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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

FILED

SEP 26 2014

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INDIANAPOLIS, INDIANA

KM Innovations LLC)	
)	
Plaintiffs,)	
)	Civil Action No. _____
v.)	
)	JURY TRIAL DEMANDED
LTD Commodities LLC,)	
)	
Defendant.)	14-cv-1573 LJM-DML

COMPLAINT

KM Innovations LLC ("KM"), by counsel, for its Complaint against Defendant LTD Commodities LLC (hereinafter "LTD") alleges and states:

Parties

- 1. KM is a limited liability company organized and existing under the laws of the State of Indiana, with its principal place of business at 3892 South Spiceland Road, New Castle, Indiana 47362.
- 2. Upon information and belief, LTD is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business at 2800 Lakeside Drive, Bannockburn, Illinois 60015.

Nature of the Action

- 3. This is an action for trademark infringement and false designation of origin / unfair competition under the Trademark Act of 1946, as amended (The Lanham Act, 15 U.S.C. § 1051 *et seq.*).

Jurisdiction and Venue

4. This Court has subject matter jurisdiction under one or more of the following statutes: 15 U.S.C. § 1121 (actions arising under the Federal Trademark Act); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1332 (diversity), and 28 U.S.C. § 1338 (acts of Congress related to trademarks and pendent unfair competition claims).

5. This Court has personal jurisdiction over LTD because, *inter alia*, LTD has committed, or aided, abetted, contributed to, or participated in, acts of trademark infringement and unfair competition in the State of Indiana and in this Judicial District and has sold its infringing products complained of herein to customers in this Judicial District. Further, LTD regularly solicits business and distributes products to customers in the State of Indiana.

6. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b) and (c) because LTD transacts business within this Judicial District by offering for sale and selling its infringing products in Indiana and KM's trademark rights are being damaged by LTD's acts of infringement in Indiana.

Factual Background

7. KM actively markets, promotes, advertises, and sells a synthetic fiber play ball that is designed to mimic the qualities of a natural snowball (the "KM Synthetic Ball").

8. The actual makeup of the KM SnowBall and the method of manufacturing it are patent pending. KM uses two distinct trademarks to market, promote, and sell the KM Synthetic Ball: SNOWTIME anytime!TM and INDOOR SNOWBALL FIGHT®.

9. KM is the owner of U.S. Trademark Registration No. 4,425,111 for the INDOOR SNOWBALL FIGHT® trademark for use in connection with synthetic fiber play balls.

10. A true and correct copy of KM's U.S. Trademark Registration for the INDOOR SNOWBALL FIGHT® trademark (the "Trademark") is attached hereto as **EXHIBIT A**.

11. In November 2012, KM marketed the KM Synthetic Ball at the Christmas Gift and Hobby Show in Indianapolis, Indiana (the “2012 Christmas Show”).

12. KM won first place at the 2012 Christmas Show from among over 360 vendors promoting their products.

13. A picture of the award ribbon received at the 2012 Christmas Show is set forth below.



14. As a result of winning first place at the 2012 Christmas Show, KM and the KM Synthetic Ball received extensive publicity and the KM Synthetic Ball has since been featured in a variety of media outlets nationwide including television, the internet and printed publications such as:

- a. In July 2013 and December 2013, the KM Synthetic Ball was featured on QVC and the KM Synthetic Ball received a 5-star review out of 5-stars from 102 out of 106 customers that posted reviews about the KM Synthetic Ball;
- b. Morning reporter interviewed Robert Nickel with KTNV-TV (Las Vegas) at the ABC Kids Expo where the KM Synthetic Ball as showcased;

- c. On August 9, 2013, travel and lifestyle expert Jaymes Duke Ballard with WITI-TV (Milwaukee) featured the KM Synthetic Ball in a segment entitled “Cool and Affordable Items”;
 - d. In the October 2013 on-line issue of PARENTGUIDE News Magazine, featured a giveaway from KM. The feature included promotion of the KM Synthetic Ball on Facebook, Twitter, the newsletter and website and included public comments from consumers.¹
 - e. Indy’s Child, Cincinnati Parent and Daytona Parent Magazines included the KM Synthetic Ball in its 2013 holiday gift guide.²
 - f. Washington Times Newspaper and Washington Times Online featured the KM Synthetic Ball in its 2013 holiday gift guide.³
 - g. San Diego Family Magazine featured the KM Synthetic Ball in its 2013 best toys gift guide.
 - h. On February 4, 2014, Disney® used KM’s SNOWTIME anytime!™ product at the premiere of the hit movie FROZEN.⁴ At about the 2:50 minute mark in the video you can see the children holding up the KM Synthetic Ball.
15. KM has spent countless hours and tens of thousands of dollars in marketing, promoting and advertising the KM Synthetic Ball under the Trademark.

¹ <http://www.parentguidenews.com/ForOurFacebookFans/SnowtimeAnytime>

² <http://www.indyschild.com/pdf/GiftGuide.pdf>

³ <http://c.washingtontimes.com/neighborhood/2013-holiday-gift-guide/2013/dec/3/holiday-gift-toys-girls-and-little-ones/>

⁴ <http://www.youtube.com/watch?v=Qy6C4z2VB6I&list=UUYdNtGaJkrtn04tmsmRrWlw&feature=c4-overview>

16. The retail price of the KM Synthetic Ball is Thirty-Nine Dollars (\$39.00) for a carrying case containing forty KM Synthetic Balls or Twenty Dollars (\$20.00) for a carrying case containing twenty KM Synthetic Balls.

17. In 2013, KM sold approximately \$1.9 million of the KM Synthetic Ball and has enjoyed wide success and consumer recognition of the KM Synthetic Ball under the Trademark.

18. LTD is now marketing, promoting, and selling a synthetic fiber play ball using the Trademark.

19. A true and accurate listing of an item "Indoor Snowball Fight Set" now being offered and sold on LTD's website under the mark "Indoor Snowball Fight" is attached hereto as **EXHIBIT B** (the "LTD Product")

20. LTD Product, like the KM Synthetic Ball, is marketed in a carrying case (velvet as compared to plastic) and retails for Nine Dollars and Ninety-Five Cents (\$9.95) for twelve synthetic balls.

21. Upon information and belief, LTD has deliberately misappropriated the Trademark to utilize the goodwill associated with the nationally recognized KM Synthetic Ball to market and profit from the sales of the LTD Product

22. The LTD Product lacks many of the qualities and features of the KM Synthetic Ball

23. Upon inspection after purchase, consumers would find that LTD's Product are of a lesser quality than the KM Synthetic Ball thereby damaging the reputation of the KM Synthetic Ball as consumers would be wrongfully confused into believing that the LTD Product is sponsored by, associated with, or otherwise connected with the KM Synthetic Ball.

24. LTD's use of the Trademark on an inferior product is diluting the Trademark and the goodwill associated with the KM Synthetic Ball.

COUNT I
INFRINGEMENT OF FEDERAL TRADEMARK REGISTRATION NO. 4,425,111

25. KM alleges and incorporates herein paragraphs 1-24 of this Complaint.

26. KM is the owner of United States Trademark Registration No. 4,425,111, registered October 29, 2013, for the INDOOR SNOWBALL FIGHT® trademark for use in connection with synthetic fiber play balls in International Class 28. *See Exhibit A.* This registration is now valid, subsisting, uncancelled and unrevoked.

27. Continuously since on or about November 2012, KM has used its INDOOR SNOWBALL FIGHT® mark in connection with and to identify its synthetic fiber play balls and to distinguish said products from similar products offered by other companies, by, and without limitation, prominently displaying said mark on packaging, advertising, and promotional materials distributed throughout the United States.

28. KM's products sold under the INDOOR SNOWBALL FIGHT® mark are provided nationwide including in the State of Indiana.

29. LTD has infringed KM's mark in interstate commerce by various acts, including, without limitation:

- a. The selling, offering for sale, promotion and advertising of synthetic fiber play balls under the name INDOOR SNOWBALL FIGHT of a type almost identical, yet inferior, to the type of synthetic fiber play balls offered by KM; and

- b. The operation of an Internet Web site, prominently displaying, advertising, selling and promoting synthetic fiber play balls under the infringing INDOOR SNOWBALL FIGHT mark.

30. LTD's use of the infringing INDOOR SNOWBALL FIGHT mark in connection with synthetic fiber play balls is without permission, license, or authority of KM and said use is likely to cause confusion, to cause mistake and/or to deceive a consumer.

31. LTD's use of the infringing INDOOR SNOWBALL FIGHT mark in connection with synthetic fiber play balls has been made notwithstanding KM's well-known and prior established rights in the trademark INDOOR SNOWBALL FIGHT® and with notice of KM's federal registration rights under 15 U.S.C. § 1072.

32. LTD's infringing activities have caused and, unless enjoined by this Court, will continue to cause, irreparable injury and other damage to KM's business, reputation and good will in its federally registered INDOOR SNOWBALL FIGHT® trademark. KM has no adequate remedy at law.

COUNT II
FALSE DESIGNATION OF ORIGIN / UNFAIR COMPETITION
35 U.S.C. § 1125(a)

33. KM alleges and incorporates herein paragraphs 1-32 of this Complaint.

34. LTD has used the designation INDOOR SNOWBALL FIGHT in connection with synthetic fiber play balls in interstate commerce.

35. LTD's use of the designation INDOOR SNOWBALL FIGHT is a false designation of origin, a false or misleading representation of fact which is likely to cause confusion and to cause mistake, and to deceive as to the affiliation, connection, or association of

LTD with KM and as to the origin, sponsorship, or approval of LTD's products and commercial activities by KM.

36. LTD's wrongful activities have caused, and unless enjoined by this Court will continue to cause, irreparable injury and other damage to KM's business, reputation and good will in its INDOOR SNOWBALL FIGHT® trademark. KM has no adequate remedy at law.

Jury Demand

37. KM requests a trial by jury for all issues proper for a jury to decide.

Prayer for Relief

WHEREFORE, KM prays that this Court grant the following relief:

- (a) Judgment that LTD's use of the INDOOR SNOWBALL FIGHT designation for synthetic fiber play balls infringes KM's registered INDOOR SNOWBALL FIGHT® trademark;
- (b) Judgment that LTD committed unfair competition by selling and offering for sale the synthetic fiber play balls under the INDOOR SNOWBALL FIGHT designation;
- (c) An award of LTD's profits and actual damages suffered by KM as a result of LTD's acts of infringement, false designation of origin, and unfair competition, together with interest, and that KM's recovery be trebled, pursuant to Section 35 of the Lanham Act (15 U.S.C. § 1117);
- (d) An Order for LTD to surrender for destruction all labels, packaging, advertisements, and other materials incorporating or reproducing the infringing INDOOR SNOWBALL FIGHT® trademark, pursuant to Section 36 of the Lanham Act (15 U.S.C. §1118);
- (e) An Order preliminarily and permanently enjoining LTD, and its affiliates and subsidiaries, and each of their officers, agents, servants, employees, successors, and assigns and all others in concert and privity with them from using the name INDOOR SNOWBALL FIGHT or any confusingly similar version thereof in connection with the offering of synthetic fiber play

balls, from infringement of U.S. Trademark Registration No. 4,425,111, from unfairly competing with KM, from engaging in unfair and deceptive trade practices and from injuring KM's business reputation and diluting its trademark rights, pursuant to Section 34 of the Lanham Act (15 U.S.C. § 1116);

(f) An Order directing LTD to file with this Court and serve on KM's attorney, thirty (30) days after the date of entry of any injunction, a report in writing and under oath setting forth in detail the manner and form in which LTD has complied with the injunction;

(g) An award to KM of its attorneys' fees, costs and expenses incurred in prosecuting this action, pursuant to Section 35 of the Lanham Act (15 U.S.C. § 1117); and

(h) All other just and proper relief.

Respectfully submitted,

Dated:

9/26/14



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