

JUDGE BUCHWALD

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FILE COPY

PANLINE U.S.A. INC. d/b/a ALEX
TOYS,

Plaintiff,

- against -

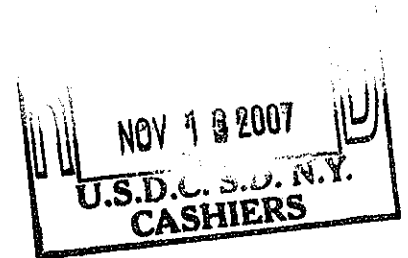
VOLKSWAGEN
AKTIENGESELLSCHAFT,
VOLKSWAGEN OF AMERICA, INC.

Defendants.

CIV. ACTION NO:

07 CIV 10272

COMPLAINT FOR DECLARATORY
JUDGMENT



Plaintiff Panline U.S.A. Inc. d/b/a Alex Toys ("Alex Toys" or "Plaintiff"), by and through its attorneys, allege as and for its Complaint against Defendants Volkswagen Aktiengesellschaft ("VWAG") and Volkswagen of America, Inc. ("VWoA") (collectively VWAG and VWoA are referred to as "Defendants") on personal knowledge as to its on activities and on information and belief as to the activities of others as follows:

SUMMARY OF THE COMPLAINT

1. This is an action for declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 that Plaintiff's children's products including but not limited to Tub Toy, Lacing Around - City/Country, Rock Painting Kit, My Touchable Puzzle -4- Vehicles, My First Words, Finger Painting Party, Tissue Paper Art, Sand Art - Sand Shapes, Paper Mache Refill, Dough Tool Set, Clay Racer Activity Kit and Crayon Car (the "Accused Products") do not infringe upon Defendants' U.S. Trademark Registration Nos. 3,038,741 and 3,043,073; Intl. Registration No. 778996; and/or trade dress (collectively the "VW Marks").

PARTIES

2. Plaintiff is a corporation organized and existing under the laws of the State of New Jersey, and having a principal place of business at 251 Union Street, Northvale, New Jersey 07547.

3. Upon information and belief, Defendant VWAG is a company duly organized and existing under the laws of Germany, and having a principal place of business in Wolfsburg, Germany.

4. Upon information and belief, Defendant VVoA is a corporation duly organized and existing under the laws of the State of New Jersey, and having a principal place of business at 3800 Hamlin Road, Auburn Hills, Michigan 48326.

JURISDICTION AND VENUE

5. This claim arises under the Declaratory Judgment Act, 28 U.S.C. §§2201 and §2202, and the Lanham Act, 15 U.S.C. §1051, *et. seq.* This action is brought for the purpose of determining a question of actual controversy concerning trademark and trade dress rights owned by Defendants and accusations of trademark counterfeiting, trademark and trade dress infringement made by Defendants against Plaintiff.

6. This Court has subject matter jurisdiction over this action pursuant to the Declaratory Judgment Act, 28 U.S.C. §2201 and §2202 and Fed. R. Civ. P. 57.

7. This Court has personal jurisdiction over Defendants in that they conduct business in the State of New York and in this District, and maintain contacts within the State of New York.

8. Venue is proper in this District pursuant to 28 U.S.C. § 1391 and §1400(a) in that Defendants conduct business in this district and are subject to personal jurisdiction in this judicial district.

PLAINTIFF'S BUSINESS AND PRODUCTS

9. Plaintiff is in the business of designing, selling and distributing educational toys and products for children, including the Accused Products at issue in this action. Plaintiff first began in this business at least as early as 1986. Plaintiff now produces over 650 items in new categories of juvenile toys: bathtub play, imaginative and dramatic play, fashion and jewelry, beach and pool playthings and whimsical children's furniture. Plaintiff's products are currently sold worldwide in over 65 countries through specialty retail stores, catalogs and web sites. Printouts from Plaintiff's website evidencing Plaintiff's products are attached as Exhibit A.

10. Plaintiff's mission is to provide children with quality creative products that foster personal expression and build self-esteem. The best children's activities are both fun for the children and open a child's mind to new skills, new ideas and new worlds.

11. Plaintiff's products have received prestigious honors in the industry with awards for its innovative, engaging and outstanding products from a variety of highly recognized magazines and toy review organizations, including but not limited to the ASTRA Award, Better Homes and Gardens Best Toy of the Year, Child Magazine Best Toys of the Year and Creative Child Magazine Preferred Choice Award and Toy of the Year Awards.

DEFENDANTS' BUSINESS AND PURPORTED MARKS

12. Defendant VWoA is a subsidiary of and the exclusive U.S. importer of cars manufactured by VWAG. VWAG purports to own several trademarks, including U.S.

Trademark Registration Nos. 3,038,741 and 3,043,073 and Intl. Registration No. 778996 for the design of the Volkswagen Beetle. VWAG's trademarks are licensed to VWoA for use in the United States on automobiles and related products.

13. On or about April 25, 2007, Defendants sent Plaintiff a cease and desist letter asserting that Plaintiff's manufacture and sale of the "Tub Toys" was infringing various intellectual property rights owned by Defendants. A copy of Defendants' letter is attached as Exhibit B. Defendants' letter alleged Plaintiff's manufacture and sale of the "Tub Toys" constitutes trademark counterfeiting, trademark infringement and trade dress infringement, misappropriation and other state law claims. Defendants' letter demanded payment in the amount of twenty five percent (25%) of gross revenues from Plaintiff's sale of the Tub Toys or five thousand dollars (\$5,000), which ever is less, and delivery of Plaintiff's inventory of the "Tub Toys" to Defendants. The letter also threatened damages, attorney's fees, and future enforcement.

14. On or about May 30, 2007, Plaintiff filed but did not serve its Complaint for declaratory relief in this action. The parties then engaged in settlement discussions in an attempt to resolve this matter. On June 28, 2007, during the settlement discussions, Defendants sent Plaintiff a draft complaint of their own, expanding their assertion of infringement from just the Tub Toy to all of the Accused Products and bringing claims for trademark dilution in addition to infringement. A copy of Defendants' threatened complaint is attached as Exhibit C. Defendants have never filed their draft complaint despite sending it to Plaintiff more than four months ago.

DECLARATORY JUDGMENT

15. Plaintiff repeats and incorporates by reference the statements and allegations in paragraphs 1 to 14 of the Complaint as though fully set forth herein.

16. The uncertainty caused by Defendants' threats has raised issues about whether Plaintiff should continue selling the Accused Products.

17. On account of Defendants' conduct, described herein, Plaintiff reasonably anticipates that in the future it will be sued by Defendants for trademark counterfeiting, trademark counterfeiting, trademark dilution, trade dress infringement and/or related claims arising from its sale of the Accused Products.

18. An actual controversy exists between the parties with respect to whether Plaintiff's sale of the Accused Products unfairly competes with or otherwise violates Defendants' rights, if any, under the Lanham Act, 15 U.S.C. §§ 1051 *et seq.* or otherwise pursuant to any other federal laws or the laws or statutes of any state.

19. To avoid further harm to and uncertainty in its business, Plaintiff seeks a judicial declaration establishing that the Accused Products do not infringe any of Defendants' alleged trademark or trade dress rights, and that the sale thereof does not constitute unfair competition, under any other state or federal law.

20. Plaintiff will be damaged in its business and reputation by Defendants' threats of infringement and will be irreparably damaged if the existing controversy between the two companies is not promptly resolved.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court grant the following relief:

1. That the Court declare that Plaintiff's manufacture, advertising, promotion and sale of the Accused Products neither infringes any of Defendants' alleged trademark or trade

dress rights in the VW Marks nor constitutes, trademark dilution or unfair competition, under any other state or federal law;

2. That the Court declare that Defendants do not have any intellectual property right or exclusive right in or to any of the Accused Products;
3. That the Court award Plaintiff reasonable attorneys' fees and costs; and
4. All such other and further relief, in law or in equity, to which Plaintiff may be entitled or which the Court deems just and proper.

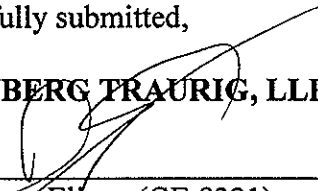
DEMAND FOR A JURY TRIAL

Plaintiff hereby demands a trial by the jury on its claims herein.

Dated: November 9, 2007

Respectfully submitted,

GREENBERG TRAURIG, LLP

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