

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

BROADWAY PINE BRANDS LLC,

Plaintiff,

v.

TOY STORAGE WORLD (TSW), *et al.*,

Defendants.

Civil Action No.

FILED UNDER SEAL

**DECLARATION OF NATE JELOVICH
IN SUPPORT OF PLAINTIFF'S *EX PARTE* APPLICATION
FOR ENTRY OF A TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

I, **NATE JELOVICH**, do hereby declare:

1. I am over eighteen (18) years of age. I have never been convicted of a felony or any criminal offense involving moral turpitude, and I am fully competent to testify to the matters stated herein. I have personal knowledge of every statement made in this Declaration and such statements are true and correct.

2. I am an executive of the Plaintiff company, BROADWAY PINE BRANDS LLC, a Delaware limited liability with a registered address of 113 Cherry Street, POB 89249, Seattle, Washington 98104-2205, and the 100% owner of the combined assets of Adam Hinkle, Dana Sue Hinkle, and Hinkle Direct, LLC d/b/a CreativeQT, the original owners and creators that developed and marketed the product at issue in this case (i.e., the SLIDEAWAY[®] toy bin).

3. I make this declaration in support of Plaintiff's *Ex Parte* Application for Entry of a Temporary Restraining Order and Preliminary Injunction against Defendants, the Individuals, Partnerships, and Unincorporated Associations identified on **Schedule "A"** to the Complaint.

4. The Defendants use the interactive commercial Internet websites and Internet based e-commerce stores using the seller identities and store names set forth on **Schedule "A"** to willfully infringe one or more of the claims of U.S. Patent No. 11,154,128 ("Plaintiff's Patent" or "the '128 patent") by offering for sale, selling, and distributing knock-off versions of Plaintiff's SLIDEAWAY® toy bin ("Infringing Products").

5. Borne from the minds of the loving parents of 5 children, the Plaintiff's patented product solved the challenging problem of cleaning up small toys that a creative child has spread out to explore and play with on the floor. The toys are stored in a decorative storage bin that has a play mat integrated into it. The toys are spilled from the storage bin onto the integrated play mat and do not escape from the system. The mat is large enough for the child to spread all their toys out but still fits neatly into the storage bin with the toys on it. To clean up, the draw string handles are pulled to gather the mat with the toys back into the storage bin. The lid of the bin is then closed and the decorative storage bin, holding the play mat, and all the toys, may be placed in the room as desired. Today, the product is sold by Plaintiff under the brand name SLIDEAWAY® toy bin ("Plaintiff's Product").

6. Plaintiff's Product has been featured in videos, articles, or podcasts by numerous media outlets, including: *The New York Times*, *Good Housekeeping*, ABC's *Good Morning America*, NBC's *Today Show*, and *Scary Mommy*.

7. Plaintiff's Product is sold under the brand name SLIDEAWAY®, and is widely legitimately advertised and promoted by Plaintiff, its authorized distributors, and unrelated third

parties via the Internet. Over the past several years, visibility on the Internet, particularly via Internet search engines such as Google, Yahoo!, and Bing, has become increasingly important to Plaintiff's overall marketing. Plaintiff's Product has been highly reviewed by consumers and has received the prestigious Gold Award for the 2020 Mom's Choice Awards.

8. Thus, Plaintiff and its authorized distributors expend significant monetary resources on Internet marketing, including search engine optimization ("SEO") strategies. Other costs include social media ads, tradeshows, and handing out free samples. Those strategies allow Plaintiff and its authorized retailers to fairly and legitimately educate consumers about the value associated with Plaintiff's brand and the goods sold thereunder. Similarly, Defendants' individual seller's stores are indexed on search engines and compete directly with Plaintiff for space in the search results.

9. Plaintiff sells its toy storage bin under the registered SLIDEAWAY® trademark U.S. Reg. No. 5994698 for "fabric sided toy storage container in the nature of a toy box or toy chest having an integrated play mat." in class 20. A copy of the trademark registration certificate and status and ownership record from the United States Patent and Trademark Office is attached as Complaint **Exhibit 3** ("Plaintiff's Mark").

10. The Plaintiff's Product is an innovative, integrated toy storage container and play mat combination that permits the user to pour small toys from the container onto the play mat. By pulling the storage bin handles, the play mat retracts back into the storage bin with all the toys. The storage bin lid is closed and the bin and toy clean-up is complete. The Plaintiff's Product, pictured below, retails for \$49.99:



11. The unique patented features of Plaintiff's Product, the distinct photographs, the design, the instructions, the packaging, and the unique presentation of the product, all comprise Plaintiff's valuable intellectual property ("IP") and all have become distinct in consumer's minds such that consumers associate all of this IP with Plaintiff's Product. Screenshots of Plaintiff's Website and Amazon Store are attached as Complaint **Exhibit 1** ("Plaintiff's Work"). Plaintiff's Product is sold on its Amazon Store under the following Amazon Standard Identification Numbers (ASINs) : B081TLWF48 (Grey Stripe); B087GCRB15 (Heather Beige); B089BR8WJ7 (Heather Blue); and B081TJLZHQ (Heather Gray).

12. The innovative features of Plaintiff's Product are the subject of U.S. Patent No. 11,154,128 entitled "storage container with an integrated mat". Plaintiff is the sole owner of U.S. Patent 11,154,128, and has not licensed the patent to any individual or entity. A copy of the patent is attached as Complaint **Exhibit 2** ("Plaintiff's Patent"). The Defendants had actual notice of the publication of this patent. The claims as published were the subject of a first office action allowance. Thus, the allowed claims and the published claims were identical. Defendants' infringement began as early as November 21, 2019 (the publication date).

13. Due to the success of Plaintiff's Product, Plaintiff has become the target of multiple infringers seeking to profit off the goodwill and reputation and fame enjoyed by Plaintiff's Product. Defendants have flooded the market with cheap imitations and caused Plaintiff's sales and profits to plummet.

14. Plaintiff has been forced to police the various Internet marketplaces to identify and seek takedowns of unlawful listings for the Infringing Products¹ since allowing the unlawful listings to continue is causing damage to Plaintiff's reputation and bottom line. Some Defendants sell their infringing products at a fraction of the controlled retail price. Because of the software provided by the various Internet Marketplaces, the lowest priced items are sorted to the top and/or promoted by the software and then purchased by the consumers. Plaintiff's Product is thus ignored. Plaintiffs have had varied success in identifying and requesting takedowns of the various unlawful listings and as soon as one is taken down another unlawful listing replaces it. Another major problem with the Internet Marketplaces is that there is a direct and convenient connection between various Chinese and other unidentified manufactures to the Infringing Products. In essence, a counterfeiter in Vietnam or Russia, for example, may order a crate of Infringing Products from a Chinese manufacturer, have them drop shipped to a fulfillment center in the United States, and then sell the Infringing Products to a US consumer through a Third-Party Service Provider. The ease of this system encourages knock-offs to flourish.

¹ As set forth in the Complaint, Defendants (1) have willfully infringed one or more of the claims of U.S. Patent No. 11,154,128 ("Plaintiff's Patent" or "the Plaintiff's Patent") by offering for sale, selling, and distributing knock-off versions of Plaintiff's SLIDEAWAY[®] toy bin ("Infringing Products") and some (Defendant Nos. 3, 4, and 48) are infringing on Plaintiff's Mark (U.S. Reg. No. 5994698) for SLIDEAWAY[®] ("Plaintiff's Mark").

15. For these reasons, Plaintiff retained the legal counsel of Ference & Associates LLC (“the Ference firm”) to perform the policing of various Internet marketplaces. During this process, the Ference firm identified many Chinese manufacturers operating on Marketplace Storefronts hosted by the Internet marketplaces. These manufacturers were supplying many of the other identified Defendants with infringing products flooding the Internet marketplaces and damaging Plaintiff’s business. This damage to Plaintiff’s business will continue unless Plaintiff receives the requested restraining order and injunctive relief.

16. Defendants’ sale, distribution, and advertising of the Infringing Product are highly likely to cause consumers to believe that Defendants are offering genuine versions of Plaintiff’s Products when in fact they are not.

17. To illustrate, below are several examples of the Infringing Products below Plaintiff’s Product:

PLAINTIFF’S PRODUCT



INFRINGING LISTING OF DEFENDANT TOY STORAGE WORLD (TSW)



INFRINGING LISTING OF DEFENDANT ALIMTO



INFRINGING LISTING OF DEFENDANT BEST US TOYS



INFRINGEMENT LISTING OF DEFENDANT DRAGON HSE



18. As poorly designed and manufactured products, the flimsiness of the infringing product may disappoint a customer who may give the product a bad review.

19. The Infringing Products threaten to destroy the reputation of high quality that Plaintiff's Products have earned.

20. Defendants do not have, nor have they ever had, the right or authority to use Plaintiff's Patent, Plaintiff Work, or Plaintiff's Mark. Defendants' unlawful activities have deprived and continue to deprive Plaintiff of its rights to control its IP. By their activities, Defendants are defrauding Plaintiffs and the consuming public for Defendants' benefit. Defendants should not be permitted to continue their unlawful activities, which are causing

Plaintiffs ongoing irreparable harm. Accordingly, Plaintiffs are seeking entry of a temporary restraining order prohibiting Defendants' further wrongful infringement.

21. Given Defendants' use of Plaintiff's Patent, the Infringing Products are indistinguishable to consumers, both at the point of sale and post-sale is causing and will continue to cause Plaintiff's irreparable harm and damage.

22. The infringement of Plaintiff's IP devalues the Plaintiff's SLIDEAWAY® brand toy storage bin by associating it with inferior quality goods, and it undermines the value of the Plaintiff's IP by creating the impression that infringement may be undertaken with impunity, which threatens Plaintiff's ability to attract investors and markets for the Plaintiff's Products.

23. I have reviewed **Composite Exhibit 1** attached to the Declaration of Dee Odell and the pictured web listings and upon my information and belief, the Defendants identified in **Schedule "A"** of the Complaint, were and/or are currently manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale and or/selling non genuine, knock-off versions of Plaintiff's Product that infringe on at least one claim of the Plaintiff's Patent, with the non-genuine, copies of Plaintiff's Product directed to U.S. consumers, including those consumers in Pennsylvania, through their e-commerce stores as more fully detailed and demonstrated by viewing the Claims Chart of **Complaint Exhibit 4** and the photographs and descriptions of each Infringing Product as shown in **Composite Exhibit 1** of the Declaration of Mary Laplante filed herewith.

24. None of the identified Defendants are authorized re-sellers of genuine versions of Plaintiff's Product. Moreover, none of the identified Defendants are authorized to manufacture, import, export, advertise, offer for sale or sell Plaintiff's Products or knock-offs. Further,

Plaintiffs never consented or granted permission to any of the identified Defendants to use Plaintiff's Patent.

25. I have confirmed that all of the identified products pictured in **Composite Exhibit 1** are infringements of Plaintiff's Product and upon information and belief, the Defendants set forth in **Schedule "A" of the Complaint** were and/or are currently manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale and/or selling Infringing Products, to sell to U.S. consumers, including those consumers in Pennsylvania, through their Online Marketplace Storefronts. Through visual inspection of Defendants' listings for Infringing Products, it was confirmed that each Defendant is offering an infringing version of the Plaintiff's Product. The checkout pages or order forms for the Infringing Products confirm that each Defendant was and/or is still currently offering for sale and/or selling Infringing Products through their respective Merchant Storefronts and User Accounts and that each Defendant provides shipping and/or has actually shipped Infringing Products to the United States², including to customers located in Pennsylvania. At checkout, a shipping address located in the Pittsburgh area ("the Pennsylvania Address") in the Western District of Pennsylvania verified that each Defendant provides shipping to the Pennsylvania Address. I inspected the detailed web listings describing the Infringing Products Defendants are offering for sale through the Internet based e-commerce stores operating under each of their respective Seller IDs, and determined the products were not genuine versions of Plaintiff's Products.

² If shipped and received, the products were examined physically to confirm that they are infringing and knock-offs and not genuine.

26. Defendants' actions have caused and will continue to cause, in the event the requested relief is not granted, irreparable harm to Plaintiff's goodwill and reputation as well as to the unassuming consumers who will continue to believe that the Defendants' cheaply produced, inferior, and typically faulty infringing products and knock-offs are produced, authorized, approved, endorsed or licensed by Plaintiffs, when they are not.

27. Defendants' intentional and illegal conduct, including offering for sale and selling inferior infringing knock-offs into the U.S. and the Commonwealth of Pennsylvania, has caused lost profits to Plaintiffs and damaged the inherent value of Plaintiff's business, by diluting the brand and goodwill, damaging Plaintiff's reputation for providing high quality products, and interfering with Plaintiff's relationships with its customers and authorized resellers, as well as impeding Plaintiff's ability to attract new customers and business.

28. All of the injuries and damages described above are taking place in the United States, including in Pittsburgh, Allegheny County, Pennsylvania.

29. In addition to trying to stop the injuries and damages caused to Plaintiff's business, Plaintiffs are also seeking in this lawsuit to protect customers from being exposed to and purchasing the substandard, faulty, and potentially dangerous infringing products.

30. I have worked with Plaintiff's legal counsel in this case to assist them in identifying knock-off products and have provided them with various leads in order to find the various outlets for the infringing and knock-off products. If called upon by the Court, Plaintiff's legal counsel is able to explain additional differences between the genuine version of Plaintiff's Product and the knock-off products by the identified Defendants.

Commented [SS1]: It used to say pets, but that doesn't seem to apply to this case.

31. To be sure that none of the Defendants receive advance notice of the relief and remedies requested in Plaintiff's Complaint or the *Ex Parte* Application for Entry of a Temporary Restraining Order and Preliminary Injunction in this case, neither I nor anybody else working for Plaintiff have publicized the filing of this lawsuit.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 16, 2021

Seattle, Washington

***_____
/ NATE JELOVICH /
NATE JELOVICH***