

EXHIBIT A

FILED

STATE OF INDIANA) HAMILTON COUNTY SUPERIOR COURT

2009 NOV 15 ROOM NO. 1 AM 10:14

COUNTY OF HAMILTON) SS: PEEPS CAUSE NUMBER: 29D01-0911-PL-1425

HAMILTON COUNTY COURTS

JUST BORN, INC.)

Plaintiff,)

v.)

SUR LA TABLE, INC. and SHEN)
MANUFACTURING COMPANY, INC.)

Defendants.)

COMPLAINT

For this Complaint against Defendants, Sur La Table, Inc. and Shen Manufacturing Company, Inc., hereinafter collectively referred to as "Defendants", 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. Defendants' infringement arises out of the unauthorized use of the PEEPS® trademarks on towels and aprons bearing reproductions of the famous PEEPS® marks ("infringing items").
2. Defendants' 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, deception and corrective advertising damages. JBI seeks a permanent injunction preventing Defendants 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, Sur La Table, Inc., is a corporation organized and existing under the laws of Washington. Defendant may be served through its registered agent, Business Filings Incorporated, 1801 West Bay Drive Northwest, Suite 206, Olympia, Washington 98502.
5. Defendant, Shen Manufacturing, Inc. is a corporation organized and existing under the laws of Pennsylvania. Defendant may be served at 40 Portland Road, West Conshohocken, Pennsylvania 19428.

JURISDICTION AND VENUE

6. This Court has original jurisdiction over this action pursuant to Ind. Code § 33-28-1-2 and Ind. Code § 33-33-29-7.
7. Defendants have submitted to this Court's jurisdiction by supplying goods within the state of Indiana.
8. Defendants have further submitted to this Court's jurisdiction by doing business in the state of Indiana.
9. 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

10. 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 bunnies and chicks.
11. Relative to this business, JBI is the exclusive owner of multiple trademarks, trade dress and other intellectual property. This intellectual property is collectively referred to herein as the "PEEPS[®] trademarks" or the "PEEPS[®] marks."
12. The PEEPS[®] trademarks are distinctive and famous.
13. JBI is engaged in the sale and/or licensing of promotional merchandise, including novelty items, bearing the PEEPS[®] trademarks in Indiana and elsewhere.
14. JBI maintains strict control over the quality and nature of its products and items bearing the PEEPS[®] trademarks.
15. 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.
16. JBI has acquired substantial goodwill among consumers.
17. 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

18. Subsequent to JBI's development and use of the PEEPS[®] trademarks, Defendants began using the PEEPS[®] marks or confusingly similar variations of the marks.
19. Defendants have manufactured, produced, advertised and/or sold items bearing the PEEPS[®] trademarks. Specifically, Defendants manufactured, distributed, advertised

- and/or sold kitchen towels and aprons using confusingly similar replications of the PEEPS® bunny trademark combined with the PEEPS® brand name. [See Attached, Exhibit A]
20. Defendants have 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.
21. By manufacturing, producing, advertising and/or selling items bearing the PEEPS® marks without permission, Defendants have attempted to profit from and capitalize on the trademark rights and substantial goodwill developed by JBI.
22. Defendants have willfully and intentionally manufactured, produced, advertised and/or sold products bearing the PEEPS® trademarks with knowledge that the PEEPS® marks are owned by JBI.
23. Defendants manufactured, produced, advertised and/or sold items bearing the PEEPS® marks with knowledge that Defendants' use of the PEEPS® trademarks was unauthorized.
24. The manufacture, production, advertisement, and/or sale of items bearing the PEEPS® trademarks created a likelihood of consumer confusion.
25. Defendants used the PEEPS® marks with the intent to confuse and/or deceive consumers.

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. Defendants used the PEEPS® trademarks in commerce and in connection with the sale of goods or services.

28. Defendants' 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 Defendants with JBI; or as to the origin, sponsorship, or approval of Defendants' goods by JBI.
29. Defendants' conduct constitutes false or misleading descriptions, false advertising, and false designations of the origin and/or sponsorship of Defendants' 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 Defendants' conduct, JBI has suffered irreparable harm to its valuable PEEPS® trademarks. Unless Defendants are 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 Defendants from further interference with JBI's trademark rights.
32. Defendants' violations of 15 U.S.C. §1125(a) have caused JBI to incur damages, including, but not limited to, Defendants' 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. Defendants, 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. Defendants' use of the PEEPS® marks has created the likelihood of confusion among consumers.

38. Defendants' acts constitute trademark infringement and willful infringement under the common law.

39. As a result of Defendants' conduct, JBI has suffered irreparable harm to valuable PEEPS® trademarks. Unless Defendants are permanently enjoined from further infringement, JBI will continue to suffer irreparable harm.

40. A permanent injunction is necessary to prevent Defendants from further interference with JBI's trademark rights.

41. As a result of Defendants' infringement, JBI has suffered damages, including, but not limited to, Defendants' 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. Defendants' unlawful and unauthorized use of the PEEPS® trademarks constitutes unfair competition with JBI.

44. Defendants' conduct creates consumer confusion as to the source and/or origin of the infringing items.
45. Defendants' 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 Defendants' conduct, JBI has suffered irreparable harm to valuable PEEPS® trademarks. Unless Defendants are permanently enjoined from further unfair competition, JBI will continue to suffer irreparable harm.
47. A permanent injunction is necessary to prevent Defendants from further interference with JBI's trademark rights.
48. Defendants' 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. Defendants knowingly or intentionally exerted unauthorized control over the property of JBI.
51. Defendants 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. Defendants knowingly or intentionally exerted unauthorized control over the goodwill developed by JBI.
53. As a result of Defendants' 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. Defendants, 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 Defendants the authority to make or possess the infringing items.
57. As a result of Defendants' 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. Defendants 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 Defendants the authority to make or utter the infringing items.
61. As a result of Defendants' 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. Defendants knowingly or intentionally made a false or misleading written statement with the intent to obtain property.
64. Defendants, with the intent to defraud, misrepresented the identity or quality of property.
65. As a result of Defendants' 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. Defendants have damaged JBI, through its advertising, JBI's goodwill and reputation, or have 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 Defendants as follows:

- a. That Defendants, its officers, partners, agents, servants, affiliates, employees, attorneys, and representatives, and all those in privity or acting in consent or participation with Defendants, 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 Defendants' 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 Defendants be required to:

- (i) Deliver to JBI for destruction all goods and materials bearing PEEPS® trademarks which Defendants have 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;

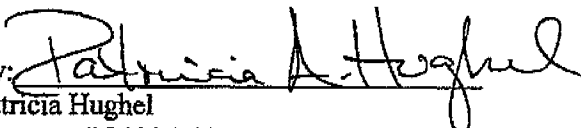
- (iv) Pay JBI treble damages, or alternatively, Defendants' profits trebled, whichever is greater;
- (v) Pay all of JBI's litigation expenses, including reasonable attorneys' fees and costs of this action;
- (vi) Pay interest to JBI, including pre-judgment interest on the foregoing sums; and
- (vii) 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,

By: 
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