

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

05 AUG 18 PM 3:12

LOUIS M. KOHUS  
2645 Erie Avenue, 3<sup>rd</sup> Floor  
Cincinnati, Ohio 45208

Plaintiff,

vs.

REGALO INTERNATIONAL, LLC  
14198 Commerce Avenue N.E.  
Suite 600  
Prior Lake, MN 55372

Serve Registered Office:

REGALO INTERNATIONAL, LLC  
3021 Harbor Lane N  
Suite 208  
Plymouth, MN 55447

and

JOHN OR JANE DOE(S) 1 to 100  
a fictitious name currently used to  
designate unknown parties,

Defendants.

Case No. **1:05 CV 544**

Judge **J. DLOTT**

**J. HOGAN**

COMPLAINT FOR PATENT  
INFRINGEMENT AND OTHER  
RELIEF WITH JURY DEMAND  
ENDORSED HEREON

Plaintiff, Louis M. Kohus, for his Complaint against defendants Regalo International, LLC and John or Jane Doe(s) 1 to 100 (collectively referred to hereinafter as "Defendants"), states as follows:

### **NATURE OF ACTION**

1. This is an action for patent infringement arising out of United States Letters Patent No. 4,822,033 issued to Louis M. Kohus, John V. Mariol and David W. Rice on April 18, 1989 (hereinafter referred to as the “ ‘033 Patent ”) and assigned to Plaintiff Louis M. Kohus. This is also an action for unjust enrichment under Ohio law.

### **JURISDICTION AND VENUE**

2. This action arises under the patent laws of the United States, 35 U.S.C. § 101 et seq., particularly § 271, and the law of Ohio regarding unjust enrichment. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1332, 1338(a), and over the non-federal claims pursuant to § 1367(a). Venue is proper in this district pursuant to 28 U.S.C. §1391(b) and (c) and 28 U.S.C. § 1400(b).

### **THE PARTIES**

3. Plaintiff Louis M. Kohus (“Kohus”) is a citizen of the United States and resides in Cincinnati, Hamilton County, Ohio. Plaintiff Kohus is a professional inventor, designer, author, and photographer. Kohus has been engaged in the business of inventing and designing consumer items including, but not limited to, products for various children’s markets for almost the past 25 years. Kohus’s designs, toys, and other products have been widely marketed throughout the United States and around the world. Kohus is a co-inventor of the ‘033 Patent and is the sole owner by assignment of all rights, title and interest in and to the said ‘033 Patent.

4. Upon information and belief, Defendant Regalo International, LLC (“Regalo”), is a Minnesota corporation with its principal place of business located in Prior Lake,

Minnesota. Regalo manufactures, imports, markets, advertises, distributes, sells and/or offers for sale a wide range of products for children, including a so-called ride-on toy device for a baby known as a "Smart Swing Plus," which is the subject of this lawsuit.

5. Upon information and belief, Defendants have manufactured, imported, marketed, advertised, distributed, used, sold and/or offered for sale, and/or induced others to import, make, use, sell and/or offer for sale, in the United States and this judicial district, products which infringe the '033 Patent, as set forth in greater detail herein. Because Kohus is unable to discover the identities of these other infringing persons or entities at this time, they are referred to as John or Jane Doe(s) 1 to 100 ("John or Jane Doc(s)"), a fictitious name used for purposes of pleading.

### **THE PATENTED TECHNOLOGY**

6. On April 18, 1989, the United States Patent and Trademark Office issued U.S. Patent No. 4,822,033, attached hereto as Exhibit A. The invention disclosed in the '033 Patent is a "Baby Swing Support Assembly."

7. The '033 Patent sets forth thirteen (13) claims. At least Claims 1, 2, 4, 5, 6, 7, 9, 10, and 13 are at issue in this Complaint.

8. Claim 1 of the '033 Patent provides as follows:

1. A baby swing support structure for providing enhanced stability and improved access to a baby seat comprising:

a pair of spaced apart upper hubs,  
a pair of spaced apart support legs, each having an upper end, and each said leg extending downwardly and rearwardly from one of said hubs and having a lowermost end which is spaced rearwardly of the hub,

a pair of spaced apart support posts, each having an upper end, each said post secured to and extending downwardly from its upper end from one of said hubs, each said post having a lowermost end which is spaced substantially forwardly of the hub to provide, with said support legs, a stable support for the hubs, and wherein one of said posts is generally aligned in front elevation with one of said legs and the other of said posts is generally aligned in front elevation with the other of said legs,  
a baby seat suspended from said hubs,  
wherein said posts are concave in side elevation to provide ready access to said seat without interference by said posts,  
and wherein said structure has a top and is open at the top, and between said hubs, to provide ready access to said seat by a person reaching forwardly to place a baby into said seat or to remove a baby from said seat.

9. Claim 2 of the '033 Patent provides as follows:

2. The baby swing support structure of claim 1, and further comprising a stabilizing means joining said post lowermost ends adjacent said post lowermost ends.

10. Claim 4 of the '033 Patent provides as follows:

4. The baby swing support structure in accordance with claim 1, and wherein said hub mounts motor means for swinging said seat.

11. Claim 5 of the '033 Patent provides as follows:

5. The baby swing support structure in accordance with claim 1, and wherein each said hub comprises a central upper portion for swingably suspending said seat and a depending portion for securing the upper ends of said legs and posts.

12. Claim 6 of the '033 Patent provides as follows:

6. The baby swing support structure in accordance with claim 1, and wherein the upper ends of said post means extend downwardly and rearwardly, and then curve and extend forwardly to said post lowermost ends to define said concave configuration.

13. Claim 7 of the '033 Patent provides as follows:

7. The baby swing support structure in accordance with claim 6, and wherein said leg lowermost ends are joined with a cross bar.

14. Claim 9 of the '033 Patent provides as follows:

9. The baby swing support structure in accordance with claim 1, and wherein the seat is suspended directly from the hubs, and wherein there is no cross piece connecting the hubs.

15. Claim 10 of the '033 Patent provides as follows:

10. A baby swing support structure for providing enhanced stability and access to a baby seat suspended therefrom comprising:  
a pair of spaced apart upper hubs,  
a pair of spaced apart support legs, each secured to and extending downwardly and rearwardly from one of said hubs and having a lowermost end which is spaced rearwardly of the hub,  
a pair of generally parallel spaced apart support posts, each secured to and extending downwardly from one of said hubs, each said post having a lowermost end which is spaced substantially forwardly of the hub to provide, with said support legs, a stable support for the hubs,  
said posts defining a forwardly open scoop configuration in side elevation to provide ready access to a baby seat suspended from said hubs from the front of said seat and from the sides of said seat without interference by said posts,  
said structure having a top and being open at the top, and between said hubs, to provide ready access to said seat by a person reaching forward to place a

baby into said seat or to remove a baby from said seat.

16. Claim 13 of the '033 Patent provides as follows:

13. The baby swing support structure in accordance with claim 10, and wherein the upper ends of said post means extend downwardly and rearwardly, and then curve and extend forwardly to said post lowermost ends, thereby to provide said forwardly open scoop configuration.

17. By assignment, Kohus owns all rights, title and interest in and to the '033 Patent. The application for the '033 Patent was initially owned by KohusMariol, Inc. ("KMI"). Kohus was a principal of KMI. The patent application was subsequently assigned to James F. Mariol by KMI on August 10, 1988. Then, on April 18, 1989, the patent application matured into U.S. Patent No. 4,822,033. James F. Mariol assigned all rights, title and interest in and to the '033 Patent to Kohus on May 01, 1995.

#### DEFENDANTS' INFRINGING ACTIVITIES

18. Upon information and belief, occurring at various times since at least November 2000, Defendants have manufactured, imported, marketed, advertised, distributed, sold, and/or offered for sale a so-called ride-on toy device for infants known as a "Smart Swing Plus," which is designated as Model Number 2400. Defendants' sales of "Smart Swing Plus" have occurred throughout the United States including Ohio and, in particular, this judicial district.

19. Upon information and belief, the so-called "Smart Swing Plus" incorporate, embody, and/or utilize the features of the invention recited in at least Claims 1, 2, 4, 5, 6, 7, 9, 10, and 13 of the '033 Patent.

20. Upon information and belief, Defendants have induced Defendant(s) John or Jane Doe(s) to import, make, use or sell and/or offer for sale the infringing "Smart Swing Plus" in the United States and this judicial district.

21. Upon information and belief, Defendant(s) John or Jane Doe(s) has (have) imported, made, used or sold and/or offered for sale in the United States and this judicial district the infringing "Smart Swing Plus."

22. Upon information and belief, Defendants have had full knowledge of the '033 Patent at all times mentioned herein.

23. This case is an exceptional case within the meaning of 35 U.S.C. § 285.

### **COUNT ONE**

#### **(Patent Infringement)**

24. Kohus hereby incorporates each and every allegation contained in paragraphs 1 through 23 above, as if the same were fully rewritten herein.

25. On April 18, 1989, the United States Patent and Trademark Office duly and legally issued the '033 Patent. The '033 Patent is valid and in good standing on the records of the United States Patent and Trademark Office. Plaintiff Kohus currently holds all rights, title and interest in and to the '033 Patent.

26. Defendants make, import, use, sell and/or offer for sale certain products, including without limitation the "Smart Swing Plus," which incorporate, embody, and/or utilize the features of the invention set forth in at least Claims 1, 2, 4, 5, 6, 7, 9, 10, and 13 of the '033 Patent. Such acts by Defendants infringe the '033 Patent literally or by equivalence,

have occurred without Plaintiff Kohus's consent, license or authorization of any kind, and are in direct violation of 35 U.S.C. § 271(a).

27. In addition, Defendants have purposely caused, urged or encouraged others, including Defendant(s) John or Jane Doe(s), to make, import, use, sell and/or offer for sale certain products, including without limitation the "Smart Swing Plus," which incorporate, embody, and/or utilize the features of the invention set forth in at least Claims 1, 2, 4, 5, 6, 7, 9, 10, and 13 of the '033 Patent, thereby actively inducing infringement of the '033 Patent in direct violation of 35 U.S.C. § 271(b).

28. Defendant(s) John or Jane Doe(s) has (have) imported, made, used or sold and/or offered for sale certain products, including without limitation the "Smart Swing Plus," which incorporate, embody, and/or utilize the features of the invention set forth in at least Claims 1, 2, 4, 5, 6, 7, 9, 10, and 13 of the '033 Patent. Such acts by Defendant(s) John or Jane Doe(s) infringe the '033 Patent literally or by equivalence, have occurred without Plaintiff Kohus's consent, license or authorization of any kind, and are in direct violation of 35 U.S.C. § 271(a).

29. In addition, Defendant(s) John or Jane Doe(s) has (have) purposely caused, urged or encouraged others to make, import, use, sell and/or offer for sale certain products, including without limitation the "Smart Swing Plus," which incorporate, embody, and/or utilize the features of the invention set forth in at least Claims 1, 2, 4, 5, 6, 7, 9, 10, and 13 of the '033 Patent, thereby actively inducing infringement of the '033 Patent in direct violation of 35 U.S.C. § 271(b).



30. Defendants' acts of infringement have been willful, deliberate, and in reckless disregard of Kohus's rights under the '033 Patent.

31. As a result of Defendants' infringing activities, Kohus has sustained damages, no part or portion of which have been paid by Defendants to Kohus, or to his predecessors-in-interest.

## **COUNT TWO**

### **(Unjust Enrichment)**

32. Kohus hereby incorporates each and every allegation contained in paragraphs 1 through 31 above, as if the same were fully rewritten herein.

33. At all relevant times, Defendants have profited from their sales of the "Smart Swing Plus" which infringe the '033 Patent, without paying any royalties or compensation to Plaintiff Kohus, the owner of the '033 Patent and the co-inventor of the invention therein described and claimed.

34. As a consequence of their receipt and retention of these revenues and profits, Defendants have derived substantial benefit and have been unjustly enriched in an amount to be determined at trial.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for relief as follows:

1. That Defendants be adjudged to have infringed United States Patent No. 4,822,033;
2. That Defendants be adjudged to have willfully and deliberately infringed the '033 Patent;

3. That Defendants be adjudged to have been unjustly enriched at the expense and detriment of Kohus by their infringement of the '033 Patent;

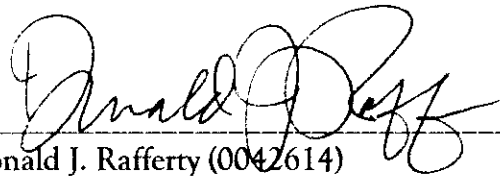
4. That Defendants be ordered to provide a full and complete accounting of all sums received by Defendants by virtue of the infringing activities set forth herein;

5. That Defendants be ordered to account for and pay to Kohus damages adequate to compensate Kohus for Defendants' infringement of, and inducement to infringe, the '033 Patent, but in no event less than a reasonable royalty, together with prejudgment and postjudgment interest;

6. That the damages awarded to Kohus be trebled pursuant to 35 U.S.C. § 284 to compensate him for Defendants' willful infringement;

7. That this action be adjudged to be an exceptional case and that Kohus be awarded his attorneys' fees, interests and costs, pursuant to 35 U.S.C. § 285; and,

8. That Kohus be granted such other and further relief as the Court may deem just and equitable.



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**JURY DEMAND**

Plaintiff Louis M. Kohus hereby demands trial by jury on all issues.

  
Donald J. Rafferty