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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

| | | |
|------------------------------------|---|-------------------------|
| NEWTON ENTERPRISES LTD., |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Jury Trial Demanded |
| |) | |
| SINGLETON TRADING INC. d/b/a ELAMA |) | Case Number 1:17-cv-906 |
| d/b/a BLUE SPOTLIGHT |) | |
| |) | |
| Defendant. |) | |
| |) | |

COMPLAINT

Newton Enterprises Ltd. (“Plaintiff”), by counsel, for its Complaint against Singleton Trading Inc. d/b/a Elama d/b/a Blue Spotlight (“Defendant”), states as follows:

THE PARTIES

1. Plaintiff is a limited company organized under the laws of the Hong Kong with its principal place of business located at Room 702-703, Empire Centre, 68 Mody Road, Tsim Sha Tsui East, Kowloon, Hong Kong.

2. Defendant is a corporation organized under the laws of the State of Delaware with its principal place of business located at 198 Middleton Street, Brooklyn, NY 11206.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this matter pursuant to the provisions of 28 U.S.C. §§ 1331 and 1338, since this action arises in part under the patent laws of the United States, Title 35, United States Code. This Court has supplemental jurisdiction over the related state law claims under 28 U.S.C. § 1367.

4. Defendant is subject to personal jurisdiction in the Southern District of Indiana (the “District”), consistent with the principles of due process and the Indiana Long Arm Statute,

because Defendant has contractually agreed that it is subject to personal jurisdiction in the District. Moreover, Defendant offer its products for sale in this District, has transacted business in this District, has committed and/or induced acts of patent infringement in this District, and/or has placed infringing products into the stream of commerce through established distribution channels with the expectation that such products will be purchased by residents of this District.

5. Defendant has contractually agreed that this District is the exclusive venue of any dispute between the parties. Moreover, venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), 1391(c), 1391(d), and 1400(b).

ALLEGATIONS COMMON TO ALL COUNTS

Plaintiff's Patent

6. On August 4, 2009, U.S. Patent No. 7,568,720 (the “‘720 Patent”) was issued for an invention entitled “WHEELED VEHICLE,” listing Matthew E. Golias as the inventor. A true and correct copy of the ‘720 Patent is attached hereto as **Exhibit A**.

7. The ‘720 Patent covers a wheeled vehicle such as a tricycle able to be folded from an in use position to a carryable storage position.

8. All right, title and interest in and to the ‘720 Patent was assigned by the inventor to Funtastic Limited on December 24, 2013. Subsequently, Funtastic Limited assigned all right, title and interest in and to the ‘720 Patent to Plaintiff on March 13, 2014.

9. Plaintiff is currently the owner of all right, title, and interest in ‘720 Patent.

The Original Dispute Between the Parties

10. Defendant infringed and/or induced others to infringe the ‘720 Patent by making, using, offering to sell, and/or selling in the United States, and/or importing into the United States, a foldable tricycle that practices at least one invention claimed in the ‘720 Patent.

11. By way of example and not limitation, Defendant's Zoom Bike product, a photograph of which is submitted herewith as **Exhibit B**, infringed all of the elements of at least one or more of independent claims 1, 2, 4, and 12 of the '720 Patent.

12. As the result of Defendant's infringement of the '720 Patent, and its refusal to cease that infringement, Plaintiff initiated a lawsuit against Defendant on June 17, 2016. That lawsuit was filed in the United States District Court for the Southern District of Indiana in the suit captioned Newton Enterprises Ltd. v. Singleton Trading Inc. d/b/a Elama d/b/a Blue Spotlight, Case No.: 1:16-cv-01496-JMS-DML (the "Initial Lawsuit").

13. After the filing of the Complaint in the Initial Lawsuit, but prior to service, Plaintiff and Defendant settled all claims asserted by Plaintiff in the Initial Lawsuit pursuant to the terms of a Settlement Agreement that had an effective date of July 26, 2016 (the "Settlement Agreement"). A copy of this Settlement Agreement is filed herewith as **Exhibit C**.

14. After execution of the Settlement Agreement, Plaintiff voluntarily dismissed the Initial Lawsuit without prejudice pursuant to Rule 41(a)(1).

**Defendant's Breach of the Settlement Agreement and
Continued Infringement of the '720 Patent**

15. Under the Settlement Agreement, Defendant was granted a limited license to sell-off its inventory of 3,600 units of the Zoom Bike (collectively, the "Inventory").

16. Aside from the right to selloff the Inventory, the Settlement Agreement required that Defendant immediately and permanently cease making, using, offering to sell, or selling the Zoom Bike and any other product that infringes the '720 Patent.

17. Defendant has had approximately nine (9) months to sell off the Inventory.

18. Upon information and belief, Defendant has sold at least 3,600 units of the Zoom Bike since the execution of the Settlement Agreement and should have exhausted all of its Inventory.

19. Despite the fact that Defendant should have exhausted all of its Inventory, the Zoom Bike continues to be sold on Amazon.com.

20. Plaintiff has made numerous attempts to contact Defendant and inquire as to the amount of Inventory that remains in stock.

21. In a letter from Plaintiff's counsel to Defendant dated March 10, 2017 (a copy of this letter is filed herewith as **Exhibit D**), Plaintiff demanded that Defendant provide a report outlining the number of units of Zoom Bikes sold since the effective date of the Settlement Agreement by no later than March 17, 2017. Plaintiff further indicated that if Defendant did not provide the required information, Plaintiff would understand Defendant's silence to mean that it has sold all 3,600 units and is now selling additional Zoom Bikes in violation of the terms of the Settlement Agreement.

22. Defendant failed to respond to or even acknowledge Plaintiff's March 10, 2017 letter.

23. Upon information and belief, Defendant is selling additional units of the Zoom Bike in excess of the Inventory. The sales of any units of Zoom Bike beyond the Inventory violates the terms of the Settlement Agreement and infringes '720 Patent.

24. Upon information and belief, Defendant has profited through its breach of the Settlement Agreement and infringement of the '720 Patent.

25. On information and belief, Plaintiff has suffered damage as a result of Defendant's breach of the Settlement Agreement and infringement of the '720 Patent.

26. On information and belief, Defendant's breach of the Settlement Agreement and infringement of the '720 Patent was willful and deliberate.

27. In the event that Defendant continues its unlawful activity, Plaintiff will suffer irreparable harm unless Defendant is enjoined from further breach and infringement by this Court.

COUNT I
Infringement of '720 Patent

28. Plaintiff incorporates by reference the allegations of the foregoing paragraphs, inclusive, as if the same were here set out in full.

29. Plaintiff is the owner of all right, title, and interest in the '720 Patent.

30. On information and belief, Defendant has continued to sell the Zoom Bikes after it exhausted the Inventory.

31. On information and belief, Defendant's continued sales of the Zoom Bike infringe each of the elements of one or more claims of the '720 Patent.

32. On information and belief, Defendant's infringement of the '720 Patent was willful and deliberate.

33. On information and belief, Plaintiff has been injured in its business and property rights as a direct and proximate consequence of the acts and practices of Defendant, and has suffered injury and damages for which it is entitled to relief under 35 U.S.C. § 284.

COUNT II
Breach of Settlement Agreement

34. Plaintiff incorporates by reference the allegations of the foregoing paragraphs, inclusive, as if the same were here set out in full.

35. Plaintiff and Defendant entered into the Settlement Agreement on or about July 26, 2016.

36. The Settlement Agreement provided that Defendant was permitted to sell off the Inventory.

37. Other than the limited license to sell off the Inventory, Defendant was required to permanently cease making, using, offering to sell, or selling the Zoom Bike and any other product that infringes the '720 Patent.

38. On information and belief, Defendant breached the Settlement Agreement by continuing to sell Zoom Bikes after it had exhausted the Inventory.

39. On information and belief, Plaintiff has been damaged as the result of Defendant's breach, and it entitled to specific performance and compensatory damages as a result of Defendant's breach.

Relief Requested

Wherefore, Plaintiff prays for relief as follows:

- A. For a judgment declaring that Defendant has infringed the '720 Patent;
- B. For a judgment declaring that Defendant's infringement of '720 Patent has been willful and deliberate;
- C. For a judgment awarding Plaintiff compensatory damages as a result of Defendant's infringement of the '720 Patent and/or breach of the Settlement Agreement, together with interest and costs, and in no event less than a reasonable royalty;
- D. For a judgment awarding Plaintiff treble damages and pre-judgment interest under 35 U.S.C. § 284 as a result of Defendant's willful and deliberate infringement of the '720 Patent;

- E. For a judgment awarding Plaintiff its expenses, costs, and attorneys' fees pursuant to the terms of the Settlement Agreement and/or in accordance with 35 U.S.C. §§ 284 and 285 and Rule 54(d) of the Federal Rules of Civil Procedure;
- F. For a grant of a permanent injunction pursuant to 35 U.S.C. § 283 and/or an award of specific performance pursuant to the terms of the Settlement Agreement, requiring Defendant to immediately and permanently cease making, using, offering to sell, or selling the Zoom Bike and any other product that infringes the '720 Patent; and
- G. For such other and further relief as the Court deems just and proper.

DATED this 24th day of March, 2017

Respectfully submitted,

s/Bradley M. Stohry
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