to the issuance of the '939 patent the Defendant The Beistle Company has infringed upon the '939 patent by, inter alia, importing into the United States, selling, or causing to be sold, and offering for sale within this judicial district, decorative balloon weights infringing the '939 patent, without the permission or authorization of Unique, and has induced others to infringe said patent by the sale to them of infringing products.

15. Plaintiff is informed and believes, and therefore avers that subsequent to the

issuance of the '939 patent the Defendant The Meadowlands Mall Inc. dba The Meadowlark Party Shoppe has infringed upon the '939 patent by, inter alia, selling, or causing to be sold, and offering for sale within this judicial district decorative balloon weights infringing the '939 patent, without the permission or authorization of Unique.

16. The Defendant The Beistle Company and the Defendant The Meadowlands Mall Inc. dba The Meadowlark Party Shoppe through its related company The Beistle Company have been notified of the '939 patent and, upon information and belief, have continued to committed their acts of infringement with knowledge of the '939 patent. Such infringement is, therefore, wilful, knowing and deliberate.

17. Plaintiff Unique has suffered substantial damages as a result of the activities of the Defendant The Beistle Company and the Defendant The Meadowlands Mall Inc. dba The Meadowlark Party Shoppe; and such damages are irreparable and are likely to continue unless enjoined by this court.

WHEREFORE, Plaintiff prays:

A. That the Defendant The Beistle Company and the Defendant The Meadowlands Mall Inc. dba The Meadowlark Party Shoppe and there respective agents, servants, employees and attorneys and those persons in active concert or participation therewith be permanently enjoined and restrained from marketing, importing, offering for sale, selling, advertising or promoting or distributing in the United States any products infringing

Unique's United States Patent No. 6,523,798 or United States Patent No. 6,688,939.

B. Further, that the Defendant The Beistle Company and the Defendant The Meadowlands Mall Inc. dba The Meadowlark Party Shoppe be ordered:

(i) to deliver up for destruction all protects infringing United States Patent No. 6,523,798 or United States Patent No. 6,688,939, as well as all means for producing, advertising or promoting such infringing products;

(ii) to make diligent efforts to recall all of the infringing products set forth in paragraph (A) already distributed; and

(iii) to file with this court and serve on Plaintiff Unique ten (10) days after the date of the injunction a report in writing and under oath setting forth in detail the matter or form in which Defendant has complied fully with the injunction;

C. That an accounting and judgment be rendered against the Defendant The Beistle Company and the Defendant The Meadowlands Mall Inc. dba The Meadowlark Party Shoppe for:

(i) All profits received by the respective defendant from the importation, offer for sale, or sale of products infringing either of the patents of the plaintiff or, alternatively, a reasonable royalty as provided by 35 U.S.C. §284;

(ii) all profits received by the customers of the defendants for the induced infringement from the resale of products infringing either of the patents of

Unique;

(iii) that the defendants account for and compensate Unique fully for all sales of products of Unique that have been diverted or reduced as a result of the infringement of the defendants;

D. That Unique have and receive its costs in this action, including an award of its reasonable attorney's fees with interest from the date of the filing of this complaint pursuant to 35 U.S.C. §285;

E. That Unique receive interest on its damages awards from the date of injury;

F. That the damages to Unique resulting from the patent infringement by the defendants be trebled pursuant to 35 U.S.C. §284; and

G. Such further relief as the Court deems just and proper.

New York, New York
Dated: September 29, 2004

Respectfully submitted,

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