

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION  
Civil Action No. 5:14-CV-00093-RLV-DCK**

Hickory Springs Manufacturing Company  
d/b/a HSM,

Plaintiff,

v.

R&D Plastics of Hickory, Ltd.,  
JAKKS Pacific, Inc.,  
JAKKS Sales Corporation, and  
Maui, Inc.

Defendants.

**FIRST AMENDED COMPLAINT FOR  
PATENT INFRINGEMENT**

Plaintiff Hickory Springs Manufacturing Company d/b/a HSM (“HSM”) files this Complaint for Patent Infringement against Defendants R&D Plastics of Hickory, Ltd. (“R&D Plastics”), JAKKS Pacific, Inc. (“JAKKS Pacific”), JAKKS Sales Corporation (“JAKKS Sales”), and Maui, Inc. (“Maui”) (collectively, “Defendants”), stating as follows:

**PARTIES**

1. HSM is a corporation organized and existing under the laws of the State of North Carolina, with its principal place of business at 235 2nd Avenue, N.W., Hickory, North Carolina 28601.

2. On information and belief, R&D Plastics of Hickory, Ltd. is a corporation organized and existing under the laws of the State of North Carolina, with its principal place of business at 345 26th Street Drive S.E., Hickory, North Carolina 28602.

3. On information and belief, JAKKS Pacific, Inc. is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 22619 Pacific Coast Highway, Malibu, California 90265.

4. On information and belief, JAKKS Sales Corporation is a subsidiary of JAKKS Pacific, Inc. and is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 22619 Pacific Coast Highway, Suite 250, Malibu, California 90265.

5. On information and belief, Maui, Inc. is a subsidiary of JAKKS Pacific, Inc. and is a corporation organized and existing under the laws of the State of Ohio, with its principal place of business at 1275 Crescent Street, Youngstown, Ohio 44502.

#### **JURISDICTION AND VENUE**

6. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including but not limited to 35 U.S.C. §§ 271 and 281.

7. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

8. On information and belief, R&D Plastics is a corporation formed and organized under the laws of the State of North Carolina, with its principal place of business located in this District.

9. On information and belief, R&D Plastics has manufactured, used, sold, and/or offered for sale in this District products directly related to the patent infringement cause of action set forth herein. This Court has personal jurisdiction over R&D Plastics because, among other things, R&D Plastics is conducting business in this District and has committed acts giving rise to this action within this District.

10. On information and belief, JAKKS Sales is a corporation registered to conduct business in the State of North Carolina.

11. On information and belief, JAKKS Pacific, JAKKS Sales, and/or Maui participated in R&D Plastics' design of the accused products in this District and purchased the accused products from R&D Plastics in this District.

12. On information and belief, JAKKS Pacific, JAKKS Sales, and Maui have distributed, sold, and/or offered for sale in this District products directly related to the patent infringement cause of action set forth herein. On information and belief, this Court has personal jurisdiction over JAKKS Pacific, JAKKS Sales, and Maui because, among other things, JAKKS Pacific, JAKKS Sales, and Maui are conducting business in this District and have committed acts giving rise to this action within this District.

13. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (d) and 1400(b). On information and belief, R&D Plastics is incorporated in this District, JAKKS Sales is registered to conduct business in this District, and Defendants have committed acts giving rise to this action in this District, including the manufacture, use, distribution, sale, and/or offer for sale of the accused products.

### **FACTUAL BACKGROUND**

14. HSM is a privately held company focused on creating diverse solutions for its ongoing furniture and bedding customers, as well as for rapidly growing transportation, healthcare, packaging and government markets. HSM has decades of experience in foam, metal, wire, converting, and fiber.

15. HSM is an innovator in foam formulations and solutions.

16. On June 10, 2014, the United States Patent and Trademark Office issued United States Patent No. 8,747,173 (“the ’173 patent”), entitled “Flotation Device.” A true and correct copy of the ’173 patent is attached hereto as **Exhibit A**, which is incorporated herein.

17. The ’173 patent discloses and claims a flotation device formed from an extruded flexible cellular foam and methods for making the flotation device.

18. HSM is the owner and assignee of all rights, title, and interest in and to the ’173 patent.

19. HSM, through its subsidiary, manufactures a flotation device that incorporates the invention claimed in the ’173 patent.

20. On information and belief, R&D Plastics makes, uses, sells, and/or offers for sale in the United States products that incorporate the invention claimed in the ’173 patent, including but not limited to foam kickboards marketed as “Maui Kickboard” products.

21. On February 25, 2014, HSM wrote to R&D Plastics providing notice to R&D Plastics that R&D Plastics’ foam kickboard products incorporated HSM technology that was the subject of a pending United States patent application.

22. On June 3, 2014, HSM again wrote to R&D Plastics providing notice to R&D Plastics that the United States Patent and Trademark Office had allowed claims from its patent application, and that the ’173 patent was expected to issue on or about June 10, 2014. HSM requested that R&D Plastics cease all infringing activities and recall and destroy any products incorporating the patented technology upon issuance of the ’173 patent.

23. HSM again wrote to R&D Plastics on June 10, 2014, providing R&D Plastics with a copy of the ’173 patent and requesting that R&D Plastics immediately cease all infringing activities and recall and destroy any products incorporating the patented technology.

24. R&D Plastics thus had knowledge of the '173 patent prior to and upon its issuance on June 10, 2014. R&D Plastics also had knowledge that its actions constituted infringement of that patent. R&D Plastics' infringement of the '173 patent is therefore willful.

25. On information and belief, JAKKS Pacific, JAKKS Sales, and Maui acquire products that incorporate the invention claimed in the '173 Patent from R&D Plastics, including but not limited to foam kickboards marketed as "Maui Kickboard" products. On further information and belief, JAKKS Pacific, JAKKS Sales, and Maui use, sell, and/or offer for sale those products.

26. On information and belief, JAKKS Pacific, JAKKS Sales, and Maui received knowledge of the '173 patent at or about the time of its issuance on June 10, 2014. On further information and belief, JAKKS Pacific, JAKKS Sales, and Maui had knowledge that their actions constituted infringement of that patent. JAKKS Pacific, JAKKS Sales, and Maui's infringement of the '173 patent is therefore willful.

**CLAIM: INFRINGEMENT OF THE '173 PATENT**

27. HSM realleges and incorporates by reference Paragraphs 1-26 above, as if fully set forth herein.

28. R&D Plastics has been and currently is infringing one or more claims of the '173 patent in violation of 35 U.S.C. § 271(a) by making, using, offering for sale, and/or selling in the United States products that embody the patented invention, including for example, foam kickboards marketed as "Maui Kickboard" products.

29. R&D Plastics' infringement of the '173 patent is willful and intentional because R&D Plastics has knowledge of the '173 patent, yet continues to infringe the patent by committing the acts described above.

30. R&D Plastics has been and currently is indirectly infringing one or more claims of the '173 patent in violation of 35 U.S.C. § 271(b) by inducing purchasers and users of R&D Plastics' products to directly infringe one or more claims of the '173 Patent through their use, offers for sale, and/or sales of R&D Plastics' products.

31. On information and belief, R&D Plastics engages in such inducement knowingly, and has done so with knowledge that such activity encourages purchasers and users of the infringing products to directly infringe one or more claims of the '173 patent.

32. On information and belief, JAKKS Pacific, JAKKS Sales, and Maui have been and currently are infringing one or more claims of the '173 patent in violation of 35 U.S.C. § 271(a) by using, offering for sale, and/or selling in the United States products that embody the patented invention, including for example, foam kickboards marketed as "Maui Kickboard" products.

33. On information and belief, JAKKS Pacific, JAKKS Sales, and Maui's infringement of the '173 patent is willful and intentional because these entities have knowledge of the '173 patent, yet continue to infringe the patent by committing the acts described above.

34. On information and belief, JAKKS Pacific, JAKKS Sales, and Maui have been and currently are indirectly infringing one or more claims of the '173 patent in violation of 35 U.S.C. § 271(b) by inducing purchasers and users of the products to directly infringe one or more claims of the '173 Patent through their use, offers for sale, and/or sales of the products.

35. On information and belief, JAKKS Pacific, JAKKS Sales, and Maui engage in such inducement knowingly, and have done so with knowledge that such activity encourages purchasers and users of the infringing products to directly infringe one or more claims of the '173 patent.

36. Defendants' infringement of the '173 patent has caused and will continue to cause HSM both monetary damage and irreparable harm for which it has no adequate remedy at law.

37. Unless this Court enjoins Defendants' infringing conduct, HSM will continue to be irreparably harmed by Defendants' infringement of the '173 patent.

### **PRAYER FOR RELIEF**

Accordingly, Plaintiff Hickory Springs Manufacturing Company d/b/a HSM respectfully requests that this Court enter judgment against Defendants R&D Plastics of Hickory, Ltd., JAKKS Pacific, Inc., JAKKS Sales Corporation, and Maui, Inc. as follows:

- A. A judgment in favor of HSM and against Defendants that Defendants have infringed, either literally or under the doctrine of equivalents, the '173 patent;
- B. A judgment that Defendants willfully infringed the '173 patent;
- C. A preliminary and permanent injunction against further infringement of any of the claims of the '173 patent in any manner by Defendants and all persons in active concert or participation with Defendants pursuant to 35 U.S.C. § 283;
- D. An accounting for damages in an amount adequate to compensate HSM for Defendants' infringement of the '173 patent, including damages for lost profits, but in no event less than a reasonable royalty, including up to treble damages for willful infringement;
- E. A judgment in favor of HSM that this is an exceptional case under 35 U.S.C. § 285, and an award to HSM of its costs, including its reasonable attorney's fees and other expenses incurred in connection with this action;
- F. An award of prejudgment interest under 35 U.S.C. § 284 and post-judgment interest under 35 U.S.C. § 1961 on all damages awarded; and

G. Such other and further relief as this Court or a jury may deem just and proper.

**DEMAND FOR A JURY TRIAL**

Plaintiff Hickory Springs Manufacturing Company d/b/a HSM requests a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure.

This the 24th day of July, 2014.

/s/ Alice C. Richey

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**CERTIFICATE OF SERVICE**

This is to certify that the foregoing **FIRST AMENDED COMPLAINT** was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to counsel of record as follows:

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This the 24th day of July, 2014.

/s/ Alice C. Richey

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