

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

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LEARNING CURVE BRANDS, INC.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civ. Action No. 3:09-cv-416
	:	
MUNCHKIN, INC.,	:	
	:	
Defendant.	:	
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COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Learning Curve Brands, Inc. (“Plaintiff” of “Learning Curve”) files this Complaint and demand for jury trial seeking relief for infringement by Defendant Munchkin, Inc. (“Munchkin”) of United States Patent No. 7,185,784 (“the ‘784 patent”). This Court previously determined that Munchkin’s Re-Usable Spill-Proof Cup & Lid (“the Original Cup”) infringed the ‘784 patent and entered a Consent Judgment enjoining Munchkin from further infringement of this patent. (*See* Civil Action No. 07-C-0558-C, Dkt. #280.) Munchkin continues to infringe the ‘784 patent and thus has violated the Consent Judgment, by manufacturing, selling and offering for sale its Twist Tight™ Re-usable Spill-Proof Cup & Lid (“the Modified Cup”). Concurrent with this Complaint, Learning Curve has filed a Motion to Hold Munchkin in Contempt of the Court’s Consent Judgment. This Complaint is being filed in the alternative should the Court determine that contempt proceedings are inappropriate in this case because a comparison of Munchkin’s Original Cup and its Modified Cup gives rise to a substantial open issue of infringement.

In support of this Complaint, Learning Curve states and alleges the following:

NATURE OF LAWSUIT

1. This is a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

THE PARTIES

2. Plaintiff Learning Curve is a corporation organized and existing under the laws of the state of Delaware. Learning Curve's principal corporate office is located at 1111 West 22nd Street, Suite 320, Oak Brook, IL 60523. Learning Curve is in the business of making and selling, among other things, feeding products for newborns, infants and toddlers. Learning Curve is the assignee and owner of the patent involved in this lawsuit.

3. Defendant Munchkin is a corporation organized and existing under the laws of the state of California with its principal place of business at 16689 Schoenborn Street, North Hills, California 91343. Munchkin also has a corporate office in Van Nuys, California.

JURISDICTION AND VENUE

4. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.* This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over Munchkin because Munchkin has transacted business within this judicial district and therefore has substantial and continuous contacts within this judicial district; because Munchkin has purposefully availed itself to the privileges of conducting business in this judicial district; and because Munchkin has committed acts of patent infringement in this judicial district.

6. Venue properly lies within this judicial district under 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b). Munchkin has conducted business in this district and has committed acts of patent infringement within this judicial district.

COUNT I – PATENT INFRINGEMENT OF U.S. PATENT NO. 7,185,784

7. Learning Curve realleges and incorporates herein by reference each and every allegation contained in the foregoing paragraphs 1-6 as though fully set forth herein.

8. On March 6, 2007, the ‘784 patent entitled “Drinking Containers” was duly and legally issued to inventors James A. Connors, Jr., David E. Medeiros, George S. Dys, James J. Britt and John A. Hession. The First Years Inc. (“TFY”) was the assignee and owner, and Learning Curve was the exclusive licensee, of the ‘784 patent during the lawsuit involving the Original Cup and at the time the Court entered the Consent Judgment. TFY has since merged into Learning Curve with Learning Curve as the surviving entity and current assignee and owner of the ‘784 patent. Attached as Exhibit A is a true and correct copy of the ‘784 patent.

9. Munchkin’s manufacture, use, sale and/or offer for sale of its Twist Tight™ Re-usable Spill-Proof Cup & Lid constitutes infringement of the ‘784 patent, either directly, indirectly, literally or under the doctrine of equivalents. Munchkin has engaged in the foregoing conduct in the United States without authority from Learning Curve and during the term of the ‘784 patent.

10. Munchkin’s activities violate one or more subsections of 35 U.S.C. § 271.

11. On information and belief, Munchkin’s infringement of the ‘784 patent has been willful and deliberate.

12. Munchkin has caused and will continue to cause Learning Curve irreparable injury and damage by infringing the '784 patent. Learning Curve will suffer further irreparable injury, for which it has no adequate remedy at law, unless and until Munchkin is enjoined from infringing the '784 patent.

13. Learning Curve has suffered economic harm as a result of Munchkin's infringing activities in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Learning Curve seeks the following relief from this Court:

- A. That this Court adjudge and decree that Munchkin has, directly and indirectly, infringed one or more claims of the '784 patent;
- B. A preliminary and permanent injunction enjoining Munchkin and its affiliates, subsidiaries, officers, directors, employees, agents, representatives, licensees, successors, assigns, and all those acting for Munchkin on its behalf, from importing, making, using, selling, and/or offering to sell its Twist Tight™ Re-usable Spill-Proof Cup & Lid, and any other product that would infringe the '784 patent;
- C. An award of damages, together with interest, to Learning Curve in an amount adequate to compensate Learning Curve for Munchkin's infringement of the '784 patent, as provided in 35 U.S.C. § 284;
- D. An adjudication that Munchkin has willfully infringed the '784 patent and increasing the award of damages to Learning Curve up to three times in view of Munchkin's willful infringement;

- E. A declaration that this is an exceptional case under 35 U.S.C. § 285 and that Learning Curve be awarded its attorneys' fees and costs incurred in prosecuting its claims as provided under 35 U.S.C. § 285; and
- F. Such other relief as this Court deems proper.

JURY DEMAND

Learning Curve requests a trial by jury on all issues appropriately triable by a jury.

Dated: June 30, 2009

Respectfully submitted,

MICHAEL BEST & FRIEDRICH LLP

s/ Arthur Gollwitzer III

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