

**FILED**

JAN 08 2020

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA

U.S. CLERK'S OFFICE  
INDIANAPOLIS, INDIANA

ESTHER A. L. VERBOVSZKY )  
325 N. Falmouth Drive )  
Rocky River, OH 44116 )

CASE NO.: \_\_\_\_\_

JUDGE: \_\_\_\_\_

and )

HUG ME JOEY, LLC )  
325 N. Falmouth Drive )  
Rocky River, OH 44116 )



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Plaintiffs )

v. )

**1 : 2 0 - c v - 0 0 6 1 R L Y - M P B**

DOREL JUVENILE GROUP, INC. )  
d/b/a Maxi-Cosi )  
2525 State Street )  
Columbus, IN 47201 )

**COMPLAINT FOR  
PATENT INFRINGEMENT**

Defendant )

**JURY DEMAND ENDORSED HEREON**

**COMPLAINT FOR PATENT INFRINGEMENT  
(Jury Demand Endorsed)**

NOW COME Plaintiffs Esther A. L. Verbovszky ("EV") and Hug Me Joey, LLC ("HMJ")  
and, for their complaint against Defendant Dorel Juvenile Group, Inc. ("DJGI"), allege as follows:

**THE PARTIES**

1. EV is an individual residing at 325 N. Falmouth Drive, Rocky River, Ohio 44116.
2. HMJ is a limited liability company organized under the laws of Ohio having its principal place of business at 325 N. Falmouth Drive, Rocky River, OH 44116.
3. EV is the Managing Member of HMJ.
4. Upon information and belief, DJGI is headquartered at 2525 State Street, Columbus, IN 47201.

5. Upon information and belief, DJGI is a division or subsidiary of Dorel Industries, Inc., a Canadian corporation with principal places of business in Massachusetts and Indiana, as well as over 20 other countries.

#### JURISDICTION AND VENUE

6. This is an action for patent infringement. The patent claims arise under the patent laws of the United States, specifically 35 U.S.C. §1 et seq. This Court has subject matter jurisdiction over the patent infringement claim by virtue of 28 U.S.C. §§1331 and 1338(a), and 35 U.S.C. §271.
7. Venue is proper in this Court under 28 U.S.C. §1400(b) because DJGI resides in this judicial district.
8. DJGI is subject to personal jurisdiction in this district because DJGI resides within this judicial district and because DJGI has committed acts of infringement within this judicial district.

#### FACTUAL ALLEGATIONS

9. EV has dedicated extensive time to the understanding of breathing problems and digestive troubles related to the positioning of small infants.
10. EV has strived to develop truly unique and innovative products and, in fact, EV is listed as an inventor on 11 Letters Patent.
11. EV is the founder and Chief Executive Officer of HMJ.
12. Since 1998, EV and HMJ have designed, produced and marketed products to abate breathing problems and decrease digestive troubles occurring in poorly positioned small infants during transport.

13. On October 22, 2002, United States Letters Patent No. 6,467,840, entitled "Child's Car Seat Insert" ("the '840 patent") fully and legally issued to EV, as joint inventor, for the aforementioned child's car seat insert. See EXHIBIT 1, a true and accurate copy of the '840 patent as issued.
14. At all times relevant, all rights to the '840 patent, including but not limited to the right to recover for infringement thereunder, have been solely assigned to EV.
15. At all times relevant, EV has licensed HMJ under the '840 patent to make, have made, import, offer for sale and sell the aforementioned child's car seat insert.
16. HMJ has and does manufacture and market a product in commerce under the claims of the '840 patent, namely, the Hug Me Joey child's car seat insert (the "HMJ insert").
17. The packaging of the HMJ insert has been and is marked with the '840 patent number. See EXHIBIT 2.
18. Upon information and belief, DJGI has been and/or is engaged in the manufacture and/or sale of at least the following car seats:
  - Mico 30 Infant Car Seat,
  - Mico Max 30 Infant Car Seat,
  - Mico Max 30 Luxe Sport Car Seat,
  - Mico Max Plus Infant Car Seat,
  - Mico Max Rachel Zoe Luxe Car Seat,
  - Pria 70 with Tiny Fit Car Seat,
  - Pria 85 Max Convertible Car Seat,
  - OnBoard 35 Air 360 Car Seat,
  - OnBoard 35 LT Car Seat,

- OnBoard 35 Car Seat,
- OnBoard 35 Air+ Car Seat,
- OnBoard 35 Air Car Seat,
- Light 'N Comfy 22 Elite Car Seat,
- Ultramax Air 360 Car Seat,
- MultiFit EX Air Car Seat,
- TrioFit 3-in-1 Car Seat,
- Grow and Go Sprint 3-in-1 Car Seat,
- SportFit 65 Convertible Car Seat,
- MultiFit 3-in-1 Car Seat,
- Light 'N Comfy 22 DX Infant Car Seat,
- Light 'N Comfy 22 LX Infant Car Seat, and
- Easy Elite 3-in-1 Convertible Car Seat

(the "Accused Products").

19. Each of the Accused Products is advertised for use with small babies/infants.
20. The description of each of the listed Accused Products found on the respective Dorel website (i.e., Maxi-Cosi, Safety1st and Cosco) includes language to the effect that the seat comes with an "infant insert," "insert cushion(s)," "insert pillow," or "body pillow" or "body insert pillow."
21. At least the Mico Max30 Infant Car Seat (Maxi-Cosi), Pria 85 Max Convertible Car Seat (Maxi-Cosi), and Ultramax Air 360 (Safety1st) came/come with an instruction booklet similarly showing and instructing the use of an "infant insert" within the car seat.

22. DJGI has offered for sale and has sold the Accused Products in this judicial district and elsewhere across the United States.
23. Upon information and belief, each of the Accused Products has an insert to be positioned in the car seat when using the car seat with a small infant.
24. Plaintiff has requested that DJGI confirm that the Accused Products came/come with an “infant insert,” but DJGI has refused to do so.
25. At all times relevant, DJGI has had constructive knowledge of the existence of the ‘840 patent.
26. Upon information and belief, at all times relevant, DJGI has had actual knowledge of the existence of the ‘840 patent.
27. Since at least August 22, 2018, the service date of the complaint in the matter of Case No. 1:18-cv-01813-DAP, captioned Verbovszky et al. v. Dorel Juvenile Group, Inc., in the United States District Court for the Northern District of Ohio, DJGI has had actual knowledge of the HMJ insert and actual notice of the existence and asserted infringement of the ‘840 patent.
28. While the HMJ insert has enjoyed sales success, it has enjoyed less success than it should have enjoyed due to DJGI's infringement of the ‘840 patent.

CLAIM FOR PATENT INFRINGEMENT UNDER 35 U.S.C. §271

29. Plaintiffs incorporate by reference the allegations set forth above as if fully rewritten.
30. DJGI's manufacture and/or importation, and offer for sale, and sales of the Accused Products are without the authorization or approval of EV and/or HMJ.

31. Upon information and belief, DJGI's manufacture and/or import, offers for sale, and sales of each of the Accused Products are direct infringements of the '840 patent in violation of 35 U.S.C. § 271(a).
32. DJGI has been and/or is currently making and/or importing, and offering for sale and selling for use with small infants at least the Mico Max 30 Infant Car Seat, the Pria 85 Max Convertible Car Seat, and the Ultramax Air 360 Infant Car Seat, each of which infringes the '840 patent.
33. The '840 patent includes claims directed to an insert to be positioned in a car seat to prevent the slouching of a small infant when placed in the car seat.
34. The '840 patent includes claims directed to a car seat that includes an insert positioned in said car seat.
35. A sample of one of the Accused Products, the Mico Max 30 Infant Car Seat, was purchased by Plaintiffs and is shown in EXHIBIT 3.
36. As depicted in EXHIBITS 4 and 5, the Mico Max 30 Infant Car Seat includes an insert to be positioned in the car seat when using the car seat with a small infant.
37. As depicted in EXHIBITS 4 and 5, the Mico Max 30 Infant Car Seat is covered by the claims of the '840 patent.
38. DJGI's making and/or importing, offering for sale, and sales of the Mico Max 30 Infant Car Seat is without authority and is a direct infringement of the '840 patent in violation of 35 U.S.C. § 271(a).
39. Another sample of one of the Accused Products, the Pria 85 Max Convertible Car Seat, was purchased by Plaintiffs in December 2019 and is shown in EXHIBIT 6.

40. The Pria 85 Max Convertible Car Seat includes an insert to be positioned in the car seat when using the car seat with a small infant.
41. The Pria 85 Max Convertible Car Seat is covered by the claims of the '840 patent.
42. DJGI's making and/or importing, offering for sale and sales of the Pria 85 Max Convertible Car Seat is without authority, is a direct infringement of the '840 patent, and is in violation of 35 U.S.C. § 271(a).
43. An instruction manual for the Ultramax Air 360 Infant Car Seat was obtained by Plaintiff in 2019 and is shown in EXHIBIT 7. The instruction manual shows an insert to be positioned in the car seat when using the car seat with a small infant, which insert is shown to be substantially similar in structure, function and purpose to the inserts of the Mico Max 30 Infant Car Seat and the Pria 85 Max Convertible Car Seat.
44. The Ultramax Air 360 Infant Car Seat is covered by the claims of the '840 patent.
45. DJGI's making and/or importing, offering for sale and sales of the Ultramax Air 360 Infant Car Seat is without authority, is a direct infringement of the '840 patent, and is in violation of 35 U.S.C. § 271(a).
46. Similar instruction manuals, requiring use of the insert when using the car seat with a small infant and instructing its positioning in the car seat, are provided with the Mico Max 30 Car Seat and the Pria 85 Max Convertible Car.
47. By providing the insert, and instructions requiring use of the insert when using the car seat with a small infant and instructing its positioning in the car seat, DJGI is

actively inducing the infringement of the '840 patent in violation of 35 U.S.C. §271(b).

48. Upon information and belief, DJGI sells inserts only as a component of each of the Accused Products; the inserts are especially made or especially adapted for use in the Accused Products; and the inserts are not a staple article or commodity of commerce suitable for substantial non-infringing use.
49. By providing the insert as a component especially made or especially adapted for use in the Accused Products, and which insert is not a staple article or commodity of commerce for substantial non-infringing use, DJGI is contributorily infringing the '840 patent in violation of 35 U.S.C. §271(c).
50. DJGI will continue to make and/or import, offer for sale, and sell the Accused Products unless enjoined by this Court.
51. DJGI is and has been actively directly infringing, contributing to and inducing infringement of the '840 patent by offering for sale and selling the Accused Products to dealers at wholesale prices, which dealers have then offered for sale and sold, and will continue to offer for sale and sell, the Accused Products to end users. DJGI's infringing activities have injured and threaten future injury to Plaintiffs.
52. DJGI's infringing activities have caused Plaintiffs to lose sales that they otherwise would have made but for the sales of the Accused Products.
53. DJGI's infringing activities are, and have at all times been, deliberate and willful, and with full knowledge of Plaintiffs' patent rights.
54. Plaintiffs are entitled to an award of damages against DJGI for willful patent infringement.



55. Because DJGI's infringement is, and at all times has been, deliberate and willful, and with full knowledge of Plaintiffs' patent rights, this is an exceptional case and Plaintiffs are entitled to recover treble damages from DJGI pursuant to 35 U.S.C. §284.
56. Because DJGI's infringement is, and at all times has been, deliberate and willful, and with full knowledge of Plaintiffs' patent rights, and because this is an exceptional case within the meaning 35 U.S.C. §285, Plaintiffs should be awarded their reasonable attorneys' fees. DJGI's sales of the Accused Products and infringement of the '840 patent have been and continue to be willful.

PRAYER FOR RELIEF / REQUEST FOR REMEDIES

WHEREFORE, Plaintiffs pray for judgment against DJGI as follows:

- A. A finding that DJGI has been and is infringing the claims of the '840 patent by making and/or importing, offering for sale, and selling the Accused Products;
- B. A permanent injunction enjoining DJGI from making and/or importing, offering for sale, and selling any product that infringes upon the '840 patent;
- C. An award of damages adequate to compensate Plaintiffs for DJGI's infringement, but in no event less than a reasonable royalty;
- D. Trebling of such damages because of DJGI's knowing and willful infringement;
- E. An assessment of pre-judgment and post-judgment interest on the damages so computed;
- F. A finding that this is an exceptional case;
- G. An award of reasonable attorneys' fees under 35 U.S.C. § 285;
- H. Costs; and

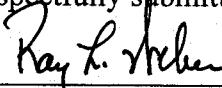
- I. Such other and further legal and equitable relief to which the Court may determine that the Plaintiffs are entitled.

JURY DEMAND

Plaintiffs request a trial by jury on all issues so triable.

Dated: January 7, 2020

Respectfully submitted,



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