

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

CROREY CREATIONS, INC.

Plaintiff,

Case No. 2:13-cv-10183-GAD-MKM

vs.

Hon. Gershwin A. Drain

JURY TRIAL DEMANDED

CRACKER BARREL OLD COUNTRY STORE, INC.

and

WOOKY ENTERTAINMENT INC.

Defendants.

Thomas N. Young (P22656)
Francine Nesti (P71332)
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Attorneys for Plaintiff

**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT
AND DEMAND FOR JURY TRIAL**

Plaintiff Crorey Creations, Inc. is amending its complaint as a matter of course under Rule 15. The original complaint has not been served.

Plaintiff Crorey Creations, Inc. submits this First Amended Complaint for Patent Infringement and Jury Demand against Cracker Barrel Old Country Store, Inc. and Wooky Entertainment Inc.

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PARTIES

1. Plaintiff Crorey Creations, Inc. is a Michigan corporation having a place of business at 44265 Riverview Ridge Drive., Clinton Township, Michigan 48038, within this judicial district.

2. Plaintiff Crorey Creations, Inc. (hereinafter “Plaintiff” or “Crorey Creations”) is the owner of United States Patent Nos. 7,946,631 (‘631 patent), 8,172,281 (‘281 patent) and D619,150 (‘150 patent), pertaining to devices and kits for making knotted string accessories such as bracelets and necklaces. The patents were issued May 24, 2011, May 8, 2012 and July 6, 2010, respectively, and are in full force and effect. An accurate copy of each patent is attached as Exhibit A.

3. Defendant Cracker Barrel Old Country Store, Inc. (hereinafter “Defendant” or “Cracker Barrel”), based on information and belief, is a Delaware corporation headquartered at 305 Hartmann Drive, Lebanon, TN 37088-0787, and having numerous places of business in this judicial district. Defendant is in the business of *inter alia* selling craft kits and devices and activity kits and devices, such as devices and kits for making knotted string accessories.

4. Defendant Wooky Entertainment Inc. (hereinafter “Defendant” or “Wooky”), based on information and belief, is a Canadian company headquartered at 75 Queen, suite 4100, Montreal, Quebec H3C 2N6, Canada. Defendant is in the business of *inter alia* manufacturing, distributing, selling and marketing craft kits and devices and activity kits and devices, such as devices and kits for making knotted string accessories.

JURISDICTION AND VENUE

5. This action arises under the patent laws of the United States, more specifically 35 U.S.C. § 271 *et seq.*

6. Subject matter jurisdiction in this Court is conferred by 28 U.S.C. §§ 1338(a), 1331 and 1332.

7. This Court has personal jurisdiction over Cracker Barrel and venue is proper under 28 U.S.C. § 1391(b) and (c) as, upon information and belief, Defendant has sold or otherwise offered for sale products accused of infringing the ‘631 patent, the ‘281 patent and the ‘150 patent to consumers from its retail stores and from its website in this judicial district and throughout the country.

8. This Court has personal jurisdiction over Wooky and venue is proper under 28 U.S.C. § 1391(b) and (c). Upon information and belief, Defendant has sold or otherwise offered for sale products accused of infringing the ‘631 patent, the ‘281 patent and the ‘150 patent to consumers through a substantial internet presence amounting to continual and systematic commercial activity in this judicial district.

BACKGROUND

9. Plaintiff developed a line of My Friendship Bracelet Maker® products that are focused on friendship, quality play time and fine motor skills for young girls. Cracker Barrel was one of the retailers that Plaintiff contacted to promote its My Friendship Bracelet Maker® products. On December 2, 2009, Plaintiff sent Cracker Barrel, via Ms. Karen Smith, a letter, attached as Exhibit B, along with a sample of its product, now covered by the ‘631 patent, the ‘281 patent and the ‘150 patent, to introduce the product to Cracker Barrel.

10. Since July 2009, through Plaintiff's own efforts, Plaintiff's patented products have been nationally distributed and sold at some of the country's largest retailers. Plaintiff has developed an interactive web-site (www.myfbm.com) to promote the products, and has used the web-site as a platform to begin campaigns to support children everywhere, including: a pro-friendship/anti-bully campaign (*I Choose Friendship!*); a campaign for juvenile diabetes (*Embracing You with a Circle of Blue!*); a campaign to fight breast cancer (*Kids Join the Fight!*); and a campaign to support children with family in the military (*Operation Kids Serve Too!*). Plaintiff's products have won many awards, including Best Product and Best Vacation Product from Dr. Toy, Top Toy of the Year from Creative Toy Awards, Sterling Fun award from Tillywig Toy Awards, and more.

11. Plaintiff continued to update Cracker Barrel, through Ms. Smith, of the success of the products and continued to offer its My Friendship Bracelet Maker® products to Cracker Barrel.

12. Plaintiff's communications with Cracker Barrel notwithstanding, no rights were ever acquired by or granted to Cracker Barrel to make, have made, sell or offer for sale products covered by Plaintiff's '631 patent, '281 patent and '150 patent.

13. Plaintiff discovered that Cracker Barrel has sold or offered for sale the Friendship Bracelet Fashion Studio, shown in Exhibit C. Plaintiff purchased the product through the website www.crackerbarrel.com, and a photograph of the product is also shown in Exhibit C. The product infringes Plaintiff's '631 patent, '281 patent and '150 patent.

14. Plaintiff sent a letter, attached as Exhibit D, to Cracker Barrel informing Cracker Barrel of its infringement on January 16, 2013. Cracker Barrel responded on January 29, 2013,

indicating that the manufacturer of the product, Wooky, would contact Plaintiff. The email is attached as Exhibit E.

15. Plaintiff discovered that Defendant Wooky is manufacturing for and/or selling the same product with similar packaging to Amazon and Sears. Exhibit F includes a screen shot of the Style Me Up Extra Large Friendship Bracelet Maker offered for sale at www.amazon.com and a screen shot of the same Wooky product offered for sale at www.Sears.com. Wooky is also advertising and offering for sale the infringing product on its own website, www.stylemeup.com, screen shots of which are also included in Exhibit F.

16. Plaintiff discovered that Defendant Wooky would be attending the Toy Fair 2013 in New York, NY February 10-13. Plaintiff sent a letter to Wooky on January 25, 2013, attached as Exhibit G, putting Wooky on notice of Plaintiff's patents and requesting that Wooky not undertake any infringing activities at the Toy Fair 2013.

17. Counsel for Wooky sent a letter dated January 29, 2013, attached as Exhibit H, indicating that Wooky would be indemnifying Cracker Barrel and confirming that Wooky was in receipt of the letter dated January 25, 2013 regarding Plaintiff's patent portfolio.

18. Plaintiff attended the Toy Fair 2013 in New York, NY and found Wooky displaying and offering for sale the infringing product, blatantly disregarding Plaintiff's letter putting Wooky on notice of its patents. Attached as Exhibit I are photos from the Toy Fair 2013 showing the infringing product in Wooky's product display.

COUNTS FOR PATENT INFRINGEMENT

19. Plaintiff incorporates the above allegations as if fully set forth herein.

20. Each of the '631 patent, the '281 patent and the '150 patent was duly and legally issued to Crorey Creations, Inc. as the assignee of sole inventor David Crorey. Crorey Creations, Inc. has the right to sue for and recover damages for infringement of each of the '631 patent, the '281 patent and the '150 patent.

21. Plaintiff has complied with the statutory requirement of placing a notice of the '631 patent, the '281 patent and the '150 patent on its products covered by these patents.

22. Defendant Cracker Barrel has sold or offered for sale products under the names the Friendship Bracelet Maker and the Friendship Bracelet Fashion Studio, which infringe one or more of each of the claims of the '631 patent, the '281 patent and the '150 patent. The products incorporate each and every limitation of at least some of the claims of each of the aforementioned '631 patent, the '281 patent and the '150 patent and, therefore, infringe said patents for the reason that Defendant's actions in offering for sale and selling such products are without right and authority of Plaintiff.

23. Defendant Wooky has manufactured, imported sold or offered for sale products under at least the names the Friendship Bracelet Maker, the Friendship Bracelet Fashion Studio and Style Me Up Friendship Bracelet Maker which infringe one or more of the claims of each of the '631 patent, the '281 patent and the '150 patent. The products incorporate each and every limitation of at least some of the claims of each of the aforementioned '631 patent, the '281 patent and the '150 patent and, therefore, infringe said patents for the reason that Defendant's actions in manufacturing, importing, offering for sale and selling such products are without right and authority of Plaintiff.

24. Defendant Wooky has willfully infringed the '631 patent, the '281 patent and the '150 patent by continuing to sell or offer for sale the infringing products at the Toy Fair 2013 under at least the name Style Me Up Friendship Bracelet Maker after receiving notification of the patents-in-suit. Wooky's knowledge of the patents-in-suit is established in the letter from Wooky's counsel in Exhibit H. Photos of the product being offered for sale in spite of such knowledge of the patents-in-suit are provided in Exhibit I.

25. Plaintiff Corey Creations has been and will continue to be damaged by Defendants' activities as aforesaid in an amount which can only be determined through an accounting; Plaintiff is without an adequate remedy at law to prevent further infringement.

PRAYER FOR RELIEF

Wherefore, Corey Creations, Inc. prays for the following relief:

- A. A preliminary and permanent injunction against continued infringement of the '631 patent, the '281 patent and the '150 patent by Defendant Cracker Barrel and all persons in privity and/or active association therewith;
- B. A preliminary and permanent injunction against continued infringement of the '631 patent, the '281 patent and the '150 patent by Defendant Wooky and all persons in privity and/or active association therewith;
- C. An accounting for and award of damages including profits lost by Plaintiff as a result of Defendant Cracker Barrel's sale and offers for sale of infringing products in the United States;

- D. An accounting for and award of damages including profits lost by Plaintiff as a result of Defendant Wooky's manufacture, importation, sale and offers for sale of infringing products in the United States;
- E. If appropriate, an award of treble damages against Defendant Wooky pursuant to 35 U.S.C. § 284 on account of Defendant's willful infringement of the '631 patent, the '281 patent and the '150 patent;
- F. An assessment of interest on the damages so computed;
- G. An award of Plaintiff's costs, expenses and attorney fees in the action (e.g., 35 U.S.C. § 285); and
- H. Such other and further relief as the Court deems appropriate.

DEMAND FOR JURY TRIAL

Crorey Creations, Inc. demands trial by jury as to all issues triable by jury in this case as a matter of right.

Respectfully submitted,

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Dated: February 15, 2013

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