

Velva L. Price
District Clerk
Travis County
D-1-GN-17-000314
victoria benavides

CAUSE NO. D-1-GN-17-000314

KBIDC INVESTMENTS, LLC,

Plaintiff,

v.

ZURU TOYS INC., TINNUS
ENTERPRISES, LLC, AND JOSH
MALONE,

Defendants.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

201ST JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

Plaintiff KBIDC Investments, LLC files this Original Petition against Defendants ZURU Toys Inc., Tinnus Enterprises, LLC, and Josh Malone (hereinafter collectively "Defendants").

I. DISCOVERY CONTROL PLAN

1. Plaintiff requests that discovery be conducted in accordance with a Level 3, tailored discovery plan under Rule 190.4 of the Texas Rules of Civil Procedure.

II. PARTIES

2. Plaintiff KBIDC Investments, LLC is a Texas limited liability company. Plaintiff may be contacted through the undersigned counsel.

3. Defendant ZURU Toys Inc. ("ZURU") is a company organized under the laws of Hong Kong, with its principal place of business in Guangzhou, China. ZURU sells products on behalf of Defendants Tinnus Enterprises, LLC and Josh Malone in Austin, Texas. Because this suit arises out of ZURU's business in Austin, Texas, ZURU may be served with process by serving the Texas Secretary of State, as its agent for service of process, at Service of Process, Secretary of State, P.O. Box 12079, Austin, Texas 78711-2079, Travis County, Texas. TEX. CIV. PRAC. & REM.

CODE ¶ 17.044.

4. Defendant Tinnus (“There is Nothing New Under the Sun”) Enterprises, LLC (hereinafter “Tinnus”) is a limited liability company organized under the laws of the State of Texas with its principal place of business at 3429 18th Street in Plano, Texas.

5. On information and belief, Defendant Josh Malone is a Texas citizen who may be served at 3429 18th Street in Plano, Texas, or wherever he may be found. Josh Malone is the founder and a principal of Tinnus.

III. VENUE AND JURISDICTION

6. This Court has jurisdiction over this matter and these parties because the amount in controversy exceeds the minimum jurisdictional limits of the Court. This Court has jurisdiction over ZURU because it has had continued and systematic contacts with Texas, it has committed a tort in whole or in part in Texas, and it has directed tortious conduct towards residents of this State. This Court has jurisdiction over Defendants Tinnus and Malone because they are Texas entities or citizens, and were residents of Texas when they committed the acts giving rise to this matter.

7. Venue is proper in Travis County, Texas pursuant to Texas Civil Practice & Remedies Code § 15.002(a) because it is the county in which all or a substantial part of the events giving rise to Plaintiffs’ claims occurred.

IV. FACTS

8. Blue Matrix Labs, LLC and Hydro Toys, LLC (collectively, “Plaintiff”)¹ were founded in and around 2012 in Austin, Texas to develop and sell a variety of products, including toys. Following extensive experimentation, effort, and trial and error testing, Plaintiff was able to

¹ Plaintiff KBIDC Investments, LLC purchased all of the assets of Blue Matrix Labs, LLC and Hydro Toys, LLC.

develop multiple variations of a self-sealing water balloon, multiple variations of replicators to fill multiple self-sealing water balloons at the same time, and a water balloon launcher.

9. These ideas and designs for self-sealing water balloons, a replicator to fill multiple balloons, and a water balloon launcher are innovative, confidential, and proprietary information and trade secrets. These ideas and designs were previously unknown to the general public, and could not have been reverse engineered without Plaintiff's confidential information. In fact, Plaintiff expended much time and effort researching the market to ensure that these ideas and designs were new and innovative and had never previously been done.

10. Based on Plaintiff's research of the market, Plaintiff devoted much time and effort to the water balloon projects. Plaintiff thought of, created, and expanded upon these ideas and designs in Austin, Texas. One of these designs included the attached drawings. Exhibit A.

11. Plaintiff also took various steps to keep this information confidential, including but not limited to entering into a non-disclosure agreement with a third party, stamping drawings and documentation related to the designs with "Confidential" and/or "Proprietary," and keeping the designs away from the general public.

12. Defendants ZURU, Tinnus, and Malone acquired Plaintiff's designs and ideas by improper means and misappropriated trade secrets to create an almost exact replica of Plaintiff's ideas and designs as shown in Exhibit A, and specifically, Defendants' Bunch O' Balloons product. Defendants have intentionally and knowingly sold Bunch O' Balloons in Austin, Texas.

13. Defendants knew or had reason to know that this information was acquired by improper means. Defendants intended to acquire this information in order compete with Plaintiff's products in Austin, Texas.

14. Due to Defendants' misappropriation of Plaintiff's trade secrets and confidential

information, Plaintiff has been hindered in marketing and selling its self-sealing water balloon products and have suffered economic and non-economic damages.

V. CAUSES OF ACTION

A. Trade Secret Misappropriation (Texas Uniform Trade Secrets Act)

15. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

16. Plaintiff developed and owned trade secrets, including confidential information, designs, mechanisms, and materials, that derive significant commercial value from not being generally known. Plaintiff developed these trade secrets through extensive time, labor, skill, and money in Austin, Texas.

17. Plaintiff has taken reasonable steps to maintain the confidentiality of these trade secrets.

18. Defendants have misappropriated those trade secrets.

19. Defendants used Plaintiff's trade secrets to develop water balloon products to sell in the marketplace, including Austin, Texas, in competition with Plaintiff.

20. Defendants' misappropriation of Plaintiff's trade secrets has caused Plaintiff damages, and caused Defendants to be unjustly enriched.

21. Defendants' misappropriation of Plaintiff's trade secrets was willful and malicious, thus entitling Plaintiff to recover actual damages over \$1,000,000, exemplary damages, and costs incurred in bringing this action.

B. Trade Secret Misappropriation (Common Law)

22. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

23. Plaintiff owns trade secrets, including confidential information, designs, mechanisms, and materials, that derive significant commercial value from not being generally

known. Plaintiff developed these trade secrets through extensive time, labor, skill, and money in Austin, Texas.

24. Plaintiff has taken reasonable steps to maintain the confidentiality of these trade secrets.

25. Defendants acquired those trade secrets by improper means and with notice that use of the trade secrets was improper.

26. Defendants used Plaintiff's trade secrets to develop water balloon products to sell in the marketplace in competition with Plaintiff.

27. Defendants' misappropriation of Plaintiff's trade secrets has caused Plaintiff damages, and caused Defendants to be unjustly enriched. Plaintiff is entitled to monetary relief over \$1,000,000.

C. Texas Theft Liability Act

28. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

29. Plaintiff developed trade secrets in Austin, Texas, including self-sealing balloons, replicators, and launchers through extensive time, labor, skill, and money and using confidential information and trade secrets.

30. Defendants unlawfully appropriated and stole Plaintiff's trade secrets.

31. Defendants intended to take Plaintiff's trade secrets to deprive Plaintiff of the ability to market and sell those products and to avoid paying for the time and effort to develop those trade secrets.

32. Plaintiff has suffered damages as a result of Defendant's conduct and is entitled to actual damages in an amount over \$1,000,000, exemplary damages, costs and attorneys' fees.

VI. EXEMPLARY DAMAGES

33. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

34. Plaintiff has actual damages as a result of Defendants' actions.

35. Defendants acted with malice by intentionally misappropriating Plaintiff's trade secrets and stealing Plaintiff's confidential information.

36. Defendants' malice justifies an award of exemplary damages pursuant to Texas Civil Practice and Remedies Code § 41.003(a)(2).

37. In the alternative, Defendants' intentional actions exhibit gross negligence and disregard for Plaintiff's rights.

38. Defendants' gross negligence justifies an award of exemplary damages pursuant to Texas Civil Practice & Remedies Code § 41.003(a)(3).

VII. ATTORNEYS' FEES

39. Plaintiff is entitled to attorneys' fees in accordance with Texas Civil Practice & Remedies Code § 134.005(b).

VIII. DEMAND FOR TRIAL BY JURY

40. Plaintiff demands a trial by jury and will tender the necessary fee.

IX. REQUEST FOR DISCLOSURE

41. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendants are requested to disclose, within fifty (50) days of service of this Request, the information or material listed in Rule 194.2.

X. CONCLUSION AND PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that (i) the Court award actual damages, exemplary damages, attorneys' fees, and court costs, and (ii) Plaintiff be awarded all

other relief, both in law and equity, to which it may show itself justly entitled.

Respectfully submitted.

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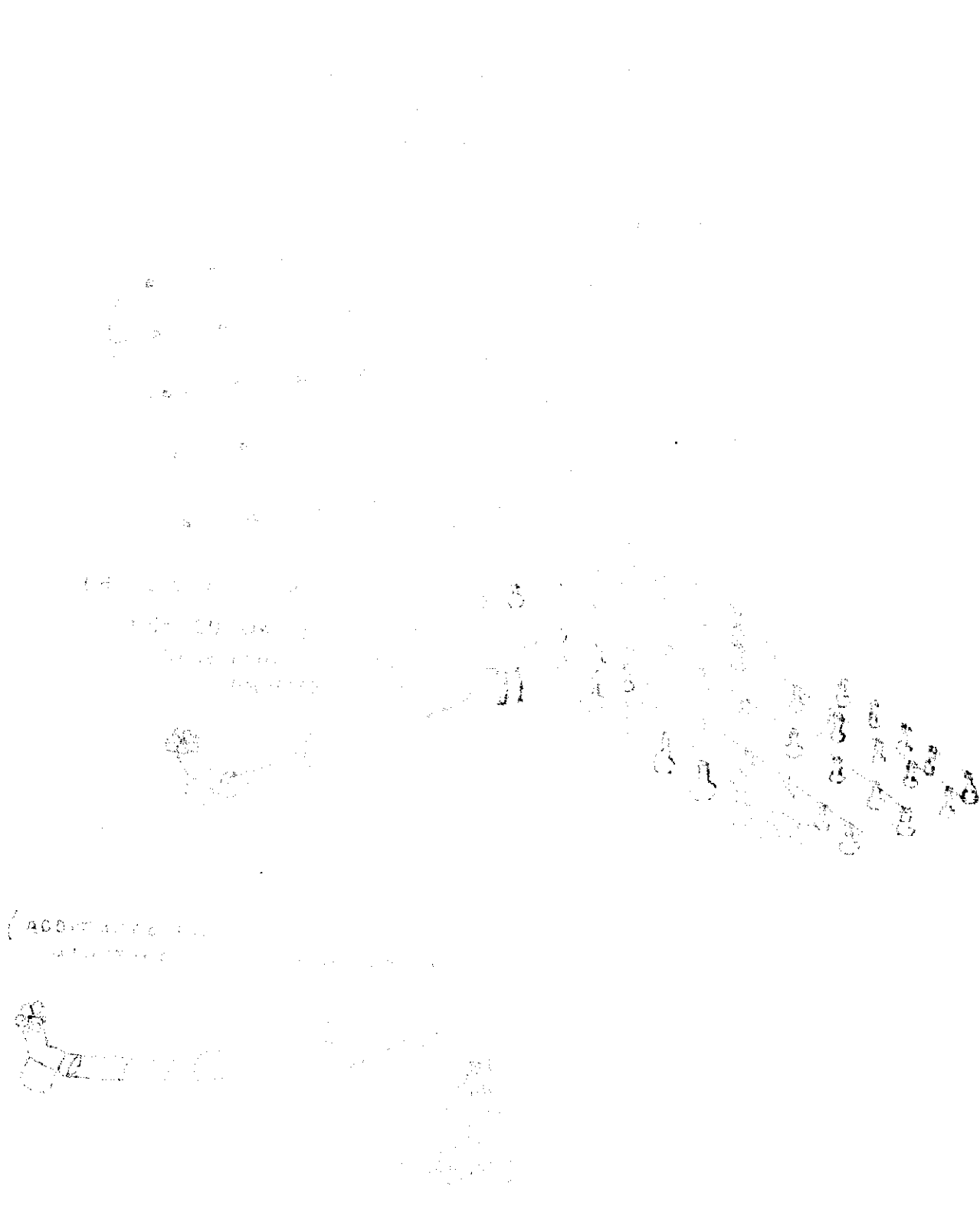


Exhibit A