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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PLASTWOOD SRL, an Italian corporation;
PLASTWOOD CORPORATION, a Delaware
corporation,

Plaintiffs,

v.

ROSE ART INDUSTRIES, INC., a New Jersey
corporation; and MEGA BRANDS, INC., a
foreign corporation,

Defendants.

CV 07-0458 JLR

COMPLAINT FOR DAMAGES FOR
FALSE ADVERTISING AND UNFAIR
AND DECEPTIVE ACTS AND
PRACTICES

JURY TRIAL DEMANDED

Plaintiffs, by and through their counsel, upon personal knowledge as to their own acts and beliefs, and upon information and belief as to all matters based upon the investigation of counsel, alleges as follows:

I. INTRODUCTION

1. Plaintiffs and Defendants directly compete in the manufacture of certain construction toys that employ magnets to enable the assembly of building sets for the childrens' toy market.

2. In 2003, Plaintiffs enjoyed a profitable and successful business in the manufacture of high end magnetic construction toy products known as SuperMag, primarily serving the American market.

COMPLAINT FOR DAMAGES FOR FALSE ADVERTISING AND
UNFAIR AND DECEPTIVE ACTS AND PRACTICES - 1
Case No.



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1 3. In late 2003, Defendants launched their cheaper magnetic construction toy
2 product, that substantially copied Supermag, known as Magnetix, representing it was safe for use
3 by children three years and older and could be used to build several structures represented on the
4 product packaging.

5 4. It was subsequently revealed that many of the structures which consumers were
6 told could be constructed with Magnetix blocks cannot, in fact, be built at all, but instead
7 collapse of their own weight and are not self-supportable. This is despite Defendants' packaging
8 for the product incorporating pictures of these unsupportable structures.

9 5. Further, although Magnetix blocks are advertised by Defendants as safe to use
10 by children three years and older, in fact, the blocks are highly dangerous to small children. The
11 magnets can spontaneously release from the blocks during normal use allowing them to be
12 ingested by small children causing horrific and severe personal injuries, and, in one instance,
13 death. In 2006, there was prominent and repeated publicity concerning the personal injuries to
14 children across the nation as the result of ingestion of magnets from Defendants' products,
15 including the death of a 22 month-old infant in the state of Washington.

16 6. Plaintiffs' premium high-end magnetic construction sets are more expensive
17 than Defendants. Both the design of the toys and the quality control in manufacture ensure the
18 magnets employed in construction of SuperMag cannot dislodge.

19 7. Defendants' false advertising deceived or tended to deceive a substantial portion
20 of the market for childrens' magnetic construction toys enticing consumers into purchasing the
21 Magnetix product believing it to be safe and capable of supporting the structures represented on
22 the packaging.

23 8. As a result of Defendants' false advertising and unfair and deceptive acts and
24 practices, Plaintiffs' sales of their product were dramatically impacted causing them to decline
25 by millions of dollars. Defendants have been unjustly enriched thereby depriving Plaintiffs of
26 profits they would ordinarily have received were it not for their loss of sales.



II. JURISDICTION AND VENUE

9. Jurisdiction. This court has subject matter jurisdiction to decide this case pursuant to the Lanham Act (TITLE 15 U.S.C. § 1051 *et seq.* and 28 U.S.C. § 1331 and because there is complete diversity between the parties and the matter in controversy exceeds \$75,000 exclusive of interests and costs pursuant to 28 U.S.C. § 1332.

10. Venue. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(a) and (c) because Defendants as corporations are “deemed to reside in any judicial district in acts “giving rise to claim[s] occurred” in this District as well as throughout the State of Washington. Many of the witnesses reside in the State of Washington, and the infant who died from ingestion of the Magnetix magnets resided in the State of Washington. Officials from Public Health – Seattle and King County and the Seattle Children’s Hospital and Regional Medical Center jointly issued a warning about the dangers of Magnetix products to children in March of 2006.

III. PARTIES

A. Plaintiffs

11. PlastWood SRL is a corporation organized and existing through and under the laws of Italy. PlastWood manufactures and sells products worldwide, including in the United States of America.

12. PlastWood Corporation is a wholly owned subsidiary of PlastWood SRL and is a corporation organized and existing under the laws of the State of Delaware. Its principle place of business is 1115 Broadway, Toy Tower 25, Suite 302, New York, New York. PlastWood is qualified to conduct business and has conducted business in King County, State of Washington.

B. Defendants

13. Defendant Rose Art Industries, Inc. (‘Rose Art’) is a corporation organized and existing under the laws of the state of New Jersey, with its principle place of business located in Wood Ridge, New Jersey. Rose Art is qualified to conduct business and has conducted business in King County, State of Washington.



1 14. Defendant MEGA BRANDS, Inc. ('MEGA BRANDS') is a corporation
2 organized and existing through and under the laws of Canada, Province of Quebec. MEGA
3 BRANDS' principle place of business is located in Montreal, Canada. Defendant Rose Art is
4 wholly owned and controlled by defendant MEGA BRANDS.

5 **IV. STATEMENT OF FACTS**

6 **A. Plaintiffs' Business – The Birth of SuperMag**

7 15. Plaintiffs created the GeoMag product in 1999 which subsequently evolved into
8 SuperMag with the goal of manufacturing and distributing a premium magnetic construction toy
9 product designed as an educational tool to promote creativity. The quality of the product was
10 paramount using high-end raw materials including non-toxic plastic, to avoid intolerances in the
11 event the magnetic rods are accidentally swallowed. The manufacturing process ensures the
12 magnets cannot dislodge from their plastic covering.
13

14 16. SuperMag was highly successful, and built a market for safe, reliable, and durable
15 magnetic construction toys.

16 **B. Defendants' Business and False Representations About Magnetix**

17 17. Since 2003 and up to and including the present time (the 'relevant period'), Rose
18 Art and MEGA BRANDS have manufactured and sold in the state of Washington, in the United
19 States of America at large and worldwide, a toy product called Magnetix building blocks.

20 18. Magnetix are small, multi-colored plastic building blocks each of which contain
21 two extremely strong magnetic beads, one at each end. The purpose of the beads is to hold
22 assembled blocks together using magnetic force alone. Consumers are told in Defendants'
23 published advertising and on Defendants' product packaging that a wide variety of structures
24 ('500 designs') can be built by assembling Magnetix blocks in certain described manners.

25 19. Investigation has revealed that many of the structures which consumers are told
26 can be constructed with Magnetix blocks cannot, in fact, be built at all, but instead collapse of



1 their own weight. These unsupportable structures are pictured on Defendants' packaging for the
2 product as shown.

3 20. In addition, Defendants advertise that Magnetix blocks are safe for use by
4 children three years old and older ('Ages 3 to 100'). In fact, Magnetix blocks are highly
5 dangerous to small children. The magnetic beads spontaneously release from the blocks both in
6 the box and during normal use. The magnets have on numerous occasions been ingested by
7 small children causing severe personal injuries and, in one instance, death.

8 21. Defendants Rose Art and MEGA BRANDS directly compete with PlastWood in
9 the manufacture, distribution and sale of toys in the United States and worldwide.

10 22. Beginning in May 2005, Defendant Rose Art Industries, Inc., and its parent
11 corporation, MEGA BRANDS became aware that the magnets in their "Magnetix" line of toys
12 were coming free, and that small children were swallowing these magnets. The magnets that
13 were coming loose were very powerful "earth magnets" that were, for the most part, smaller than
14 a popcorn kernel, and easily swallowed by children. Once swallowed, the magnets (in a typical
15 case) would pass into the child's intestines. Prior to May of 2005, Defendants had received a
16 number of consumer complaints involving magnets falling out of the Magnetix products. On
17 May 20, 2005, Defendants were put on notice of a claim for personal injuries made on behalf of
18 a ten year-old child, Timothy Kroell, as a result of ingestion of the magnets. Defendants took no
19 action at the time to address the potentially life threatening defect in their products.

20 23. Once in the child's intestines, the magnets attract one another across the intestinal
21 wall, and cause an intestinal blockage. In addition (depending on the length of time in the
22 intestines), the magnets begin to degrade and eat small holes (fistula) into the intestinal wall,
23 allowing bacteria to be released into the abdominal cavity causing infection and septicemia.

24 24. The magnets also caused a variety of other serious injuries when they were
25 inhaled or became lodged in the stomach.



1 25. These product failures and the injuries they caused were known to Defendants at
2 least by May 2005, and Defendants' continuing false advertising and statements throughout the
3 relevant period actually deceived or tended to deceive a substantial portion of the childrens'
4 market for magnetic toys. The statements materially influenced purchasers' buying decisions
5 within the market.

6 **C. Widespread Publicity About the Dangers of Magnetix**

7 26. On November 24, 2005, Kenneth Sweet, Jr., a 22 month-old infant, died in the
8 State of Washington from complications arising out of the ingestion of Magnetix magnets.

9 27. Over 34 incidents involving Magnetix magnets were reported to the Consumer
10 Product Safety Commission (hereinafter "CPSC"). There were several serious injuries including
11 Kenneth Sweet, Jr.'s death reported to the CPSC. Several lawsuits were filed against Defendants
12 claiming personal injuries as a result of ingestion of the magnets. The injuries sustained
13 invariably involved the removal of sections of the child's intestine.

14 28. On or about March 16, 2006, officials from Public Health Seattle and King
15 County and the Seattle Children's Hospital and Regional Medical Center issued a warning about
16 Magnetix, which they reported had caused the death of one King County child and severely
17 injured another. In the publicly issued warning, King County Medical Examiner Dr. Richard
18 Harruff was quoted as follows: "We have found that the loose magnets are a serious hazard
19 when swallowed. If two or more get into the intestine they can cause severe or fatal injury."

20 **D. Defendants' Public Admissions of the Dangers of Magnetix**

21 29. On or about March 31, 2006, the CPSC announced Defendants' voluntary
22 replacement program for all lines of Magnetix toys. Despite this so called voluntary recall,
23 Defendants did not pull the products off retailers' shelves, and they continued to be purchased by
24 unwitting consumers. At or about this time, Rose Art, Inc. publicly acknowledged learning
25 about reports of children being harmed by ingesting small parts.



1 30. On October 25, 2006, MEGA BRANDS issued a press release announcing
2 settlement of several lawsuits, and that a warning about ingesting or inhaling magnets had been
3 added to the toy packaging. The press release announced to the world that manufacturing and
4 quality control improvements had been implemented, and MEGA BRANDS had taken proactive
5 measures to ensure the safety of their products.

6 40. Despite the known danger of the "old" toy, MEGA BRANDS did not recall the
7 products from retailers. Retailers across the nation, including Wal-Mart and Toys R Us,
8 continue to this day to market and sell the old product right alongside the "new" product with
9 actual knowledge that several children suffered major injuries from the toy, and that at least one
10 child died as a result of ingesting magnets from the toy thereby poisoning the magnetic toy
11 market throughout the relevant period.

12 **F. Magnetix Toys Continue to Injure Infants**

13 41. On February 6, 2007, T.L. Leisey, a three year-old infant, became ill from
14 ingestion of Magnetix magnets, some of which may have been released from the so-called "new"
15 product Defendant claimed was subject to manufacturing and quality control improvements.
16 Infant Leisey sustained severe intestinal damage and a blockage requiring the surgical removal
17 of approximately six inches of his small intestine.

18 **F. Damage to Plaintiffs and the SuperMag Market**

19 42. The public is unaware of the distinction between Magnetix blocks, manufactured
20 and sold by Defendants, and SuperMag, manufactured and sold by Plaintiff PlastWood. As a
21 direct and proximate result of the deceptive and untruthful advertising of Magnetix by
22 Defendants which has resulted in personal injuries and death to small children, sales of
23 SuperMag toys in the state of Washington, throughout the United States of America and
24 worldwide have drastically decreased, resulting in profound economic losses suffered by
25 PlastWood. Plaintiffs have been required to lay off nearly a third of its workforce.

26 43. Defendants have earned profits from the sales of Magnetix, which profits would



1 have been earned by PlastWood from sales of SuperMags, had Defendants not commercially
2 advertised and promoted the Magnetix product misrepresenting the nature, characteristics, and
3 qualities of the product. Defendants should be forced to disgorge those profits to plaintiff
4 PlastWood, in an amount to be proved at time of trial, but in excess of \$75,000.00. For instance,
5 following the negative publicity associated with the death of a child from ingestion of the
6 magnets in the state of Washington, Plaintiff's sales were dramatically impacted. When
7 Defendants' product was first released on the market, Plaintiff's sales also plummeted by
8 millions of dollars.

9 **V. CLAIMS FOR RELIEF**

10 **CLAIM I**

11 **(Violation of Lanham Act)**

12 44. Plaintiffs reallege the previous allegations .

13 45. Defendants have violated section 43(a) of the Lanham Act, TITLE 15 U.S.C.
14 § 1125, by using in commerce, in connection with goods, a word, term or false or misleading
15 description of fact and representation of fact which in commercial advertising or promotion
16 misrepresents the nature, characteristics, and qualities of its own goods.

17 46. Defendants have caused the Magnetix blocks to be sold in interstate commerce.

18 47. Defendants' misrepresentations of fact, omissions and deceptive advertising and
19 promotion have caused damage to Plaintiff PlastWood in an amount to be proved at time of trial
20 but including (not limited to) all of Defendants' profits, all of Plaintiffs actual damages, all
21 equitable damages including unjust enrichment, plus costs of this litigation including reasonable
22 attorneys fees. TITLE 15 U.S.C. § 1117(A).

23 48. Defendants' deceptive advertising and promotion were not mere puffery, were
24 material, and have actually deceived and have the capacity to continue to deceive, a substantial
25 segment of the advertising audience.



49. Defendants' deceptive advertising and promotion have influenced and will likely continue to influence the purchasing decision of persons to whom Defendants have advertised and advertises.

50. Plaintiff further requests that any damages which the court deems to award should be trebled.

CLAIM II

(Unjust Enrichment)

51. Plaintiffs reallege the previous allegations.

52. Defendants have been unjustly enriched by their false and misleading advertising, promotion and representations in an amount to be proved at time of trial, including but not limited to, the profits they received from the sale of Magnetix blocks which profits would otherwise have been earned by plaintiff PlastWood, which profits they should be required to disgorge.

CLAIM III

(Violation of Delaware Deceptive Trade Practices Act)

53. Plaintiffs reallege the allegations contained in paragraphs 1 through 13 above.

54. Defendants have engaged in unfair and deceptive acts and practices in the conduct of trade and business. These acts and practices, including omissions, have caused the Plaintiff PlastWood to suffer actual damages, in an amount to be proved at time of trial.

55. Defendants' acts, practices and omissions are susceptible of repetition and impact the public interest, and these acts, practices and omissions have caused actual consumer reliance, resulting in an adverse economic impact on PlastWood's business.

56. Defendants are liable to Plaintiff for Plaintiff's actual damages, a penalty of \$10,000 per incident, and reasonable attorney's fees and costs pursuant to 6 DEL. C. § 2532.

WHEREFORE, plaintiff prays for relief as follows:

1 B. For a money judgment against Defendants, jointly and severally, for
2 compensatory and treble damages and attorney's fees pursuant to Delaware Trade Practices Act,
3 6 DEL. C. §§ 2531-2536.

4 C. For a money judgment against Defendants, jointly and severally, for unjust
5 enrichment;

6 D. For appropriate injunctive relief including enjoining Defendants from their
7 current marketing of Magnctix products; and

8 E. For such other relief as the court deems equitable in the premises.

9 DATED this __ day of March, 2007.

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