

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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U.S. CIVIL ACTION NO.
DISTRICT COU.
DISTRICT OF MASS.

HandsOnToys, Inc.,
Plaintiff

V.

The Kroger Co.,
Defendant

COMPLAINT

MAGISTRATE JUDGE *Alexander*

SLI

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff HandsOnToys, Inc., complaining of defendant The Kroger Co., pleads as follows:

THE PARTIES

1. Plaintiff HandsOnToys, Inc. is a Massachusetts corporation, located and doing business at 250 Canal Street, 6th Floor, Lawrence, MA 01840.
2. Defendant The Kroger Co. ("Kroger") is, upon information and belief, an Ohio corporation, having a main office at 104 Vine Street, Cincinnati, Ohio 45201. Kroger represents in SEC filings and on its website that it operates and conducts retail activities in Massachusetts, including the sale of jewelry within this judicial district at Cape Cod Mall, Route 132, Hyannis, Massachusetts 02601; Holyoke Mall at Ingleside, 50 Holyoke Street, Holyoke, Massachusetts 01040; Emerald Square, 999 S. Washington Street, N. Attleboro, Massachusetts 02760; and Silver City Galleria, 2 Galleria Mall Drive, Taunton, Massachusetts 02780. In addition, Kroger has invoked the jurisdiction of this Court by commencing, as plaintiff, a matter entitled *Walgreen Co., Eckerd Corporation, The Kroger Co., Albertson's, Inc., and Hy-Vee, Inc. v. Smithkline Beecham Corporation and Glaxosmithkline P.L.C.*, 2002-CV-10588, which involved, among

other things, an action to recover damages resulting from the defendants' unlawful procurement of a U.S. patent.

JURISDICTION AND VENUE

3. This is a civil action for patent infringement pursuant to 35 U.S.C. §271.

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1338(a). This Court has personal jurisdiction over Kroger.

5. Venue in this District is proper pursuant to 28 U.S.C. §1400.

**COUNT FOR PATENT INFRINGEMENT
U.S. Patent No. 5,157,063**

6. Plaintiff repeats and realleges the allegations set forth in the above paragraphs.

7. HandsOnToys, Inc. is the owner of U.S. Patent No. 5,157,063 of October 20, 1992 entitled "Elastic Modeling Paste" ("the '063 Patent"). A true copy of the '063 Patent is annexed hereto as Exhibit A.

8. Defendant Kroger is making, using, selling, offering for sale, use and/or importation into the United States elastic modeling paste products covered by one or more claims of the '063 Patent without the consent of HandsOnToys, Inc., and accordingly is infringing the '063 Patent. Kroger has been placed on notice of its alleged infringement of the '063 Patent and, upon information and belief, is continuing its infringement in a knowing, willful and intentional manner.

9. The acts of infringement of defendant Kroger are causing irreparable injury and damage to plaintiff HandsOnToys, Inc. and will continue to do so unless permanently restrained by this Court.

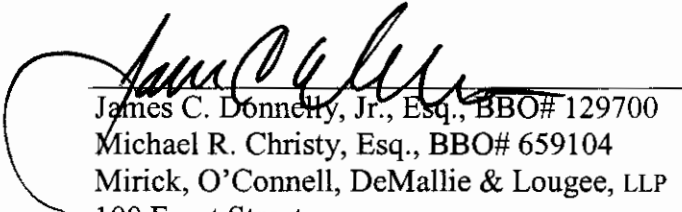
10. HandsOnToys, Inc. has no adequate remedy at law.

WHEREFORE, plaintiff prays that:

1. The Court grant plaintiff a permanent injunction enjoining defendant Kroger, its officers, agents, servants, employees and such other persons who may be in active concert or participation with it or them from further infringement of U.S. Patent No. 5,157,063.
2. The Court award to plaintiff its damages resulting from the infringement pursuant to 35 U.S.C. §284, such damages to be increased as may be allowed.
3. The Court award plaintiff its attorneys' fees pursuant to 35 U.S.C. §285.
4. The Court award plaintiff its costs and such other relief as deemed appropriate in the circumstances.

HANDSONTOYS, INC.

By its attorneys,



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