

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

BIGMOUTH LLC)	
)	
Plaintiff,)	
)	Civil Action No. _____
v.)	
)	
KANGAROO MANUFACTURING, INC.)	
)	
Defendant.)	
_____)	

COMPLAINT

Now comes Plaintiff BigMouth LLC (“Plaintiff” or “BigMouth”), as and for its Complaint for Declaratory Judgment against Defendant Kangaroo Manufacturing, Inc. (“Defendant” or “Kangaroo”) and alleges upon personal knowledge as to its own acts and as to events taking place in its presence, and upon information and belief as to all other facts, as follows:

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202, under the laws of the United States concerning actions relating to copyrights, 28 U.S.C. §§ 1331, 1338 (a) and (b).

2. This Court has personal jurisdiction over Defendant because Defendant has transacted business within this District; Defendant regularly does or solicits business within this District; Defendant regularly and systematically directs electronic activity into this District with the manifest intent of engaging in business within this District, including the sale and/or offer for sale of certain products to Internet users within this District, as well as entry into contracts with residents of this District through the sale of items in online marketplaces.

3. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because the events giving rise to this action occurred in this judicial district.

4. The Court has the power to declare the rights and obligations of the parties pursuant to 28 U.S.C. §§ 2201 & 2202 and Fed. R. Civ. P. 57.

PARTIES

5. Plaintiff BigMouth LLC is a Connecticut limited liability company with its principal place of business in Glastonbury, Connecticut. BigMouth designs, manufactures, and sells a variety of lifestyle products, including the Giant Pineapple Pool Float (the “BigMouth Pineapple Pool Float”) and the Giant Pizza Slice Pool Float (the “BigMouth Pizza Pool Float”) (collectively, the “BigMouth Pool Floats”). BigMouth has been a leading innovator in this field since its first product launched in 2004. BigMouth sells products to consumers through retail outlets and on the Internet.

6. Defendant Kangaroo Manufacturing, Inc. is a Florida corporation with its principal place of business in Tempe, Arizona.

FACTS GIVING RISE TO THIS ACTION

7. BigMouth and Kangaroo are competing manufacturers and distributors of pool floats and other inflatable products that are sold in retail outlets and online.

8. BigMouth uses, owns, and has registered several copyrights on the surface design and packaging of its products, including the BigMouth Pineapple Pool Float and BigMouth Pizza Pool Float, in the Copyright Catalog of the United States Copyright Office (collectively, the “BigMouth Copyrights”), including:

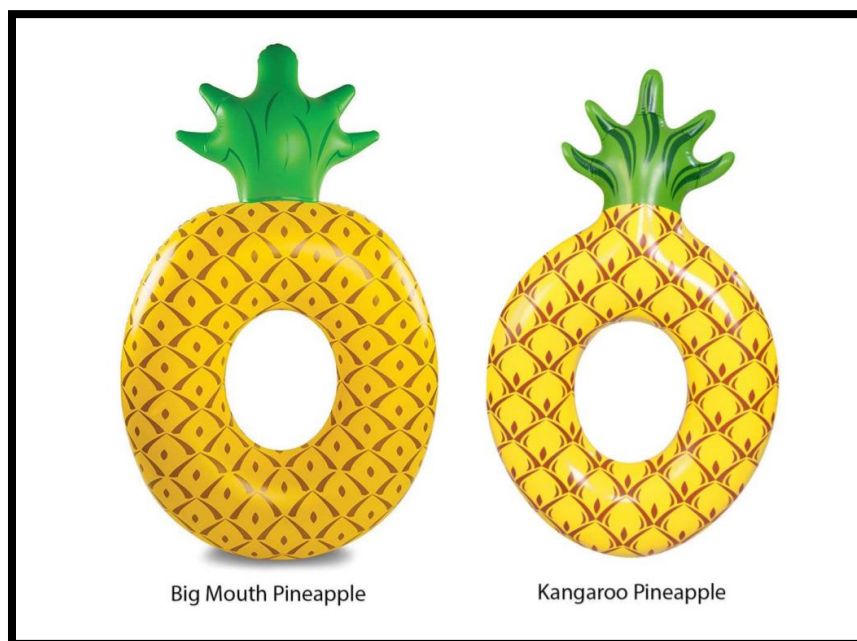
Copyright	Reg. No.	Reg. Date	Type of Work
Giant Pineapple Pool Float	VA0001996685	2016-02-16	Visual Material

Giant Pineapple Pool Float - Packaging	VA0001989574	2016-02-04	Visual Material
Pizza Slice Pool Float - Packaging	VA0001967442	2015-08-18	Visual Material

9. The Registration Numbers for the above BigMouth Copyrights were duly and legally issued by the United States Copyright Office to BigMouth, the owner of the copyrights. BigMouth’s registrations are in full force and effect.

10. BigMouth does not permit unauthorized parties to access, copy, mirror, or in any way use its copyrighted materials, including the BigMouth Copyrights.

11. Kangaroo sells products, including, but not limited to, the Kangaroo 61" Pineapple Pool Float (the “Kangaroo Pineapple Pool Float”) and the Kangaroo 72" Pizza Pool Float (the “Kangaroo Pizza Pool Float”) (collectively, the “Kangaroo Pool Floats”).





12. In May of 2017, BigMouth reported to Amazon.com and eBay.com that the Kangaroo Pool Floats infringed the BigMouth Copyrights and requested that the Kangaroo Pool Float product listings be removed (the “Take-Down Notices”).

13. Upon receiving the Take-Down Notices and in compliance with the Digital Millennium Copyright Act (“DMCA”), 17 U.S.C. § 512, Amazon.com and eBay.com removed Kangaroo’s product listings for the Kangaroo Pool Floats.

14. On June 5, 2017, Kangaroo filed a Complaint in the United States District Court for the Central District of California - Western Division, CA No. 2:17-cv-04165 (the “Action”), against BigMouth alleging misrepresentation of copyright infringement pursuant to 17 U.S.C. § 512(f)(1), intentional interference with prospective economic advantage, and unfair competition, seeking injunctive relief.

15. Specifically, Kangaroo alleged that BigMouth sent the Take-Down Notices in violation of 17 U.S.C. § 512(f)(1), because according to it the Kangaroo Pool Floats “do not infringe any copyrights being asserted by BigMouth.” Kangaroo also alleged that BigMouth “knew at the time it sent the Take-Down Notices to Amazon and eBay that the representations in

the Take-Down Notices that the Kangaroo Pool Floats infringed any of the BigMouth Pool Floats were false.”

16. On July 27, 2017, Bigmouth filed a Motion to Dismiss or Transfer the Action, arguing that the Court lacked personal jurisdiction over BigMouth in the Central District of California, and that alternatively, the Action should be transferred to the District of Connecticut pursuant to 28 U.S.C. § 1404(a). In response, Kangaroo stated that it intended to dismiss its Complaint in the Action without prejudice.

17. Despite its intent to dismiss its Complaint in the Action, Kangaroo continues to believe that the merits of the dispute have not been resolved and that BigMouth’s Take-Down Notices to Amazon.com and eBay.com were improper under 17 U.S.C. § 512(f)(1). However, Kangaroo has not stated how it intends to resolve the ongoing dispute given its intent to voluntarily dismiss the Complaint.

18. There is an actual justiciable controversy between BigMouth and Kangaroo as to whether BigMouth knowingly materially misrepresented that the Kangaroo Pool Floats infringe the BigMouth Copyrights by sending the Take-Down Notices, in violation of 17 U.S.C. § 512(f)(1).

19. BigMouth is reasonably at legal risk because of this unresolved dispute and is entitled to obtain judicial resolution of the dispute without having to wait for Kangaroo to commence an action against it.

COUNT I
(Request for Declaratory Judgment)

20. BigMouth hereby realleges each and every allegation of the Complaint contained in the foregoing paragraphs as though fully set forth in this claim for relief.

21. There is a controversy between BigMouth and Kangaroo concerning whether BigMouth knowingly materially misrepresented that the Kangaroo Pool Floats infringe the BigMouth Copyrights by sending the Take-Down Notices, in violation of 17 U.S.C. § 512(f)(1).

22. BigMouth is reasonably at legal risk because of this unresolved dispute and is entitled to obtain judicial resolution of the dispute without having to wait for Kangaroo to commence an action against it.

23. This Court has the power to declare whether Kangaroo has the right to bring an action against BigMouth for violation of 17 U.S.C. § 512(f)(1).

24. BigMouth requests that this Court issue a judgment declaring that: (1) BigMouth did not knowingly materially misrepresent that the Kangaroo Pool Floats infringe the BigMouth Copyrights; and therefore (2) that Kangaroo does not have the right to bring an action against BigMouth for violation of 17 U.S.C. § 512(f)(1) based on BigMouth's sending of the Take-Down Notices. BigMouth further brings an action for copyright infringement as to the Kangaroo Pineapple Pool Float.

COUNT II
(Copyright Infringement)

25. BigMouth hereby realleges each and every allegation of the Complaint contained in the foregoing paragraphs as though fully set forth in this claim for relief.

26. The product design and packaging of the Kangaroo Pineapple Pool Float contain images that infringe BigMouth's registered copyrights in the BigMouth Pineapple Pool Float, Registration Numbers VA0001996685 and VA0001989574.

27. A comparison of the product design and packaging of the Kangaroo Pineapple Pool Float to BigMouth's registered copyrights in the BigMouth Pineapple Pool Float,

Registration Numbers VA0001996685 and VA0001989574, reveals that Kangaroo is using BigMouth's copyrighted images or derivatives thereof without authorization.

28. By engaging in unauthorized reproduction and derivative use of BigMouth's registered copyrights in the BigMouth Pineapple Pool Float, Registration Numbers VA0001996685 and VA0001989574, Kangaroo has infringed the BigMouth's copyrights in violation of the Copyright Act, 17 U.S.C. § 501.

29. Kangaroo's conduct has caused and will continue to cause irreparable injury to BigMouth, for which BigMouth has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff BigMouth respectfully requests that this Court:

- A. Declare that BigMouth did not knowingly materially misrepresent that the Kangaroo Pool Floats infringe the BigMouth Copyrights;
- B. Declare that Kangaroo does not have the right to bring an action against BigMouth for violation of 17 U.S.C. § 512 based on BigMouth's sending of the Take-Down Notices;
- C. Preliminarily and permanently enjoin Kangaroo, including all partners, officers, agents, servants, employees, attorneys, and all those persons and entities in active concert or participation with it, from infringing BigMouth's copyrights in the advertising of any products manufactured, marketed, or sold by Kangaroo, including but not limited to the Kangaroo Pineapple Pool Float described herein;
- D. Enter an order that Kangaroo's copyright infringement was willful;
- E. Direct Kangaroo to pay BigMouth the actual damages and profits realized by it due to its copyright infringement, pursuant to 17 U.S.C. § 504;

- F. Alternatively, direct Kangaroo to pay BigMouth statutory damages in the amount of \$150,000 for its willful copyright infringement;
- G. Award BigMouth its attorneys' fees and costs in prosecuting this action, pursuant to 17 U.S.C. § 505; and
- H. Award BigMouth such other and further relief as the Court deems just and proper.

JURY TRIAL CLAIM

Plaintiff BigMouth LLC demands trial by jury as to all issues so triable of right by a jury.

Date: August 1, 2017

Respectfully submitted,

/s/ Sean Higgins

Sean R. Higgins (ct28279)

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COUNSEL FOR BIGMOUTH LLC

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.