

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JFJ Toys, Inc, d/b/a/D&L Company and Fred Ramirez.)	
)	
Plaintiffs.)	COMPLAINT
)	
vs.)	Civil Action No: 8:10-cv-00019
)	
Five Below, Inc., Tom Vellios, David Schlessinger, Design International Group, Inc., Lucky Group USA, Inc., William Shou-Chih Yeh, And JOHN DOES 1-20,)	
)	
Defendants.)	
)	

COMPLAINT

JFJ Toys, Inc. d/b/a D&L Company (“D&L”) and Fred Ramirez (“Mr. Ramirez”) (collectively, the “Plaintiffs”), allege as follows:

NATURE OF THE ACTION

1. D&L is the manufacturer and distributor of an award-winning children’s toy product that is sold under the mark STOMP ROCKET (the “Word Mark”). The product—which may be referred to generically as a compressed air rocket or just an air rocket—was first sold under the Word Mark in the early 1990s by Mr. Ramirez, sole owner of D&L. Mr. Ramirez adopted the mark STOMP ROCKET as a suggestive reference to one of several methods by which users may

launch an air rocket that is powered by a cylinder- or bladder-type air pump. STOMP ROCKET brand air rocket toys not only teach children about the science of motion and flight, but they also generate positive competitive games and recreational activities. STOMP ROCKET is an award-winning product that is loved by parents, children and teachers alike.

2. In a wanton effort to exploit the goodwill associated with Plaintiff's STOMP ROCKET brand name, Defendants Five Below, Inc. ("Five Below"), Design International Group, Inc. ("DIG"), and Lucky Group USA, Inc. ("Lucky Group USA"), along with the President of DIG and Lucky Group USA, William Shou-Chih Yeh ("Mr. Yeh") and the co-founders and principals of Five Below, Tom Vellios ("Mr. Vellios") and David Schlessinger ("Mr. Schlessinger"), arranged for the manufacture, distribution, and retail sale of knock-off SUPER STOMP ROCKET products. These products were of lesser quality than Plaintiffs' goods, and they bore the copyrighted packaging, distinctive trade dress, and Word Mark of the Plaintiffs. Over the course of all or part of 2008, Defendants DIG and Lucky Group USA developed, manufactured, imported into the United States, and distributed thousands of these fraudulently-named and packaged toys, selling them to Defendant Five Below, and, upon information and belief, to other unidentified retail outlets ("John Does 1-20"). This was a massive, fraudulent enterprise, with Defendant Five Below alone selling almost 40,000 counterfeit SUPER STOMP ROCKET kits to unsuspecting consumers. Even after demand by D&L's attorney that it cease its infringing activities, Five Below refused to stop unless Plaintiffs swore off pursuit of their statutory legal remedies, a proposition they expressly rejected.

3. The infringement of Plaintiffs' rights by Defendant Five Below is particularly egregious because Mr. Vellios and Mr. Schlessinger were previously customers of D&L. Thus, Mr.

Vellios and Mr. Schlessinger knew or should have known that Lucky Star's SUPER STOMP ROCKET kits were fraudulently named and packaged and that they were manufactured and sold in violation of D&L's legitimate copyright, trade dress, and trademark rights.

4. As set forth below, Defendants' actions constitute intentional copyright infringement in violation of the federal Copyright Act of 1976, trademark infringement and unfair competition in violation of the federal Lanham Act, as well as trademark infringement, unfair competition, unfair trade practices, unjust enrichment, and civil conspiracy under the common law of Maryland.

5. By this action, Plaintiffs seek fair redress for Defendants' infringement of its copyright and misuse and infringement of its trademark and trade dress, including damages and injunctive relief, as allowable under Maryland and federal laws.

THE PARTIES

6. Plaintiff JFJ Toys is a Delaware Corporation with a business address in Porterville, CA. D&L Company is a fictitious business name of JFJ Toys, as registered with Tulare County, CA.

7. Plaintiff Fred Ramirez is a citizen and resident of Camp Nelson, California.

8. On information and belief, Defendant Lucky Group USA is a California corporation that is a member of, and U.S. importer for, Lucky Group International ("Lucky Group International"), a multinational, family-owned Taiwanese corporation in the business of developing, sourcing, manufacturing, and marketing more than 80,000 products worldwide, including novelties, toys, costumes and the like.

9. On information and belief, Defendant DIG is a California corporation that is a member of, and functions as the United States marketing and distribution arm of, Lucky Group International.

DIG sells to Defendant Five Below and, on information and belief, to numerous other retail outlets throughout the United States and the world, including John Does 1-20. Among the products sold to Five Below are the knock-off SUPER STOMP ROCKET kits.

10. On information and belief, William Yeh is a resident of the state of California. He is the President and an owner of DIG and Lucky Group USA.

11. On information and belief, Five Below is a Pennsylvania corporation with almost 80 retail outlets throughout the United States. In the state of Maryland, Five Below operates stores in Silver Spring, Waldorf, Rockville and Laurel, Maryland. Five Below sells thousands of items, generally priced between one and five dollars and particularly targeting pre-teens and teenagers.

12. On information and belief, Mr. Vellios is a citizen and resident of Pennsylvania. He is the co-founder, CEO and an owner of Five Below. He is also the former President and CEO of Zany Brainy, Inc., a defunct Pennsylvania corporation that specialized in selling educational toys and multimedia learning devices (“Zany Brainy”). Zany Brainy was a customer of D&L’s STOMP ROCKET kits.

13. On information and belief, Mr. Schlessinger is a citizen and resident of Pennsylvania. He is the co-founder, President and owner of Five Below. He is also the former founder and CEO of Zany Brainy.

14. On information and belief, John Does 1-20 are additional, unidentified companies who are retail outlets or other resellers, in the U.S. and/or throughout the world, of knock-off SUPER STOMP ROCKET kits that are acquired from DIG and/or Lucky Group USA. The true names and identities of John Does 1-20 are currently unknown to the Plaintiffs. If necessary, Plaintiffs

will seek leave of the Court to amend the Complaint to state the true names and identities of John Does 1-20 when this information ascertained.

JURISDICTION AND VENUE

15. This is a civil action seeking monetary, declaratory and injunctive relief for trademark infringement, unfair competition and unfair trade practices under the Lanham Act, 15 U.S.C. §1001, for copyright infringement under the Copyright Act of 1976, as amended, 17 U.S.C. §101, *et. seq.*, and for violation of the laws of the State of Maryland, Md. Code Com. Law, §13-301 *et. seq.*, governing common law trademark rights and unfair competition occurring in the State of Maryland.

16. On information and belief, this court has personal jurisdiction over Defendant Five Below pursuant to the laws of the State of Maryland, including Maryland's long arm statute, Md. Cts & Jud. Proc. Code Ann. §6-103(b)(1)-(5), as a result of contacts with the forum by Five Below and/or its agent(s), including the transaction of business in the state, the contracting to supply and sell goods in the state, the derivation of substantial revenue from goods used or consumed in the state, the possession of real property in the state, the causation of tortious injury in the state by acts or omissions within the state, and, in view of Five Below's regular doing and solicitation of business in the state and its derivation of substantial revenue from goods used or consumed in the state, by the causation of tortious injury within or outside of the state by act or omission outside the state.

17. On information and belief, this court has personal jurisdiction over Defendants Mr. Vellios and Mr. Schlessinger pursuant to the laws of the State of Maryland, including Maryland's long arm statute, Md. Cts & Jud. Proc. Code Ann. §6-103(b)(1) and (2), as a result of

their ownership and operation of Five Below and their contacts with the forum, including the transaction of business in the state, the contracting to supply and sell goods in the state, the derivation of substantial revenue from goods used or consumed in the state, the causation of tortious injury in the state by act or omission in the state, and, in view of the Defendants' regular doing and solicitation of business in the state and/or their derivation of substantial revenue from goods used or consumed in the state, by their causation of tortious injury within or outside of the state by act or omission outside the state.

18. On information and belief, this court has personal jurisdiction over Defendant DIG pursuant to the laws of the State of Maryland, including under Maryland's long arm statute, Md. Cts & Jud. Proc. Code Ann. §6-103(b)(1)–(4), as a result of contacts with the forum by DIG and/or its agent(s), including the transaction of business in the state, the contracting to supply and sell goods in the state, the derivation of substantial revenue from goods used or consumed in the state, the causation of tortious injury in the state by act or omission in the state, and in view of DIG's regular doing and solicitation of business in the state and/or its derivation of substantial revenue from goods used or consumed in the state, by the causation of tortious injury within or outside of the state by act or omission outside the state.

19. On information and belief, this court has personal jurisdiction over Defendant Lucky Group USA pursuant to the laws of the State of Maryland, including under Maryland's long arm statute, Md. Cts & Jud. Proc. Code Ann. §6-103(b)(1)–(4), as a result of contacts with the forum by Lucky Group USA and/or its agent(s), including the transaction of business in the state, the contracting to supply and sell goods in the state, the derivation of substantial revenue from goods used or consumed in the state, the causation of tortious injury in the state by act or omission in

the state, and, in view of Lucky Group USA's regular doing and solicitation of business in the state and/or its derivation of substantial revenue from goods used or consumed in the state, by the causation of tortious injury within or outside of the state by act or omission outside the state.

20. On information and belief, this court has personal jurisdiction over Defendant Mr. Yeh pursuant to the laws of the State of Maryland, including Maryland's long arm statute, Md. Cts & Jud. Proc. Code Ann. §6-103(b)(1) and (2), as a result of his active management of Defendants DIG and Lucky Group USA and his contacts with the forum, including the transaction of business in the state, the contracting to supply and sell goods in the state, the derivation of substantial revenue from goods used or consumed in the state, the causation of tortious injury in the state by act or omission in the state, and, in view of Mr. Yeh's regular doing and solicitation of business in the state and/or his derivation of substantial revenue from goods used or consumed in the state, by the causation of tortious injury within or outside of the state by act or omission outside the state.

21. This court has subject matter jurisdiction to hear Plaintiffs' copyright, trademark infringement and unfair competition claims under 17 U.S.C. §101 *et seq.*; 15 U.S.C. §1125(a); and 28 U.S.C. §§1331 and 1338.

22. This Court has supplemental jurisdiction over the related state law claims asserted herein pursuant to 28 U.S.C. §1367.

23. Venue of this action is proper pursuant to 28 U.S.C. §§ 1400(a) and 1391(b).

FACTS

Plaintiffs' STOMP ROCKET- History

24. In 1992, Fred Ramirez began marketing a children's toy he called STOMP ROCKET. The toy consists of two parts: a rocket and a launcher. The rocket is constructed from a tube made of hollow plastic or soft foam (depending on model type and target age group), with one end open and one end closed by a curved "nose." "Fins" or "wings" made from either plastic or foam (again, depending on model) are attached to the lower end of the tube. The fins provide the rocket with stability during flight. The launcher consists of a hard plastic tube that is connected by flexible tubing to a hollow plastic cylinder, or "air bladder." Importantly, the launcher tube is just slightly smaller than the rocket tube; it must be tight enough to prevent pressure-releasing air leakage but loose enough to ensure that the rocket will move smoothly along the launcher tube during liftoff.

25. Ramirez's STOMP ROCKET employs relatively simple technology. Launch proceeds in three stages. First, air pressure inside the launcher tube is increased by a user's rapid compression of the air bladder—usually by squeezing, stepping, or dropping something heavy on it. This causes air within the bladder to quickly empty into the launcher tube. Second, increased air pressure inside the launcher tube forces the rocket tube to accelerate along the launcher tube. Third, air is expelled from the bottom of the rocket tube as the rocket tube is propelled or "lifted off" from the end of the launcher tube.

26. Over the years, D&L produced several versions of its STOMP ROCKET brand air rocket toys, including the STOMP ROCKET, SUPER STOMP ROCKET, JUNIOR STOMP ROCKET and ULTRA STOMP ROCKET (each, a "Sub-brand Mark"). The kits vary in the number of rockets included, the type of materials used in manufacturing, the projectile flight path (100'-400') and the targeted age group (3 and up to 8 and up). STOMP ROCKETS quickly became a

hit not only with children, but also with parents and teachers, because they are fun and enable kids to learn about energy, motion and flight. STOMP ROCKETS gained a reputation for being superior to other commercially-available air rocket toys, in large part because D&L has engineered the clearance between its launcher tubes and its rocket tubes specifically to ensure easy liftoff and optimal flight performance.

27. Over the years, STOMP ROCKET brand air rocket toys have sold more than 3.5 million units and have been honored with many prestigious awards, including those from iParenting Media (Hot Toy and Excellent Product Awards) and Creative Child Magazine (Top Toy of the Year, Seal of Excellence and Preferred Choice Awards). According to its official website, STOMP ROCKET brand air rockets have also been credited by customers for their ability to keep children of all ages entertained for hours, for engaging special needs children and teaching them socialization skills, and for their simple and high quality craftsmanship.

STOMP ROCKET Trademarks, Trade Dress and Copyrights that Defendants Infringed

28. On February 2, 1999, STOMP ROCKET was registered with the United States Patent and Trademark Office (“PTO”), under U.S. Registration No. 2,221,554, for use in connection with “toys, namely, flying winged tubes and structural parts therefor” (the “Registration”). The Registration was renewed on June 26, 2008. See Exhibit 1. Under Section 7(b) of the Federal Lanham Act, 15 U.S.C. §1057(b), the Registration constitutes prima facie evidence of the validity of the Word Mark, of Mr. Ramirez’s ownership of same, and of Mr. Ramirez’s exclusive right to use the Word Mark in commerce on or in connection with the goods specified in the Certificate of Registration. In addition, on October 30, 2009, the Registration became incontestable under 15 U.S.C. §1065. Subject to certain statutory limitations, the Registration

now constitutes conclusive evidence of the validity of the STOMP ROCKET mark, of Mr. Ramirez's ownership of same, and of Mr. Ramirez's exclusive right to use the Word Mark in commerce on or in connection with the goods specified in the Certificate of Registration.

29. By virtue of D&L's substantially exclusive, continuous, and long standing use of the Word Mark pursuant to an exclusive license from Mr. Ramirez, the Word Mark has become a strong identifier of the source of Plaintiffs' products, symbolic of the extensive goodwill that has become associated therewith.

30. Since at least as early as December 1, 2006, D&L has also used the distinctive Sub-brand Mark SUPER STOMP ROCKET in U.S. commerce, on and in connection with a deluxe version of its STOMP ROCKET brand air rocket toy. By virtue of D&L's substantially exclusive, continuous, and long standing use of SUPER STOMP ROCKET pursuant to an exclusive license from Mr. Ramirez, the wording SUPER STOMP ROCKET has become a strong identifier of the source of Plaintiffs' products, symbolic of the extensive goodwill that has become associated therewith.

31. The packaging of D&L's SUPER STOMP ROCKET brand air rocket toys includes a distinctive design version of the SUPER STOMP ROCKET mark (the "Design Mark"). The Design Mark incorporates the Sub-brand Mark SUPER STOMP ROCKET presented in bright yellow with red shadowing, with the STOMP ROCKET portion of the wording superimposed over a black parallelogram having a purple border on the left and bottom edges, which border is ornamented with yellow dots and red stripes, triangles, and a trapezoid. The Design Mark further identifies the source of STOMP ROCKET brand air rocket toys. See Exhibit 2.

32. The packaging of Plaintiffs' SUPER STOMP ROCKET kit also features a distinctive and primarily nonfunctional combination of design elements that collectively create a particular trade dress (the "Trade Dress"). The front panel of the Trade Dress contains the following elements: (a) dimensions of approximately 9.5" in width and 11.5" in height; (b) the Design Mark, which incorporates both the STOMP ROCKET Word Mark and the SUPER STOMP ROCKET sub-brand, occupying the upper left portion of the panel; (c) an enlarged image of Plaintiffs' red and yellow plastic air rocket in flight, occupying the middle- and upper-right portions of the panel; (d) the photographic images of two young boys, one jumping on the air bladder of the STOMP ROCKET toy, the other kneeling next to the rocket launcher, holding a rocket in each hand while pointing skyward toward Plaintiffs' red and yellow plastic rocket in mid-flight, occupying the middle-left and lower-left portions of the panel; (e) a distinctive red, blue, yellow, and white graphic presentation of certain descriptive data occupying the lower right portion of the panel; and (f) background art that is suggestive of an outdoor environment, with bright green coloration along the bottom of the panel, fading to a bright yellow midsection, fading to a blue sky with white clouds along the top of the box. See Exhibit 3.

33. The side and top panels of the Trade Dress contain the following additional elements: (g) the same photographic image of a young boy jumping on the air bladder that appears on the front panel; (h) the Design Mark; and (i) the same enlarged image of Plaintiffs' red and yellow plastic rocket that appears on the front panel. See Exhibit 4.

34. The back panel of the Trade Dress contains the following additional elements: (j) the Design Mark in the upper left corner of the panel; (k) an image of the package contents in the lower right portion of the panel; (l) an enlarged image of Plaintiffs' red and yellow plastic air

rocket, here occupying the middle left portion of the panel; and (m) a pictorial representation of various ways to use Plaintiffs' toy, occupying the middle-right portion of the panel. See Exhibit 5.

35. Plaintiffs' distinctive and unique Trade Dress has acquired secondary meaning in that consumers have come to recognize and associate with a single source the arrangement and overall appearance of the particular combination of design elements that is identified herein.

36. Plaintiffs' package design and the photography, drawings, and design elements incorporated therein are also protected by copyright. A copyright notice is affixed to the packaging of each and every STOMP ROCKET kit that is manufactured by D&L. Plaintiffs have registered copyright in the SUPER STOMP ROCKET packaging with the United States Copyright Office, Reg. No. VA 1-687-163. See Exhibit 6.

Defendants' Infringements

37. In the summer of 2008, D&L was advised by Steven Springer ("Mr. Springer"), a former wholesale buyer of STOMP ROCKET brand air rocket toys, that a retail chain store, Defendant Five Below, was selling a cheap, ineffectual counterfeit version of SUPER STOMP ROCKET toys that improperly used Plaintiffs' copyrighted packaging, STOMP ROCKET and SUPER STOMP ROCKET word marks, Design Mark, and Trade Dress. The knock-off version came in packaging that was nearly identical to Plaintiffs' packaging. It incorporated the Word Mark, the Design Mark, and the SUPER STOMP ROCKET sub-mark along with most of the background art, photographs, and graphic elements that are comprised by Plaintiffs' Trade Dress and copyrighted package design. All elements were arranged in the same manner as in Plaintiffs' Trade Dress and copyrighted package design. Compare the original SUPER STOMP ROCKET

packaging (on right) with Five Below's knock-off packaging (on left). See Exhibit 7. In December 2008, Mr. Springer bought a counterfeit SUPER STOMP ROCKET kit at a Five Below store in Virginia. See Exhibit 8.

38. On information and belief, Defendants' copying of Plaintiffs' Trade Dress and copyrighted package design was direct and intentional.

39. After an investigation, Plaintiffs discovered that Five Below is owned by Mr. Vellios and Mr. Schlessinger. Mr. Vellios and Mr. Schlessinger were very familiar with STOMP ROCKET brand air rocket toys and their popularity because they had purchased these products from D&L when they owned and operated another chain store, Zany Brainy, which sold toys and educational products. In 2001 alone, Zany Brainy bought hundreds of thousands of dollars worth of genuine STOMP ROCKET products from D&L. See Exhibit 9.

40. On information and belief, the marketing plan of Five Below is to target pre-teens and teenagers, selling all products for \$5 or less. This price point was extended to counterfeits of Plaintiffs' SUPER STOMP ROCKET brand air rocket kit. The D&L version retails for about \$15 and contains six rockets, each projectable up to 400 feet. The counterfeit version contains four rockets that can allegedly be projected up to 200 feet. Point-of-sale signage in Five Below stores boasts "super stomp rocket. no batteries or fuel required. ready to use in seconds. 4 air powered rockets included. compare up to: \$9.99." See Exhibit 10.

41. There is a significant difference in quality between the genuine SUPER STOMP ROCKET toys and the counterfeit products. The "nose" on genuine D&L product is integrated into the rocket itself, whereas the "nose" on Defendants' knock-off rockets is constructed of lightweight foam, clumsily glued to the rocket. In addition, D&L's rocket tubes fit snugly, but

not tightly, over their accompanying launcher tubes. This level of precision in design and manufacture allows for easy and instantaneous flight with even the smallest amount of bladder compression. In comparison, Defendants' counterfeit rockets fit tightly over their accompanying launcher tubes, inhibiting and even preventing flight unless the bladder is compressed with considerable force.

42. In January 2009, D&L counsel sent a cease and desist letter to Five Below and its owners, advising them of their deception and infringing behavior, and demanding they immediately cease and desist from the sale of falsely-labeled and fraudulently-marketed counterfeit products. See Exhibit 11. Following telephone communication between the attorneys, D&L was advised in writing that Five Below would stop selling the knock-offs within a 30 day period, but only if Five Below received assurances that D&L would accept its resolution and not sue the chain for trade fraud. See Exhibit 12.

43. D&L expressly rejected that proposal and retained trademark counsel, who made further demands on Five Below, including written confirmation of an immediate cessation of sales of the knock-off products, and details on the source of the infringing goods and number of units sold. See Exhibit 13.

44. Only after a series of lawyer letters and communications did Five Below finally claim that it ceased sales of the knock-off STOMP ROCKET kits. At that time, Five Below also notified D&L that the counterfeit toys originated with Lucky Star Enterprise & Co., Ltd., the Taipei, Taiwan-based corporation that operates the world headquarters of Lucky Group International. On information and belief, Defendants DIG and Lucky Group USA operate the

United States-based businesses of Lucky Group International, which businesses are ultimately accountable to Lucky Star Enterprise & Co., Ltd.

45. Also following the exchange of lawyer letters and communications, Five Below informed D&L that it had sold almost 40,000 units of the toy, that discussions resulting in its purchase of the knock-off STOMP ROCKET toys with Lucky Group, that it did not buy Lucky Group's entire manufacturing run of knock-off STOMP ROCKET toys, and that Lucky Group had other retail merchant accounts. Therefore, the full scope of the harm remains undisclosed.

46. On information and belief, Mr. Vellios and Mr. Schlessinger had actual or constructive knowledge that the products originating with Lucky Star were counterfeit and infringing of D&L's copyright and trademark rights, because they knew or should have known that the wholesale pricing offered by Lucky Group was significantly less than the wholesale pricing of the genuine STOMP ROCKET toys and also because they knew or should have known that the counterfeit product was being offered through channels of distribution that were different from those channels associated with the genuine STOMP ROCKET toys.

47. On information and belief, Mr. Vellios and Mr. Schlessinger, acting intentionally, negligently, or with reckless disregard for D&L's legal rights, arranged for Five Below to acquire and market the knock-off STOMP ROCKET brand air rocket toys. On information and belief, they did so because they knew of the original STOMP ROCKET brand products and their popularity with young customers by virtue of their extensive dealings with D&L while owning and operating Zany Brainy and they knew that the cheap price offered by Lucky Group would allow them to reap a windfall personal profit from Five Below's sale of the counterfeit toys, and that by attracting customers to their stores with the sale of the counterfeit STOMP ROCKET

brand air rocket toys could reap additional benefits from the sale of other Five Below merchandise.

48. On information and belief, Defendants Vellios and Schlessinger are liable in their personal capacity for the afore-described violations of Plaintiffs' copyright, trademarks, and trade dress, because they had an opportunity to supervise the unlawful course of conduct, because they had a financial interest in such course of conduct, and because they personally directed, controlled, ratified and participated in the infringing activity.

49. On information and belief, Lucky Group USA and DIG have developed, sourced, manufactured, exported, imported, and distributed an unknown number of knock-off STOMP ROCKET brand air rocket toys to third parties throughout the United States and the world, including John Does 1-20. The distribution and subsequent retail sale of these products is likely to continue unless the court takes appropriate action.

50. On information and belief, Lucky Group USA and DIG have caused Lucky Group International and its member companies, including Lucky Star Enterprise & Co., to develop, source, manufacture, export, import, and distribute an unknown number of knock-off STOMP ROCKET brand air rocket toys to third parties throughout the United States and the world, including John Does 1-20. The distribution and subsequent retail sale of these products is likely to continue unless the court takes appropriate action.

51. On information and belief, Mr. Yeh, as President and owner of Defendants DIG and Lucky Group USA, had actual or constructive knowledge that the STOMP ROCKET brand air rocket toys that were developed, sourced, manufactured, exported, imported, and distributed by DIG and Lucky Group USA were counterfeit and infringing of D&L's copyright and trademark

rights, because the nearly identical packaging of the genuine product and the counterfeit product indicate that Yeh had access to a genuine STOMP ROCKET brand air rocket toy prior to authorizing the development, manufacture, importation, and distribution of the counterfeit products, and because he had actual or constructive knowledge of the fact that the STOMP ROCKET Word Mark is registered to Plaintiff Ramirez.

52. On information and belief, Mr. Yeh is liable in his personal capacity for the afore-described violations of Plaintiffs' copyright, Trademarks, and Trade Dress, because he had an opportunity to supervise the unlawful course of conduct by DIG and Lucky Group USA, because he had a financial interest in such course of conduct, and because he personally directed, controlled, ratified and participated in the infringing activity.

**COUNT I
COPYRIGHT INFRINGEMENT
Against ALL DEFENDANTS**

53. Plaintiffs re-allege and incorporate herein the allegations in Paragraphs 1-52, inclusive.

54. As described above, Plaintiff D&L is the owner of all right, title and interest in and to the copyrighted packaging of the SUPER STOMP ROCKET brand air rocket toy ("Plaintiff's Work").

55. Plaintiff's Work is widely distributed to the public and therefore Defendants had unrestricted access to the Work through ordinary channels of trade. On information and belief, Defendants utilized their access to Plaintiff's Work in order to copy from it.

56. In addition, a side-by-side comparison of Plaintiff's Work and Defendants product packaging reveals that the works are nearly identical. The similarity between Plaintiff's Work

and Defendants' product packaging is so striking as to be independently probative of the fact that Defendants had access to and copied from Plaintiff's Work.

57. Defendants' product packaging is substantially similar to Plaintiff's Work, and the substantial similarity extends to Plaintiff's original, copyright-protected authorship. Thus, Defendants' product packaging represents an unauthorized reproduction of, and an unauthorized derivative work based upon, Plaintiff's Work.

58. At least as early as the summer of 2008, Defendants began selling in the United States their counterfeit SUPER STOMP ROCKET brand air rocket toys, in packaging that represents an unauthorized reproduction of, and a derivative work based upon, Plaintiff's Work. Each subsequent reproduction, distribution, and public display of counterfeit STOMP ROCKET kits in Defendants' product packaging further infringed copyright in Plaintiff's Work.

59. Defendants have engaged in such reproduction, distribution, public display, and adaptation of Plaintiff's Work without the consent, approval or license of D&L.

60. Defendants' infringement was willful in that Defendants acted with actual or constructive knowledge that their actions constituted infringement or acted with reckless disregard to Plaintiff's rights.

61. Commercial demand for air rocket toys is not unlimited. Persons who purchase a counterfeit air rocket in Defendants' infringing packaging are less likely to purchase a genuine air rocket packaged in Plaintiff's Work. Therefore, Defendants' infringement usurps demand for Plaintiff's Work and for the genuine STOMP ROCKET toys.

62. Members of the public who are familiar with Plaintiff's copyrighted packaging would reasonably assume that any air rocket toy so packaged is a genuine, STOMP ROCKET brand air

rocket, when it is not. A disappointing experience with the quality of Defendants' product will be attributed to Plaintiff's identically-packaged genuine articles, thereby interfering with Plaintiff's ability to build loyal, repeat buyers. In this manner, Defendants' copyright infringement usurps demand for Plaintiff's Work and for the genuine STOMP ROCKET toys.

63. By virtue of Defendants' infringement, Plaintiff D&L has sustained and will continue to sustain substantial injury, loss and damage to its ownership rights in the Work.

64. Plaintiff D&L is entitled to receive all appropriate injunctive relief, including but not limited to the relief available under 17 U.S.C. §§502-503.

65. Plaintiff D&L is further entitled to recover from the Defendants the damages it has sustained and will sustain, and any gains, profits and advantages obtained by Defendants as a result of Defendants' willful acts of infringement alleged in this Complaint, including but not limited to such damages and awards as are available under 17. U.S.C. §§504-505.

COUNT II
COPYRIGHT INFRINGEMENT
Against DEFENDANTS Mr. Vellios and Mr. Schlessinger

66. Plaintiffs re-allege and incorporate herein the allegations in Paragraphs 1-65, inclusive.

67. As described above, Plaintiff D&L owns all rights, title, and interest in and to the Work.

68. As corporate officers and owners of Five Below, Mr. Vellios and Mr. Schlessinger had the opportunity to supervise the infringing activity and had a financial interest in having Plaintiff's Work reproduced, adapted, publicly displayed, and distributed in Maryland and throughout the United States.

69. On information and belief, Mr. Vellios and Mr. Schlessinger personally participated in the chain of events by which Defendant Five Below infringed copyright in Plaintiff's Work.

70. Mr. Vellios' and Mr. Schlessinger's infringement was willful in that each of them knew or should have known that their conduct infringed Plaintiff's copyright or, alternatively, acted in reckless disregard to Plaintiff's rights.

71. Mr. Vellios and Mr. Schlessinger, as owners and officers of Defendant Five Below, reaped profits from the sale of counterfeit STOMP ROCKET toys in packaging that infringed Plaintiff's Work.

72. By reason of the infringements committed by Mr. Vellios and Mr. Schlessinger, D&L has sustained and will continue to sustain substantial injury, loss and damage to its ownership of Plaintiff's Work.

73. Plaintiff D&L is entitled to receive all appropriate injunctive relief, including but not limited to the relief available under 17 U.S.C. §§502-503.

74. Plaintiff D&L is further entitled to recover from Mr. Vellios and Mr. Schlessinger the damages they have sustained and will sustain, plus any gains, profits and advantages obtained by the Defendants, as a result of the infringements alleged in this Complaint, including but not limited to such damages and awards as are available under 17. U.S.C. §§504-505.

**COUNT III
COPYRIGHT INFRINGEMENT
Against DEFENDANT Mr. Yeh**

75. Plaintiffs re-allege and incorporate herein the allegations in Paragraphs 1-74, inclusive.

76. As described above, Plaintiff D&L owns all rights, title, and interest in and to the Work.

77. As corporate officer and owner of DIG and Lucky Group USA, Mr. Yeh had the opportunity to supervise the infringing activity and had a financial interest in having Plaintiff's Work reproduced, adapted, publicly displayed, and distributed throughout the United States.

78. On information and belief, Mr. Yeh personally participated in the chain of events by which Defendants DIG and Lucky Group USA infringed copyright in Plaintiff's Work.

79. Mr. Yeh's infringement was willful in that he knew or should have known that his conduct infringed Plaintiff's copyright or, alternatively, acted in reckless disregard to Plaintiff's rights.

80. Mr. Yeh, as corporate officer and owner of Defendants DIG and Lucky Group USA, reaped profits from the sale of counterfeit STOMP ROCKET toys in packaging that infringed Plaintiff's Work.

81. By reason of the infringements committed by Mr. Yeh, D&L has sustained and will continue to sustain substantial injury, loss and damage to its ownership of Plaintiff's Work.

82. Plaintiff D&L is entitled to receive all appropriate injunctive relief, including but not limited to the relief available under 17 U.S.C. §§502-503.

83. Plaintiff D&L is further entitled to recover from Mr. Yeh the damages they have sustained and will sustain, plus any gains, profits and advantages obtained by the Defendants, as a result of the infringements alleged in this Complaint, including but not limited to such damages and awards as are available under 17. U.S.C. §§504-505.

COUNT IV
TRADEMARK INFRINGEMENT UNDER THE LANHAM ACT
Against ALL DEFENDANTS

84. Plaintiffs re-allege and incorporate herein the allegations in Paragraphs 1-83, inclusive.

85. As described above, Plaintiff Mr. Ramirez owns all rights, title and interest in and to the registered Word Mark, the common law Design Mark, and the common law SUPER STOMP ROCKET Sub-brand Mark (collectively, "the Trademarks").

86. D&L's use of the Trademarks in commerce, pursuant to exclusive license from Mr. Ramirez, has been substantially exclusive, continuous, and long standing. The Trademarks are distinctive and representative of the extensive goodwill built up by Plaintiffs.

87. By using Plaintiffs' common law Design Mark and common law Sub-brand Mark on packaging and in advertising for Defendants' air rocket toys, Defendants have, under Section 32(1)(a) and (b) of the Lanham Act, 14 U.S.C. 1114(1)(a),(b), infringed Plaintiffs' rights in the registered Word Mark that is embedded within the Design Mark and Sub-brand Mark. On information and belief, Defendants had actual notice of registration of Plaintiffs' Word Mark because such notice is given in the instructional insert that accompanies Plaintiffs' SUPER STOMP ROCKET brand air rocket toys and on Plaintiffs' website and promotional materials.

88. On information and belief, Defendants' trademark infringement has caused, and will continue to cause, confusion, mistake, and/or deception, among trade and retail customers of Plaintiffs' and Defendants' goods, as to the source or origin of Defendants' products, and/or as to the source or origin of Plaintiffs' products.

89. Defendants Mr. Vellios and Mr. Schlessinger are personally liable for the infringement of Plaintiffs' Word Mark because they personally directed, controlled, ratified and participated in the infringing activity by Defendant Five Below.

90. Defendant Mr. Yeh is personally liable for the infringement of Plaintiffs' Word Mark because he personally directed, controlled, ratified and participated in the infringing activity by Defendant DIG and Lucky Group USA.

91. As a direct result of said trademark infringement, Plaintiffs have sustained and are likely to continue to sustain monetary damages and irreparable injury to their businesses, reputations and goodwill.

92. Plaintiffs have no adequate remedy at law.

93. By reason of the foregoing, Defendants are liable to the Plaintiffs for trademark infringement under the Federal Lanham Act, and Plaintiffs are entitled to Defendant's profits, Plaintiff's damages, the costs of the action, plus reasonable attorneys' fees by reason of the willfulness of Defendant's conduct, which willfulness renders this an exceptional case within the meaning of Section 35(a) of the Lanham Act, 15 U.S.C. 1117(a).

94. Plaintiffs are entitled under Section 35(b) of the Lanham Act, 15 U.S.C. 1117(b), to the larger of treble profits or treble damages, plus a reasonable attorneys' fee and pre-judgment interest, because Defendants intentionally used the Word Mark, knowing that such Word Mark was counterfeit, in connection with the sale, offering for sale, and distribution of goods and/or because Defendants provided goods or services that were necessary to the intentional and knowing use of a counterfeit mark, with the intent that the recipient of the goods or services would use the goods or services in committing the violation.

95. Plaintiffs are entitled under Section 35(c)(2) of the Lanham Act, 15 U.S.C. 1117(b), to elect statutory damages of up to one million dollars, because Defendants intentionally used the Word Mark, knowing that such Word Mark was counterfeit, in connection with the sale, offering for sale, and distribution of goods.

96. Plaintiffs are entitled under Section 36 of the Lanham Act, 15 U.S.C. §1118 to a court order providing that all product packaging, advertising, and promotional matter bearing

Plaintiffs' Word Mark, along with all means of making such packaging, advertising, and promotional matter, be delivered up and destroyed.

COUNT V
FALSE DESIGNATION OF ORIGIN UNDER THE LANHAM ACT
Against ALL DEFENDANTS

97. Plaintiffs re-allege and incorporate herein the allegations in Paragraphs 1-96, inclusive.

98. By using Plaintiffs' Word Mark, Design Mark, and SUPER STOMP ROCKET Sub-brand Mark on packaging and in advertising for Defendants' air rocket toys, Defendants have falsely designated the origin of their goods within the meaning of Section 43(a) of the Lanham Act, 15 U.S.C. 1125(a), thereby causing confusion, mistake or deception among consumers as to the source or origin of Defendants' products and/or as to the source or origin of Plaintiffs' products.

99. On information and belief, Defendants' false designation of origin has caused confusion, mistake, and/or deception among actual and prospective customers of Plaintiffs' and Defendants' goods in the trade and retail segments of the market for air rocket toys.

100. As a direct result of said false designation of origin, Plaintiffs have sustained and are likely to continue to sustain monetary damages and irreparable injury to its business, reputation and goodwill.

101. Defendants Mr. Vellios and Mr. Schlessinger are personally liable for these false designations of origin because they personally directed, controlled, ratified and participated in the offending activity by Defendant Five Below.

102. Defendant Mr. Yeh is personally liable for these false designations of origin because he personally directed, controlled, ratified and participated in the offending activity by Defendant DIG and Lucky Group USA.

103. Plaintiffs have no adequate remedy at law.

104. By reason of the foregoing, Defendants are liable to the Plaintiffs for false designation of origin under the Federal Lanham Act, and Plaintiffs are entitled to Defendant's profits, Plaintiff's damages, the costs of the action, plus reasonable attorneys' fees by reason of the willfulness of Defendant's conduct, which willfulness renders this an exceptional case within the meaning of Section 35(a) of the Lanham Act, 15 U.S.C. 1117(a).

105. Plaintiffs are entitled to treble damages and increased profits, plus attorneys' fees, by reason of the willfulness of Defendants' conduct, which willfulness renders this an exceptional case within the meaning of Section 35(a) of the Lanham Act, 15 U.S.C. 1117(a).

106. Plaintiffs are entitled under Section 36 of the Lanham Act, 15 U.S.C. §1118 to a court order providing that all product packaging, advertising, and promotional matter bearing Plaintiffs' Word Mark, Design Mark, and SUPER STOMP ROCKET Sub-brand Mark, along with all means of making such packaging, advertising, and promotional matter, be delivered up and destroyed.

COUNT VI
FALSE OR MISLEADING DESCRIPTION OF FACTS UNDER THE LANHAM ACT
Against ALL DEFENDANTS

107. Plaintiffs re-allege and incorporate herein the allegations in Paragraphs 1-106, inclusive.

108. By using Plaintiffs' Word Mark, Design Mark, and SUPER STOMP ROCKET Sub-brand Mark on packaging and in advertising and promotion for Defendants' air rocket toys,

Defendants have conveyed the false or misleading message to consumers that Defendants' air rocket toys originate with or are sponsored by Plaintiff; that Plaintiffs' air rocket toys originate with or are sponsored by Defendant; and/or that Plaintiffs' and Defendants' air rocket toys are of the same nature and quality. Through this conduct, Defendants have engaged in false or misleading representations and/or omissions of material fact within the meaning of Section 43(a) of the Lanham Act, thereby causing confusion, mistake or deception among consumers as to the source or origin of Defendants' products and/or as to the source or origin of Plaintiffs' products.

109. Defendants' false or misleading representations of fact are material in that consumers perceive Plaintiffs' Trademarks as symbolic of the nature and quality of all goods sold thereunder and therein. The product performance and safety for which STOMP ROCKET brand air rocket toys are known constitute two facets of product quality that are very material to the process by which wholesale and retail consumers investigate, shop for, purchase, and use toys.

110. On information and belief, Defendants' false or misleading representations of fact have caused confusion, mistake, and/or deception among actual and prospective customers of Plaintiffs' and Defendants' goods in the wholesale, manufacturing, and retail segments of the market for air rocket toys.

111. As a direct result of Defendants' false or misleading representations of fact, Plaintiffs have sustained and are likely to continue to sustain monetary damages and irreparable injury to its business, reputation and goodwill.

112. Defendants Mr. Vellios and Mr. Schlessinger are personally liable for these false or misleading representations of fact because they personally directed, controlled, ratified and participated in the unlawful activity by Defendant Five Below.

113. Defendant Mr. Yeh is personally liable for the afore-described false or misleading representations of fact because he personally directed, controlled, ratified and participated in the unlawful activity by Defendants Lucky Group USA and DIG.

114. Plaintiffs have no adequate remedy at law.

115. By reason of the foregoing, Defendants are liable to the Plaintiffs for false or misleading descriptions of fact under the Federal Lanham Act, and Plaintiffs are entitled to Defendants' profits, Plaintiffs' damages, the costs of the action, plus reasonable attorneys' fees by reason of the willfulness of Defendants' conduct, which willfulness renders this an exceptional case within the meaning of Section 35(a) of the Lanham Act, 15 U.S.C. 1117(a).

116. Plaintiffs are entitled to treble damages and increased profits, plus attorneys' fees, by reason of the willfulness of Defendants' conduct, which willfulness renders this an exceptional case within the meaning of Section 35(a) of the Lanham Act, 15 U.S.C. 1117(a).

117. Plaintiffs are entitled under Section 36 of the Lanham Act, 15 U.S.C. §1118 to a court order providing that all product packaging, advertising, and promotional matter bearing Plaintiffs' Word Mark, Design Mark, and SUPER STOMP ROCKET Sub-brand Mark, along with all means of making such packaging, advertising, and promotional matter, be delivered up and destroyed.

Count VII
TRADE DRESS INFRINGEMENT UNDER THE LANHAM ACT
Against ALL DEFENDANTS

118. Plaintiffs re-allege and incorporate herein the allegations in Paragraphs 1-117, inclusive.

119. As described above, Plaintiff Mr. Ramirez owns all rights, title and interest in and to the Trade Dress. Plaintiff D&L owns an exclusive license to use the Trade Dress in commerce.

120. D&L's use of the Trade Dress in commerce, pursuant to exclusive license from Mr. Ramirez, has been substantially exclusive, continuous, and long standing and represents the extensive goodwill built up by Plaintiffs.

121. Plaintiffs' Trade Dress is primarily non-functional.

122. Plaintiffs' Trade Dress has acquired secondary meaning in that consumers have come to recognize the well-known appearance and arrangement of the design elements of Plaintiffs' Stomp Rocket product packaging, and associate that appearance and arrangement with a single source. Further, Defendants' intentional and direct copying of Plaintiffs' Trade Dress is alone sufficient to establish a prima facie case of secondary meaning.

123. On information and belief, Defendants have used a trade dress that is identical and/or confusingly similar to Plaintiffs' Trade Dress on packaging and in advertising for Defendants' air rocket toys, with the express intent to confuse, mislead, or deceive the public as to the origin of Defendants' products.

124. By using Plaintiffs' Trade Dress on packaging and in advertising for Defendants' air rocket toys, Defendants have falsely designated the origin of goods and falsely or misleadingly represented the source, origin, nature, and quality of goods, thereby violating Plaintiffs' rights in the Trade Dress under Section 43(a) of the Lanham Act. Defendants' conduct has and will continue to cause confusion, mistake or deception among consumers as to the source or origin of Defendants' products, and/or as to the source or origin of Plaintiffs' products.

125. On information and belief, Defendants' trade dress infringement has caused confusion, mistake, and/or deception among actual and prospective customers of Plaintiffs' and Defendants' goods in the wholesale, manufacturing, and retail segments of the market for air rocket toys.

126. As a direct and proximate result of Defendants' actions, Plaintiffs have sustained and are likely to continue to sustain monetary damages and irreparable injury to its business, reputation and goodwill.

127. Defendants Mr. Vellios and Mr. Schlessinger are personally liable for the infringement of Plaintiffs' Trade Dress because they personally directed, controlled, ratified and participated in the infringing activity by Defendant Five Below.

128. Defendant Mr. Yeh is personally liable for the afore-described infringement of Plaintiffs' Trade Dress because he personally directed, controlled, ratified and participated in the infringing activity by Defendants Lucky Group USA and DIG.

129. Plaintiffs have no adequate remedy at law.

130. By reason of the foregoing, Defendants are liable to the Plaintiffs for trade dress infringement under Sections 43(a)(1)(A) and (B) of the Federal Lanham Act, 15 U.S.C. §1125(a)(1)(A) and (B), and Plaintiffs are entitled to Defendants' profits, Plaintiffs' damages, the costs of the action, plus reasonable attorneys' fees by reason of the willfulness of Defendants' conduct, which willfulness renders this an exceptional case within the meaning of Section 35(a) of the Lanham Act, 15 U.S.C. 1117(a).

131. Plaintiffs are entitled to treble damages and increased profits, plus attorneys' fees, by reason of the willfulness of Defendants' conduct, which willfulness renders this an exceptional case within the meaning of Section 35(a) of the Lanham Act, 15 U.S.C. 1117(a).

132. Plaintiffs are entitled under Section 36 of the Lanham Act, 15 U.S.C. §1118 to a court order providing that all product packaging, advertising, and promotional matter bearing

Plaintiffs' Trade Dress, along with all means of making such packaging, advertising, and promotional matter, be delivered up and destroyed.

Count VIII
TRADEMARK DILUTION IN VIOLATION OF 15 U.S.C. §1125(c)
Against ALL DEFENDANTS

133. Plaintiffs re-allege and incorporate herein the allegations in Paragraph 1-132, inclusive.

134. Plaintiffs' Word Mark is symbolic of the extensive goodwill and consumer recognition built up by Plaintiffs through years of advertising, promotion and sales. Plaintiffs have so used the Work Mark in connection with its toys that the public has come to associate the mark exclusively with Plaintiff D&L, and as indicating that the goods offered under the mark originate with Plaintiff D&L.

135. As a result of its prominent and continuous use, Plaintiffs' distinctive Word Mark has become famous across the nation within meaning of 15 U.S.C. §1125(c).

136. Defendants' use of Plaintiffs' famous Word Mark is for a commercial purpose.

137. Defendants' use of Plaintiffs' famous Word Mark has caused, and is likely to continue to cause, dilution by blurring and/or by tarnishment of the distinctive qualities of Plaintiffs' Word Mark, and/or harm to the reputation of Plaintiffs' Word Mark.

138. Defendants Mr. Vellios and Mr. Schlessinger are personally liable for the afore-described dilution of Plaintiff's Word Mark because they personally directed, controlled, ratified and participated in the unlawful activity by Defendant Five Below.

139. Defendant Mr. Yeh is personally liable for the afore-described dilution of Plaintiffs' Word Mark because he personally directed, controlled, ratified and participated in the unlawful activity by Defendants Lucky Group USA and DIG.

140. By reason of the foregoing, Defendants are liable to the Plaintiffs for trademark dilution under Section 43(c) of the Lanham Act, 15 U.S.C. 1143(c), and Plaintiffs are therefore entitled to preliminary and permanent injunctive relief under Section 34(a) of the Lanham Act, 15 U.S.C. 1116(a); monetary damages, profits, and costs under Section 35(a) of the Lanham Act, 15 U.S.C. 1117(a); and also to the remedies set forth in 15 U.S.C. §1118.

141. Plaintiffs are entitled to treble damages and increased profits, plus attorneys' fees, by reason of the willfulness of Defendants' infringement, which willfulness renders this an exceptional case within the meaning of Section 35(a) of the Lanham Act, 15 U.S.C. 1117(a).

142. In view of the willfulness of Defendants' infringement, Plaintiffs are entitled under Section 36 of the Lanham Act, 15 U.S.C. §1118 to a court order providing that all product packaging, advertising, and promotional matter bearing Plaintiffs' Word Mark, along with all means of making such packaging, advertising, and promotional matter, be delivered up and destroyed.

Count IX
TRADEMARK INFRINGEMENT UNDER COMMON LAW
Against ALL DEFENDANTS

143. Plaintiffs re-allege and incorporate herein the allegations in Paragraphs 1-142, inclusive.

144. As described above, Plaintiffs own all rights, title and interest in and to the Word Mark, the Design Mark, and the SUPER STOMP ROCKET Sub-brand Mark.

145. As described above, the Trademarks are distinctive and Plaintiffs have built up valuable good will in the Trademarks.

146. Defendants' use of the Trademarks infringes Plaintiffs' rights therein and has and will continue to cause confusion, mistake, or deception among consumers as to the source and origin of Defendants' counterfeit STOMP ROCKET brand air rocket toys.

147. Defendants' conduct deceived or is likely to deceive, and caused or is likely to cause, confusion or mistake among actual and prospective consumers of the Plaintiffs' products by passing off Defendants' products as being manufactured, sponsored or otherwise approved by or connected with the Plaintiffs.

148. As a direct and proximate result of Defendants' infringements of Plaintiffs' common law trademark rights under the State of Maryland and other common law, Plaintiffs have sustained and are likely to continue to sustain monetary damages and irreparable injury to its business, reputation and goodwill.

149. Defendants Mr. Vellios and Mr. Schlessinger are personally liable for the infringement of Plaintiffs' Trademarks because they personally directed, controlled, ratified and participated in the infringing activity by Defendant Five Below.

150. Defendant Mr. Yeh is personally liable for the afore-described infringement of Plaintiffs' Trademarks because he personally directed, controlled, ratified and participated in the infringing activity by Defendants Lucky Group USA and DIG.

151. Plaintiffs have no adequate remedy at law.

152. By reason of the foregoing acts, Defendants are liable to Plaintiffs for trademark infringement and Plaintiffs are therefore entitled to preliminary and permanent injunctive relief and monetary damages.

153. Plaintiffs are entitled to exemplary and punitive damages by reason of Defendants' willful, reckless, deliberate and intentional conduct.

Count X
TRADE DRESS INFRINGEMENT UNDER COMMON LAW
Against ALL DEFENDANTS

154. Plaintiffs re-allege and incorporate herein the allegations in Paragraphs 1-153, inclusive.

155. Defendants' actions constitute common trade dress infringement under the State of Maryland and other common law.

156. Upon information and belief, Defendants used a trade dress that is identical and/or confusing similar to Plaintiffs' distinctive and primarily non-functional Trade Dress on packaging and in advertising for Defendants' air rocket toys, with the express intent to confuse, mislead, or deceive the public as to the origin of Defendants' product.

157. As a direct and proximate result of Defendants' infringements of Plaintiffs' common law trade dress rights under the State of Maryland and other common law, Plaintiffs have sustained and are likely to continue to sustain monetary damages and irreparable injury to its business, reputation and goodwill.

158. Defendants Mr. Vellios and Mr. Schlessinger are personally liable for the afore-described infringement of Plaintiff's Trade Dress because they personally directed, controlled, ratified and participated in the unlawful activity by Defendant Five Below.

159. Defendant Mr. Yeh is personally liable for the afore-described infringement of Plaintiffs' Trade Dress because he personally directed, controlled, ratified and participated in the unlawful activity by Defendants Lucky Group USA and DIG.

160. Plaintiffs have no adequate remedy at law.

161. By reason of the foregoing acts, Defendants are liable to Plaintiffs for trade dress infringement and Plaintiffs are therefore entitled to preliminary and permanent injunctive relief and monetary damages.

162. Plaintiffs are entitled to exemplary and punitive damages by reason of Defendants' willful, reckless, deliberate and intentional conduct.

Count XI
UNFAIR TRADE PRACTICES UNDER MD. CODE COM. LAW § 13-101 *et seq.*
Against ALL DEFENDANTS

163. Plaintiffs re-allege and incorporate herein the allegations in Paragraphs 1-162, inclusive.

164. As described above, Defendants have engaged in unfair trade practices by representing to consumers that Plaintiffs' products have a source, nature, and quality that they do not have.

165. Defendants have engaged in false and misleading representations and omissions of material fact to consumers and have engaged in deceptive conduct.

166. Defendants' false and misleading representations and deceptive conduct are material in that the same have caused and are likely to cause prospective consumers of the Plaintiffs' products to be deceived as to the identity of the person to whom rights belongs and as to the level of quality of the product.

167. Defendants have disparaged the goods and services and business of Plaintiffs through false and misleading representations of material facts.

168. By reasons of Defendants knowingly false and misleading representations of fact and conduct, Defendants have violated Maryland's Consumer Protection Act § 13-301.

169. As a direct and proximate result of said misleading and deceptive conduct, Plaintiffs, as well as consumers, have sustained and are likely to continue to sustain damages.

170. Defendants Mr. Vellios and Mr. Schlessinger are personally liable for the afore-described unfair trade practices because they personally directed, controlled, ratified and participated in the unfair activity by Defendant Five Below.

171. Defendant Mr. Yeh is personally liable for the afore-described unfair trade practices because he personally directed, controlled, ratified and participated in the unfair activity by Defendants Lucky Group USA and DIG.

172. Plaintiffs have no adequate remedy at law.

173. Pursuant to Maryland's Consumer Protection Act § 13-406 and § 13-408, Plaintiffs are entitled to enjoin Defendants' unlawful conduct as well as obtain compensatory damages, punitive damages, and attorney's fees.

Count XII
UNFAIR COMPETITION UNDER COMMON LAW
Against ALL DEFENDANTS

174. Plaintiffs re-allege and incorporate herein the allegations in Paragraphs 1-173, inclusive.

175. As described above, Defendants have engaged in false and misleading representations and omissions of material fact and have engaged in deceptive conduct.

176. Defendants' false and misleading representations and deceptive conduct are material in that they falsely represent the source of Defendant's air rocket toys, thereby harming Plaintiffs' legitimate business interests by deceiving actual and prospective consumers into believing that Defendant's air rocket toys are of the same nature and quality as Plaintiffs' products.

177. Defendant Five Below's use is in bad faith as Defendant refused Plaintiffs' request to cease use of the Trademarks, even after having been provided with notice of Plaintiffs' rights.

178. As a direct result of said deceptive conduct, Plaintiffs have sustained and are likely to continue to sustain damages.

179. Defendants' unauthorized use of the Trademarks constitutes unfair competition under the common law of the State of Maryland.

180. Defendants Mr. Vellios and Mr. Schlessinger are personally liable for the afore-described unfair competition because they personally directed, controlled, ratified and participated in the unfair activity by Defendant Five Below.

181. Defendant Mr. Yeh is personally liable for the afore-described unfair competition because he personally directed, controlled, ratified and participated in the unfair activity by Defendants Lucky Group USA and DIG.

182. Plaintiffs have no adequate remedy at law.

183. Plaintiffs are therefore entitled to preliminary and permanent injunctive relief and monetary damages.

184. Plaintiffs are entitled to exemplary and punitive damages by reason of Defendants' willful, reckless, deliberate and intentional conduct.

Count XIII
UNJUST ENRICHMENT
Against ALL DEFENDANTS

185. Plaintiffs re-allege and incorporate herein the allegations in Paragraphs 1-184, inclusive.

186. Plaintiffs have been denied financial compensation in connection with Defendants' sale of counterfeit SUPER STOMP ROCKET brand air rocket toys. Defendants have been enriched by their use of Plaintiffs' Trademarks and Trade Dress in connection with their sale, at Plaintiffs' expense, of counterfeit SUPER STOMP ROCKET brand air rocket toys. The circumstances are

such that equity and good conscience require the Defendants to make restitution in an amount to be proven at trial.

**Count XIV
CIVIL CONSPIRACY
Against ALL DEFENDANTS**

187. Plaintiffs re-allege and incorporate herein the allegations in Paragraphs 1-186, inclusive.

188. The foregoing acts of Defendants constitute a civil conspiracy in that the Defendants agreed, conspired and/or engaged in concerted action to harm Plaintiffs by the unlawful actions described above through unlawful means, including but not limited to unfairly competing with Plaintiffs; accessing, stealing, misappropriating, and otherwise unlawfully obtaining and using Plaintiffs' proprietary rights in Trademarks, Trade Dress, and copyright in violation of applicable federal and Maryland law. A single plan existed among the Defendants, they all shared in the general conspiratorial objective, and they committed the overt acts described above in furtherance of the conspiracy that has injured Plaintiffs. Each conspirator had the intent to establish this common purpose, and each was aware of the other's intent.

189. As a result of Defendants' unlawful conduct, Plaintiffs have been and continue to be damaged in a manner that may not be able to be fully measured or compensated in economic terms, but in any event exceeds \$75,000.

190. Defendants Mr. Vellios and Mr. Schlessinger are personally liable for the afore-described conspiracy because they personally directed, controlled, ratified and participated in the conspiratorial activity by Defendant Five Below.

191. Defendant Mr. Yeh is personally liable for the afore-described conspiracy because he personally directed, controlled, ratified and participated in the conspiratorial activity by Defendants Lucky Group USA and DIG.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against each Defendant as follows:

A. Preliminarily and permanently enjoining and restraining Defendants, their officers, directors, shareholders, agents, employees, and attorneys and all those acting in concert with them from:

1. Reproducing, publicly distributing, publicly displaying, and preparing any derivative work based on Plaintiffs' Work, in any medium, including but not limited to print and online;

2. Producing, marketing, selling, distributing any product whose packaging contains any portion of Plaintiffs' Work;

3. Using Plaintiffs' Trademarks, Trade Dress, or any colorable imitation thereof.

B. Ordering that Defendants file with this Court and serve upon Plaintiffs within 20 days after the service of such injunction, an affidavit, sworn to under penalty of perjury, setting forth in detail the manner and form in which Defendants have complied with such injunctions.

C. Ordering an accounting of all revenues received by each Defendant as a result of its unlawful conduct.

D. Awarding Plaintiffs: 1) Defendants' profits realized as a result of the copyright and trademark infringements, false advertising, unfair competition, unjust enrichment and/or each of the Defendants' deceptive practices, or in the Court's discretion, such sum as the Court finds to

be just; 2) actual damages sustained by Plaintiffs, or such other amount as the Court may find just; and 3) the costs of this action.

E. Awarding Plaintiffs increased damages and profits, and reasonable attorneys' fees, pursuant to 15 U.S.C. § 1117(a)-(c).

F. Awarding Plaintiffs the relief set forth in 15 U.S.C. §1118.

G. Awarding Plaintiffs prejudgment and post-judgment interest on any monetary award in this action.

H. Granting such other and further relief as to this Court deems just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all claims for which there is a right to jury trial.

Respectfully Submitted,

By /s/ Allison L. Rapp

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