

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

<b>THE STEP2 COMPANY, LLC,</b>	)	CASE NO. 5:08-cv-2580
	)	
Plaintiff,	)	JUDGE LIOI
	)	
v.	)	<b>AMENDED COMPLAINT FOR</b>
	)	<b>DECLARATORY JUDGMENT OF</b>
<b>PARALLAX GROUP INTERNATIONAL,</b>	)	<b>PATENT NON-INFRINGEMENT AND</b>
<b>LLC,</b>	)	<b>INVALIDITY</b>
	)	
and,	)	
	)	<i>Demand for Jury Trial Endorsed Hereon</i>
<b>BRUCE THRUSH,</b>	)	
	)	
Defendants.	)	

Plaintiff The Step2 Company, LLC (“Step2”), by and through its counsel, files this Complaint against Defendant Parallax Group International, LLC (“Parallax”) and Defendant Bruce Thrush (“Thrush”) (collectively “Defendants”), and hereby avers as follows:

1. This is an action for declaratory judgment that the United States Design Patent No. D543,764 for “RESILIENT MAT” (“the ‘764 Patent”) is invalid and not infringed by Step2.

**THE PARTIES**

2. Plaintiff The Step2 Company, LLC is a limited liability corporation existing under the laws of the State of Ohio, and having a principal place of business at 10010 Aurora-Hudson Road, Streetsboro, Ohio 44241. Step2 makes and sells children’s products and other high quality plastic products. One of Step2’s children’s products is a cushioned play mat with interlocking teeth.

3. Defendant Parallax Group International, LLC is, on information and belief, a limited liability corporation existing under the laws of the State of California, and having a principal place of business at 940 Calle Amanecer, Suite F, San Clemente, California, 92673-6218. On information and belief, Parallax distributes flooring products, including automotive, residential and commercial flooring made from plastic, foam, rubber and carpet. On information and belief, Parallax regularly conducts business in Ohio, including selling its products in this judicial district, and has a distribution network in Ohio and in this judicial district. On information and belief, Parallax derives substantial revenue from the sales of its products in Ohio and in this judicial district. On information and belief, Parallax has purposefully directed contacts with the State of Ohio by contacting Step2, an Ohio limited liability company, and accusing Step2's products of infringing the '764 Patent, and the claims asserted herein arise from Parallax's contacts with the State of Ohio. On information and belief, Parallax has ownership rights in the '764 Patent, which is assigned on its face to Parallax.

4. Defendant Bruce Thrush is, on information and belief, an individual residing at 27542 Calle De La Rosa, San Juan Capistrano, California 92675. On information and belief, Thrush is the President, CEO and owner of Parallax. On information and belief, Thrush and Parallax are alter egos of one another with respect to the acts complained of herein. On information and belief, Thrush, through his company Parallax, regularly conducts business in Ohio, including selling its products in this judicial district, and has a distribution network in Ohio and in this judicial district. On information and belief, Thrush, through his company Parallax, derives substantial revenue from the sales of its products in Ohio and in this judicial district. On information and belief, Thrush has purposefully directed contacts with the State of Ohio by contacting Step2, an Ohio limited liability company, and accusing Step2's products of infringing

the '764 Patent, and the claims asserted herein arise from Thrush's contacts with the State of Ohio. On information and belief, Thrush has ownership rights in the '764 Patent and is the sole inventor listed on the face of the '764 Patent.

### **JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction over this controversy concerning declaratory judgment that the claim of the '764 Patent is invalid and not infringed by virtue of Title 28 U.S.C. Sections 1331, 1338(a), 2201 and 2202.

6. This Court has personal jurisdiction over the Defendants pursuant to the provisions of the Ohio Long Arm Statute, O.R.C. § 2307.382, and the laws of the United States based on at least the following: (a) on information and belief, Defendants regularly solicit and transact business in the State of Ohio and in this judicial district; (b) on information and belief, Defendants contract to supply goods in the State of Ohio and in this judicial district; (c) on information and belief, Defendants have committed acts in the State of Ohio and in this judicial district which constitute a tort; and, (d) on information and belief, Defendants purposefully directed contacts with the State of Ohio and in this jurisdiction by contacting Step2, an Ohio limited liability company, and accusing Step2's products of infringing the '764 Patent, and the claims asserted herein arise from Defendants' contacts with the State of Ohio and their contacts with Step2.

7. Venue is proper in this judicial district pursuant to Title 28 U.S.C. Section 1391.

### **CAUSE OF ACTION**

8. On its face, the '764 Patent appears to have issued on June 5, 2007 and is assigned to Parallax. The '764 Patent has single claim directed to the design for the resilient mat as

shown and described therein. Thrush is the sole inventor listed on the face of the '764 Patent. A true and correct copy of the '764 Patent is attached hereto as Exhibit A.

9. On information and belief, Parallax purportedly assigned to Thrush a ten percent (10%) interest in the '764 Patent on October 1, 2008. On information and belief, this purported assignment was subsequently recorded with the U.S. Patent and Trademark Office on November 3, 2008.

10. On information and belief, the purported assignment from Parallax to Thrush is not valid.

11. On information and belief, the purported assignment from Parallax to Thrush was recorded with the U.S. Patent and Trademark Office after the filing of the original complaint in this case.

12. Step2 makes and sells cushioned play mats with interlocking teeth (the "Step2 Play Mat"). A true and correct copy of a photograph showing the Step2 Play Mat is attached hereto as Exhibit B.

13. The Step2 Play Mat is sold in a number of retail distribution chain stores, including Wal-Mart Stores, Inc. ("Wal-Mart").

14. On information and belief, in the fall of 2008, Defendants contacted Wal-Mart and orally accused the Step2 Play Mat of infringing the '764 Patent. On information and belief, Wal-Mart pulled the Step2 Play Mat from being offered for sale on the shelves of Wal-Mart's stores in response to Defendants' baseless infringement allegations.

15. Defendants subsequently contacted Step2 and again orally accused the Step2 Play Mat of infringing the '764 Patent.

16. On or about October 8, 2008, counsel for Wal-Mart sent Step2 a letter informing Step2 that Wal-Mart had received a claim from Defendants alleging that Wal-Mart's sale of the Step2 Play Mat infringes the '764 Patent. The letter also states that pursuant to the terms of the supply agreement between Wal-Mart and Step2, Step2 is obligated to defend, indemnify and hold Wal-Mart harmless from all claims, liabilities, losses and expenses arising from the sale of Step2's products. The letter further stated that it constituted notice of receipt of a claim. A true and correct copy of Wal-Mart's letter of October 8, 2008 is attached hereto as Exhibit C.

17. On information and belief, Parallax has attempted to enforce the '764 Patent against BJ's Wholesale Club, Inc. and filed suit against BJ's Wholesale Club, Inc. based on alleged infringement of the '764 Patent in a case captioned, *Parallax Group International, LLC v., BJ's Wholesale Club, Inc., et al.*, Civil Action No. 07cv4211 SJO, U.S. District Court for the Central District of California.

18. The '764 Patent is invalid for failure to meet the conditions for patentability specified in 35 U.S.C. § 101 *et seq.*

19. Step2 did not, does not, and will not infringe the '764 Patent by making, using, selling, importing, or offering for sale the Step2 Play Mat.

20. By reason of Defendants' allegations to both Wal-Mart and Step2 that the Step2 Play Mat purportedly infringes the '764 Patent, there is a substantial and continuing justiciable controversy between Step2 and Defendants as to Defendants' rights to threaten or maintain suit for infringement of the '764 Patent, as to the validity of the '764 Patent, and as to whether the Step2 Play Mat infringes the claim of the '764 Patent.

21. Step2 has been and is being irreparably injured and damaged by Defendants improperly claiming that the Step2 Play Mat infringes the '764 Patent, and threatening litigation with respect thereto, when the claims of the '764 Patent are not infringed and are invalid.

22. Defendants' unfounded and improper accusations of patent infringement have damaged Step2 and, unless they are stopped, will continue to damage Step2. Defendants' unfounded and improper accusations of infringement have caused monetary damages to Step2 and will continue to do so.

23. If Defendants are permitted to continue their incorrect assertions that the accused Step2 Play Mat infringes the '764 Patent, the manner and amount of damage to Step2 caused thereby cannot be fully measured or compensated in economic terms, and so cannot be fully or adequately remedied at law.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Step2 prays:

- (a) for a judgment that the claim of the '764 Patent is not infringed by the Step2 Play Mat;
- (b) for a judgment that the '764 Patent is invalid;
- (c) for a permanent injunction against Defendant Parallax, its officers, directors, employees, agents, licensees, servants, successors, affiliates, and assigns, Defendant Thrush, and any and all persons acting in privity with them, from stating, implying or otherwise communicating to others that the Step2 Play Mat infringes the '764 Patent;
- (d) for a permanent injunction against Defendant Parallax, its officers, directors, employees, agents, licensees, servants, successors, affiliates, and



**PLAINTIFF'S DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff The Step2 Company, LLC hereby demands a jury trial on all triable issues.

Respectfully submitted,

Dated: November 4, 2008

By: /s/ John S. Cipolla

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