



FILED

SEP 14 2009

Date: 09/12/2009

Boyd Beaman
CLERK OF THE
HAMILTON CO. CIRCUIT COURT

MAIL INC:

The following is in response to your 09/12/2009 request for delivery information on your Signature Confirmation(TM) item number 2180 5213 9070 4194 7005. The delivery record shows that this item was delivered on 09/10/2009 at 03:23 PM in CHICAGO, IL 60606 to C PYM. The scanned image of the recipient information is provided below.

Delivery Section

Signature of Recipient:

Craig Pym
Craig Pym

Address of Recipient:

111 N. CANAL ST STE 700

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,

United States Postal Service

The customer reference info shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

D010909PL1127 SNT. 908 LM
RECYCLED PAPER GREETINGS, INC.
C/O REGST. AGENT, JOHN BOLGER
111 N CANAL ST STE 700
CHICAGO IL 60606

STATE OF INDIANA) HAMILTON COUNTY SUPERIOR COURT
) ROOM NO. 1

SS:)
 COUNTY OF HAMILTON) CASE NUMBER: 29D01-0909-PL- 1127
)

HAMILTON COUNTY COURTS 12)
 JUST BORN, INC.)
)
 Plaintiff,)
)
 v.)
)
 RECYCLED PAPER GREETINGS, INC.)
)
 Defendant.)

APPEARANCE BY ATTORNEY IN CIVIL CASE

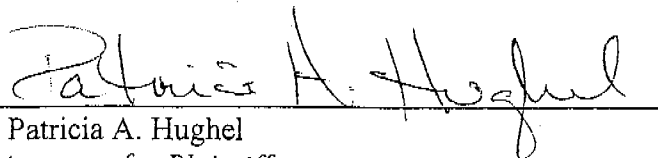
Party Classification: Initiating X Responding ___ Intervening ___

1. The undersigned attorney and all attorneys listed on this form now appear in this case for the following party member(s): Just Born, Inc.
2. Applicable attorney information for service as required by Trial Rule 5(B)(2) and for case information as required by Trial Rules 3.1 and 77(B) is as follows:

Name: Patricia A. Hughel Atty Number: 24115-49
 Address: Brannon & Associates, P.C.
1 North Pennsylvania St., Suite 520 Phone: (317) 408-2913
Indianapolis, IN 46204 FAX: (317)
 Computer Address: patty@brannonpatents.com

3. There are other party members: Yes ___ No X (If yes, list on continuation page.)
4. If first initiating party filing this case, the Clerk is requested to assign this case the following Case Type under Administrative Rule 8(b)(3): CC
5. I will accept service by FAX at the above noted number: Yes ___ No X

Respectfully submitted,

A handwritten signature in cursive script, reading "Patricia A. Hughel", is written over a horizontal line.

Patricia A. Hughel
Attorney for Plaintiff

Patricia A. Hughel, Esq.
Brannon & Associates, P.C.
1 North Pennsylvania Street, Suite 520
Indianapolis, Indiana 46204
Phone (317) 408-2913
Fax (317) 630-2813

STATE OF INDIANA)
COURT)

HAMILTON COUNTY SUPERIOR

2009 SEP 17
ROOM NO: 17

COUNTY OF HAMILTON)

SS:)
CAUSE NUMBER: 29D01-0908-PL- 1127
HAMILTON COUNTY COURTS

JUST BORN, INC.)

Plaintiff,)

v.)

RECYCLED PAPER GREETINGS, INC.)

Defendant.)

SUMMONS

DEFENDANT: Recycled Paper Greetings, Inc.
c/o Registered Agent, John Bolger
111 N. Canal, #700
Chicago, IL 60606

You are hereby notified that you have been sued by the person named as Plaintiff and in the Court indicated above.

The nature of the suit against you is stated in the Complaint, which is attached to this Summons. It also states the relief sought or the demand made against you by Plaintiff.

An answer or other appropriate response in writing to the Complaint must be filed either by you or your attorney within twenty (20) days, commencing the day after you receive this Summons, (or twenty-three (23) days if this Summons was received by mail), or a judgment by default may be rendered against you for the relief demanded by Plaintiff.

If you have a claim for relief against Plaintiff arising from the same transaction or occurrence, you must assert it in your written answer.

Dated: SEP 04 2009

Peggy Bearse
Hamilton County Superior Court No. 7
CLERK OF COURTS

The following manner of service of Summons is hereby designated:

- Registered or Certified Mail
- Service on individual at above address:
- Service on agent:
- Service by Publication

Patricia Hughel
Patricia Hughel
Atty. No. 24115-49
Attorney for Plaintiff

CERTIFICATE OF MAILING

I hereby certify that on _____, 2009, I mailed a copy of this summons and a copy of the complaint to defendant, Recycled Paper Greetings, Inc., by certified mail, return receipt requested, at the address furnished.

Clerk of Hamilton County

Dated: ____ day of _____, 2009.

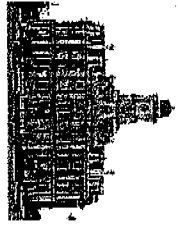
RETURN OF SERVICE OF SUMMONS BY MAIL

I hereby certify that the attached return receipt was received by me showing that:

- (1) The summons and a copy of the complaint was mailed to defendant, Recycled Paper Greetings, Inc.
- (2) The attached return receipt was received by me showing that the summons and a copy of the complaint were mailed to defendant, Recycled Paper Greetings, Inc., and were accepted by _____ on behalf of said defendant on _____, 2009;
- (3) The attached return receipt was received by me showing that the summons and a copy of the complaint were returned not accepted on _____.

Clerk of Hamilton County

Dated: ____ day of _____, 2009.





PEGGY BEAVER
CLERK OF HAMILTON CO
STE 106
HAMILTON COUNTY SQ
NOBLESVILLE, IN 46060-2228

First Class Parcel
DMM 503 9.2.2

010909PL1127 SNT. 908 LM



ELECTRONIC SCAN REQUIRED

FCM	
USPS FIRST-CLASS MAIL®	
PEGGY BEAVER CLERK OF HAMILTON CO STE 106 1 HAMILTON COUNTY SQ NOBLESVILLE, IN 46060-2228	
SHIP RECYCLED PAPER GREETINGS, INC. TO: C/O REGST. AGENT, JOHN BOLGER 111 N CANAL ST STE 700 CHICAGO, IL 60606-7210 	
e/ USPS SIGNATURE CONFIRM	
 9121 8052 1390 7041 9470 05	
Electronic Rate Approved #805213907	

Attention Carrier
on Route #C039
This piece is being
monitored for Delivery
and Scanning accuracy.
↑

Non-Machinable
Parcel

Attention: The styrofoam cube enclosed in this envelope is being included by the sender to meet a United States Postal Service regulation.

STATE OF INDIANA)	HAMILTON COUNTY SUPERIOR COURT
)	ROOM NO. 1
) SS:	
COUNTY OF HAMILTON)	CAUSE NUMBER: 29D01-0909-PL- 1127

JUST BORN, INC.)
)
Plaintiff,)
)
)
v.)
)
RECYCLED PAPER GREETINGS, INC.)
)
Defendant.)

25
559

COMPLAINT

For this Complaint against Defendant, Recycled Paper Greetings, Inc., Plaintiff, Just Born, Inc. ("JBI") hereby alleges as follows:

SUBSTANCE OF THE ACTION

1. This case involves infringement upon the distinctive and famous PEEPS® trademarks used by JBI in connection with the sale and promotion of its confectionary products. Defendant's infringement arises out of the unauthorized use of the PEEPS® trademarks on greeting cards which utilize pictorial and graphical reproductions of the famous PEEPS® marks ("infringing items").
2. Defendant's use of the PEEPS® marks on the infringing items violates JBI's rights under federal law, common law and Indiana state law. JBI asserts claims for false designation of origin or sponsorship, false advertising and trade dress infringement pursuant to the Lanham Act, common law trademark infringement, unfair competition, conversion, forgery, counterfeiting, and deception. JBI seeks a permanent injunction preventing Defendant from using the distinctive PEEPS® trademarks, along

with an award of damages, treble damages, profits, attorney's fees and costs.

THE PARTIES

3. JBI is a business organized and existing under the laws of the state of Pennsylvania.
4. Defendant, Recycled Paper Greetings, Inc., is a corporation organized and existing under the laws of Illinois. Defendant may be served through its registered agent, John Bolger, 111 N. Canal 700, Chicago, IL 60606.

JURISDICTION AND VENUE

5. This Court has original jurisdiction over this action pursuant to Ind. Code § 33-28-1-2 and Ind. Code § 33-33-29-7.
6. Defendant has submitted to this Court's jurisdiction by supplying goods within the state of Indiana.
7. Defendant has further submitted to this Court's jurisdiction by doing business in the state of Indiana.
8. Venue properly lies in this Court because a substantial part of the events giving rise to the claims alleged herein arose in Hamilton County, Indiana.

GENERAL ALLEGATIONS AS TO JBI

JBI's Trademark and Trade Dress Rights

9. JBI is a family-owned candy manufacturer that has been in business for more than seven decades and over three generations. JBI introduced its legendary marshmallow PEEPS® candies more than fifty (50) years ago. The original PEEPS® candies are unique marshmallow confectionaries shaped like baby chicks and bunnies.
10. Relative to this business, JBI is the exclusive owner of multiple trademarks, trade dress, including the famous and distinctive trade dress design shapes of its marshmallow chick

and bunny confections, and other intellectual property. This intellectual property is collectively referred to herein as the "PEEPS® trademarks" or the "PEEPS® marks."

11. The PEEPS® trademarks are distinctive and famous.
12. JBI is engaged in the sale and/or licensing of greeting cards bearing the PEEPS® trademarks in Indiana and elsewhere.
13. JBI maintains strict control over the quality and nature of its products and items bearing the PEEPS® trademarks.
14. JBI has invested considerable time and money in advertising the PEEPS® trademarks throughout Indiana and elsewhere. As a result of extensive worldwide advertising, the PEEPS® marks are immediately recognizable.
15. JBI has acquired substantial goodwill among consumers.
16. As a result of such goodwill and immediate recognition, and as a result of extensive advertising, the PEEPS® trademarks have become highly valuable.

Defendant's Infringement of JBI's Trademark Rights

17. Subsequent to JBI's development and use of the PEEPS® trademarks, Defendant began using the PEEPS® marks or confusingly similar variations of the marks.
18. Defendant has manufactured, produced, advertised and/or sold greeting cards bearing a number of the PEEPS® trademarks. Specifically, Defendant manufactured, distributed, advertised and/or sold greeting cards using pictorial and graphical replications of the PEEPS® trademarks, including the famous and distinctive trade dress design shapes of its marshmallow chick and bunny confections and the PEEPS® brand name. [See Attached, Exhibit A].
19. Defendant has not received permission from JBI, or anyone acting on JBI's behalf, to

manufacture, produce, advertise or sell any item bearing the PEEPS® trademarks or trade dress.

20. By manufacturing, producing, advertising and/or selling items bearing the PEEPS® marks without permission, Defendant has attempted to profit from and capitalize on the trademark rights and substantial goodwill developed by JBI.
21. Defendant has willfully and intentionally manufactured, produced, advertised and/or sold products bearing the PEEPS® trademarks with knowledge that the PEEPS® marks are owned by JBI.
22. Defendant manufactured, produced, advertised and/or sold items bearing the PEEPS® marks with knowledge that Defendant's use of the PEEPS® trademarks was unauthorized.
23. The manufacture, production, advertisement, and/or sale of items bearing the PEEPS® trademarks created a likelihood of consumer confusion.
24. Defendant used the PEEPS® marks with the intent to confuse and/or deceive consumers.
25. Defendant's use of the PEEPS® trademarks was not fair use.

COUNT I
FALSE DESIGNATION OF ORIGIN OR SPONSORSHIP,
FALSE ADVERTISING AND
TRADE DRESS INFRINGEMENT UNDER 15 U.S.C. § 1125(a)

26. JBI incorporates by reference the allegations contained in all previous paragraphs of this Complaint.
27. Defendant used the PEEPS® trademarks in commerce and in connection with the sale of goods or services.
28. Defendant's use of the PEEPS® marks is likely to cause confusion or mistake and/or is likely to deceive consumers as to the affiliation, connection or association of Defendant with JBI; or as to the origin, sponsorship, or approval of Defendant's goods by JBI.

29. Defendant's conduct constitutes false or misleading descriptions, false advertising, and false designations of the origin and/or sponsorship of Defendant's goods and constitutes trade dress infringement in violation of § 43(a) of the Lanham Act, as amended, 15 U.S.C. § 1125(a).
30. As a result of Defendant's conduct, JBI has suffered irreparable harm to valuable PEEPS® trademarks. Unless Defendant is permanently enjoined from further false designations, false advertisement and trade dress infringement, JBI will continue to suffer irreparable harm.
31. A permanent injunction is necessary to prevent Defendant from further interference with JBI's trademark rights.
32. Defendant's violations of 15 U.S.C. §1125(a) have caused JBI to incur damages, including, but not limited to, Defendant's profits from the sale of all infringing goods, actual damages, treble damages, statutory damages, costs of suit and attorney's fees.

COUNT II
COMMON LAW TRADEMARK INFRINGEMENT

33. JBI incorporates by reference the allegations contained in all previous paragraphs of this Complaint.
34. JBI was the first to use the PEEPS® trademarks or any marks similar thereto in association with the sale of any product or service. As a result of the continued sale by JBI, the marks have become immediately recognizable and JBI has become identified in the public mind as the manufacturer and/or licensor of the products and services to which the PEEPS® trademarks are applied.
35. JBI has acquired a reputation among consumers for quality and excellence, and the PEEPS® trademarks have come to symbolize that reputation.

36. Defendant, with knowledge of and with intentional disregard for the rights of JBI, manufactured, produced, advertised and/or sold items using the PEEPS® marks or confusingly similar imitations thereof.
37. Defendant's use of the PEEPS® marks has created the likelihood of confusion among consumers.
38. Defendant's acts constitute trademark infringement and willful infringement under the common law.
39. As a result of Defendant's conduct, JBI has suffered irreparable harm to valuable PEEPS® trademarks. Unless Defendant is permanently enjoined from further infringement, JBI will continue to suffer irreparable harm.
40. A permanent injunction is necessary to prevent Defendant from further interference with JBI's trademark rights.
41. As a result of Defendant's infringement, JBI has suffered damages, including, but not limited to, Defendant's profits from the sale of all infringing goods, actual damages, treble damages, statutory damages, costs of suit and attorney's fees.

COUNT III
UNFAIR COMPETITION

42. JBI incorporates by reference the allegations contained in all previous paragraphs of this Complaint.
43. Defendant's unlawful and unauthorized use of the PEEPS® trademarks constitutes unfair competition with JBI.
44. Defendant's conduct creates consumer confusion as to the source and/or origin of the infringing items.
45. Defendant's use of the PEEPS® trademarks is an attempt to interfere with JBI's business

relationship with its consumers and to trade on JBI's goodwill.

46. As a result of Defendant's conduct, JBI has suffered irreparable harm to valuable PEEPS® trademarks. Unless Defendant is permanently enjoined from further unfair competition, JBI will continue to suffer irreparable harm.
47. A permanent injunction is necessary to prevent Defendant from further interference with JBI's trademark rights.
48. Defendant's unfair competition has caused JBI to incur damages, including but not limited to, Defendant's profits from the sale of the infringing products, actual damages, costs of suit and attorney's fees.

COUNT IV
CONVERSION UNDER IND. CODE § 35-43-4-3

49. JBI incorporates by reference the allegations contained in all previous paragraphs of this Complaint.
50. Defendant knowingly or intentionally exerted unauthorized control over the property of JBI.
51. Defendant sold items bearing JBI intellectual property without JBI's consent and in a manner or to an extent other than that to which JBI had consented.
52. Defendant knowingly or intentionally exerted unauthorized control over the goodwill developed by JBI.
53. As a result of Defendant's conversion, JBI was damaged and seeks an award of actual damages, treble damages, costs and attorney's fees pursuant to the Indiana Crime Victim's Act, Ind. Code § 34-24-3-1.

COUNT V
FORGERY UNDER IND. CODE § 35-43-5-2(b)

54. JBI incorporates by reference the allegations contained in the previous paragraphs of this Complaint.
55. Defendant, with the intent to defraud, made, uttered, and/or possessed a written instrument in such a manner that it purports to have been made by JBI.
56. JBI did not give Defendant the authority to make or possess the infringing items.
57. As a result of Defendant's forgery, JBI was damaged and seeks an award of actual damages, treble damages, costs and attorney's fees pursuant to the Indiana Crime Victim's Act, Ind. Code § 34-24-3-1.

COUNT VI
COUNTERFEITING UNDER IND. CODE § 35-43-5-2(a)

58. JBI incorporates herein by reference the allegations contained in all previous paragraphs of this Complaint.
59. Defendant knowingly or intentionally made and/or uttered a written instrument in such a manner that it purports to have been made by JBI.
60. JBI did not give Defendant the authority to make or utter the infringing items.
61. As a result of Defendant's counterfeiting, JBI was damaged and seeks an award of actual damages, treble damages, costs and attorney's fees pursuant to the Indiana Crime Victim's Act, Ind. Code § 34-24-3-1.

COUNT VII
DECEPTION UNDER IND. CODE § 35-43-5-3

62. JBI incorporates herein by reference the allegations contained in all previous paragraphs of this Complaint.
63. Defendant knowingly or intentionally made a false or misleading written statement with the intent to obtain property.

64. Defendant, with the intent to defraud, misrepresented the identity or quality of property.
65. As a result of Defendant's deception, JBI was damaged and seeks an award of actual damages, treble damages, costs and attorney's fees pursuant to the Indiana Crime Victim's Act, Ind. Code § 34-24-3-1.

COUNT VIII
CLAIM FOR CORRECTIVE ADVERTISING DAMAGES

66. JBI incorporates herein by reference the allegations contained in all previous paragraphs of this Complaint.
67. Defendant has damaged JBI, through its advertising, JBI's goodwill and reputation, or has otherwise caused misinformation in the marketplace as to the origin, source or sponsorship of Defendant's products.
68. JBI seeks those damages arising from this advertising injury, including but not necessarily limited to monies sufficient to compensate for the damage to JBI's goodwill and/or the cost for correcting the misinformation in the marketplace.

PRAYER FOR RELIEF

WHEREFORE, JBI prays for relief against the Defendant as follows:

- a. That Defendant, its officers, partners, agents, servants, affiliates, employees, attorneys, and representatives, and all those in privity or acting in consent or participation with Defendant, and each and all of them, be permanently enjoined from:
 - (i) Imitating, copying, reproducing, or using, in any manner, the PEEPS® trademarks, or any other mark confusingly similar to the PEEPS® trademarks;

- (ii) Committing any act that dilutes or is likely to dilute the distinctiveness of the PEEPS® trademarks;
 - (iii) Committing any act that is likely to create the impression that Defendant's business or products are in any way sponsored by, approved of or otherwise affiliated or connected with JBI;
 - (iv) Importing, manufacturing, producing, distributing, circulating, selling, offering for sale, advertising, promoting or displaying any product or service using any simulation, reproduction, counterfeit, copy or imitation of any JBI trademark or trade dress; and
 - (v) instructing, assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs (i) through (iv) above.
- b. That Defendant be required to:
- (i) Deliver to JBI for destruction all goods and materials bearing PEEPS® trademarks which Defendant has in its possession;
 - (ii) Recall and deliver to JBI for destruction all goods and materials bearing the PEEPS® trademarks that have been previously distributed or sold;
 - (iii) Pay compensatory damages to JBI in an amount to be determined at trial for the injuries JBI has sustained as a consequence of the acts complained of;
 - (iv) Pay JBI treble damages, or alternatively, Defendant's profits trebled, whichever is greater;
 - (v) Pay all of JBI's litigation expenses, including reasonable attorneys' fees

and costs of this action;

(vi) Pay interest to JBI, including pre-judgment interest on the foregoing sums;

and

(vii) File with this Court and serve on JBI an affidavit setting forth in detail the manner and form of Defendant's compliance with the terms of this Court's orders.

c. That JBI be awarded such other and further relief as the Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

JBI hereby respectfully requests a trial by jury in this cause, and for all other relief just and proper in the premises.

Respectfully submitted,

Patricia Hughel
Attorney # 24115-49

By: 

Attorney for Plaintiff