

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FLIPSI, LTD.,

Plaintiff,

vs.

Case No. 23-cv-00745

TOMY INTERNATIONAL, INC.,

Defendant.

COMPLAINT

Plaintiff Flipsi, Ltd. (“Flipsi”), by and for its Complaint against Defendant TOMY International, Inc. (“TOMY”), alleges to the Court as follows:

PARTIES, JURISDICTION, AND VENUE

1. Flipsi is a company organized and existing under the laws of the State of Delaware, with a principal place of business in Ann Arbor, Michigan 48105.
2. Under information and belief, TOMY is a company organized and existing under the laws of the State of Delaware, with a principal place of business within this District at 2015 Spring Road, Suite 700, Oak Brook, Illinois 60523.
3. This action includes a claim for design patent infringement arising out of TOMY’s unauthorized importing, manufacturing, offering for sale, and selling baby bottle inserts in violation of Flipsi’s patent rights. Because this is an action for infringement under the patent laws of the United States, 35 U.S.C. § 271, *et seq.*, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over TOMY in that, at all times pertinent hereto, upon information and belief, TOMY is doing business and has systematic activities in this District and is committing infringing acts in Illinois and this District. More specifically, upon information and belief, at a minimum, TOMY offers for sale and sells baby bottle inserts, including the accused infringing inserts, online and through retail outlets in this District.

5. This action also includes a claim for breach of contract arising out of TOMY's violation of the parties' October 17, 2016 Mutual Confidentiality Agreement ("MCA"). TOMY's breach of contract is so related to TOMY's design patent infringement that they form part of the same case or controversy under Article III of the United States Constitution. This Court therefore has supplemental jurisdiction over Flipsi's breach of contract claim. 28 U.S.C. § 1367(a).

6. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b) because the Northern District of Illinois is where TOMY resides and/or this District is where TOMY has committed acts of infringement and has a regular and established place of business. Furthermore, the MCA provides that any action to enforce its terms shall be filed in the State of Illinois.

FLIPSI'S INNOVATIVE BOTTLE DESIGN AND THE PATENT-IN-SUIT

7. Flipsi repeats and realleges all paragraphs above as if fully set forth herein.

8. Flipsi is a family-owned business that designs and sells reusable baby bottles, including bottle inserts.

9. Upon their introduction in 2016, Flipsi's fully reversible bottles were an immediate hit, drawing the attention of numerous journalists, bloggers, and competitors.

10. Flipsi owns various intellectual property directed to its innovative baby bottles, including United States Design Patent No. D890,574 (the "574 patent").

11. To the extent required, Flipsi has complied with all marking requirements under 35 U.S.C. § 287.

12. The '574 patent, entitled "Beverage Container Insert," was duly and legally issued to Flipsi by the United States Patent and Trademark Office on July 21, 2020. The application that led to the '574 patent was filed May 28, 2019 and claims priority to United States Design Patent No. D779,882, which was filed on September 3, 2015. A true and correct copy of the '574 patent is attached hereto as **Exhibit 1**.

TOMY SOLICITED FLIPSI TO COLLABORATE ON A BABY BOTTLE

13. Flipsi repeats and realleges all paragraphs above as if fully set forth herein.

14. In and around October 2016, TOMY, without any contact from Flipsi, reached out and advised Flipsi that TOMY was impressed with Flipsi's products and approached Flipsi about a potential collaboration to produce a baby bottle including an insert with design features similar to those described in the '574 patent and other Flipsi intellectual property. This was an unsolicited request by TOMY.

15. On or around October 17, 2016, Flipsi and TOMY entered into the MCA in anticipation of collaborating on a baby bottle design. The MCA is attached hereto as **Exhibit 2**.

16. On or around October 27, 2016, the principals of Flipsi met with TOMY marketing and design representatives from TOMY's BOON product line to discuss various Confidential Information, as defined in the MCA, including, but not limited to sharing confidential design modifications and selling features of Flipsi's products. During this meeting, TOMY advised Flipsi that if TOMY were to design a baby bottle, TOMY would want it to look just like Flipsi's baby bottles. In follow-up to this meeting, TOMY requested a listing of Flipsi's intellectual property.

17. On or around October 28, 2016, subject to the MCA, Flipsi shared with TOMY potential contemplated design modifications of the Flipsi baby bottle, selling features of the Flipsi

baby bottle, and a complete list of Flipsi's intellectual property, including its pending utility and design patents and trademarks.

18. On or around March 8, 2017, following multiple unanswered inquiries from Flipsi inquiring about next steps for the collaboration, TOMY notified Flipsi that TOMY "decided to go in a different product direction" and that TOMY would no longer be exploring a collaboration with Flipsi.

19. On or about March 28, 2018 Flipsi learned of TOMY's line of BOON NURSH bottle inserts, which infringe the '574 patent and are sold, marketed and advertised improperly using confidential information Flipsi shared with TOMY subject to the MCA.

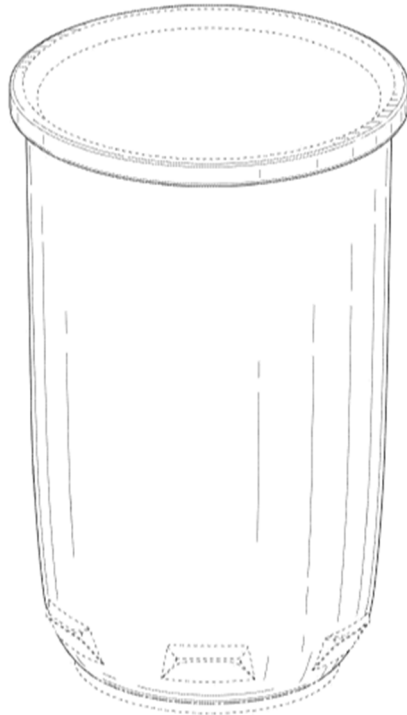
COUNT I – PATENT INFRINGEMENT

20. Flipsi repeats and realleges all paragraphs above as if fully set forth herein.

21. The '574 patent is valid and enforceable.

22. Flipsi is the assignee and owner of the '574 patent, and it has all necessary rights to enforce the '574 patent and to receive all damages and the benefits of all other remedies for TOMY's infringement.

23. Without permission or authorization from Flipsi and in violation of 35 U.S.C. § 271(a), TOMY is making, selling, offering for sale, importing, and/or using in this District and elsewhere in the United States, certain baby bottle inserts, which are at least sold at amazon.com, including, but not limited to NURSH reusable silicone pouches having item numbers B11230, B11231, B11347, B11346, B11227, B11228, B11229, B11343, B11224, B11225, B11226, B11341, B11522, B11526, B11557, B11330, and any other similarly configured, products (collectively, the "Infringing TOMY Bottle Inserts," as depicted in **Exhibit 3** hereto), that infringe the '574 patent.



'574 patent, Figure 1



Infringing TOMY Bottle Inserts (*e.g.*, B11230)

24. The Infringing TOMY Bottle Inserts contain each and every aspect of the claimed ornamental design in the '574 patent.

25. The Infringing TOMY Bottle Inserts have an overall appearance that is confusingly similar to the claimed design in the '574 patent. More specifically, the Infringing TOMY Bottle Inserts violate the '574 patent because they have a top lip and sidewall profile that are confusingly similar to the claimed design in the '574 patent.

26. The Infringing TOMY Bottle Inserts have an overall appearance that is substantially the same as the claimed design in the '574 patent.

27. Since at least September 14, 2020, TOMY has had notice of the '574 patent and Flipsi's infringement allegations relating to the '574 patent. On that date, Flipsi sent TOMY a copy of the '574 patent and detailed the bases for Flipsi's infringement allegations. TOMY did not respond to the September 14, 2020 letter or Flipsi's follow-up letter from October 1, 2020.

28. TOMY's infringement of the '574 patent has been and continues to be willful.

29. Upon information and belief, TOMY has by its aforementioned infringement of the '574 patent unlawfully derived substantial profits and gains that Flipsi would otherwise have received.

30. TOMY's conduct has caused and will continue to cause Flipsi substantial damage, including irreparable harm, for which Flipsi has no adequate remedy at law, unless and until TOMY is enjoined from infringing the '574 patent.

Wherefore, Flipsi respectfully prays for entry of a judgment and relief as follows:

- For a judgment that TOMY has infringed the '574 patent;
- For a preliminary and permanent injunction enjoining TOMY and its agents, officers, directors, employees, and all persons in privity or active concert or participation with them, directly or indirectly, from infringing the '574 patent;
- For a judgment and award that TOMY account for and pay to Flipsi damages, consistent with 35 U.S.C. § 284, which are damages adequate to compensate for TOMY's infringement of the '574 patent, including lost profits but in no event less than a reasonable royalty and total profits pursuant to 35 U.S.C. § 289;
- For a judgment and award of any supplemental damages sustained by Flipsi for any continuing post-verdict infringement of the '574 patent until entry of final judgment with an accounting as needed;
- For a finding that TOMY's infringement is willful and an award of increased damages for willful infringement pursuant to 35 U.S.C. § 284;

- For an order finding that this case is exceptional case under 35 U.S.C. § 285 and awarding Flipsi its costs, expenses, and disbursements incurred in this action, including reasonable attorneys' fees as available by law to be paid by TOMY;
- For an award of pre-judgment interest, post-judgment interest, and costs in this action; and
- For an award of such other relief to Flipsi as this Court deems just and proper.

COUNT II – BREACH OF CONTRACT

31. Flipsi repeats and realleges all paragraphs above as if fully set forth herein.
32. Flipsi and TOMY entered into the MCA in contemplation of the disclosure of proprietary confidential information to one another in furtherance of discussions for a project of mutual business interest.

33. The MCA, ¶ 1, provides the following regarding “Confidential Information”:

Confidential Information as used in this Agreement shall include: product development information including but not limited to, product ideas, product concepts, product design, product prototypes, inventions, trade secrets, copyrights, trademarks, patent, patent applications, sketches, drawings, models, and other artworks, specifications, research, research results and analysis; financial information including but not limited to, business forecasts, profit and loss statements, balance sheets, investor information; and marketing information including but not limited to, sales and marketing forecasts, marketing plans, customer lists, marketing strategies; and manufacturing information including but not limited to, processes, formulas, engineering studies, specifications, procurement requirements, identification of current or prospective manufacturing or supply sources. Confidential Information shall include all information not in the public domain communicated by either party either orally, by document, or in any visual, audible, or electronic format.

34. The MCA, ¶ 2, precludes each party from disclosing Confidential Information to any employees, unless such disclosure is necessary in order to properly evaluate the Confidential Information.

35. Pursuant to the MCA, Flipsi disclosed various Confidential Information, as defined in the MCA, to TOMY, including, but not limited to, product development information, patents, patent applications, research, and marketing information.

36. TOMY took Flipsi's Confidential Information and improperly utilized it to create its line of BOON NURSH bottle inserts.

37. In doing so, TOMY substantially and materially breached the MCA, including, but not limited to, by improperly disclosing Flipsi's Confidential Information to various TOMY employees to research, develop, design, market, and sell the infringing BOON NURSH bottle inserts.

38. Based on TOMY's material and substantial breach of the MCA, TOMY is depriving Flipsi of the essential purpose and benefit of the MCA, which Flipsi reasonably anticipated when entering into the MCA.

39. Flipsi has been damaged and continues to be damaged by TOMY's breach of the MCA.

40. Flipsi has at all times complied with its obligations under the MCA.

Wherefore, Flipsi respectfully prays for entry of a judgment and relief in its favor and against TOMY for an amount in excess of \$75,000, injunctive relief, and award Flipsi all costs and attorney fees and such other relief that this Court deems just.

DEMAND FOR JURY TRIAL

Flipsi demands a trial by jury on all issues so triable.

Dated: February 7, 2023

Respectfully submitted,

/s/ Jaye Quadrozzi

Jaye Quadrozzi

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