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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92048260
Party	Plaintiff i play. inc.
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Date	09/25/2008
Attachments	Notice_of_Filing_Cannon_Transcript.pdf (3 pages)(64289 bytes) Cannon Deposition Transcript.pdf (34 pages)(1019354 bytes) Exhibits 1-3.pdf (7 pages)(215254 bytes)

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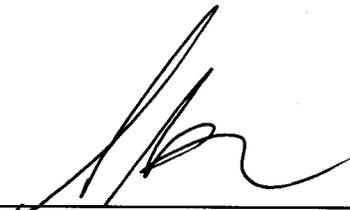
i play. inc. (change of name)	
from FAMILY CLUBHOUSE,)	
INCORPORATED d/b/a i play),)	
a North Carolina corporation,)	
)	Cancellation No. 92048260
Cancellation)	
Petitioner,)	
)	
v.)	Registration No. 2,923,675
)	International Class 28
INTERNATIONAL PLAYTHINGS, INC.,)	
substituted as party defendant)	
for IPI Acquisition Corporation,)	
)	
Registrant.)	

NOTICE OF FILING OF TESTIMONY
DEPOSITION TRANSCRIPT OF BECKY CANNON

PLEASE TAKE NOTICE, that pursuant to Rule 1.125(c) of the Trademark Rules of Practice, cancellation petitioner is today filing with the Trademark Trial and Appeal Board a certified transcript of the testimony deposition of Becky Cannon, taken on August 20, 2008, together with exhibits.

Counsel for registrant International Playthings, Inc., Paul H. Kochanski, was provided by the undersigned with copies of the exhibits immediately following the testimony deposition August 20, 2008, and was provided by the office of the reporter with a copy of the deposition transcript by letter dated September 2, 2008.

Cancellation No. 92048260



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Dated: September 25, 2008

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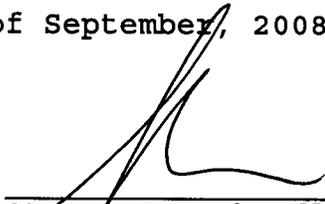
Cancellation No. 92048260

CERTIFICATE OF SERVICE

I hereby certify that the paper titled NOTICE OF FILING OF TESTIMONY DEPOSITION TRANSCRIPT OF BECKY CANNON has been served upon Registrant's Attorney of Record by depositing a copy thereof in First Class Mail, postage prepaid and properly addressed as follows:

Paul H. Kochanski
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This, the 25th day of September, 2008.



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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2			
3	i play, inc. (change of name from))	
4	FAMILY CLUBHOUSE, INCORPORATED))	
5	d/b/a i play), a North Carolina))	Cancellation No.
6	corporation,))	92048260
7	Cancellation Petitioner,))	
8	vs.))	ORIGINAL
9	INTERNATIONAL PLAYTHINGS, INC.,))	Registration No.
10	a Delaware corporation,))	2,923,675
11	Registrant.))	International Class
12)	2B

DEPOSITION OF BECKY CANNON

Wednesday, August 20, 2008

1:05 p.m.

---oOo---

Taken by the Cancellation Petitioner
Pursuant to Notice

At the Offices of CARTER & SCHNEDLER, P.A.
56 Central Avenue, Suite 101
Asheville, North Carolina 28801

Reported by:

Robert R. Molezzo, CM

SPERLING & BARRACO, INC.
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A P P E A R A N C E S

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Also Present:

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I N D E X

WITNESS: BECKY CANNON

DIRECT	CROSS	REDIRECT	RECROSS
4	22	30	32

E X H I B I T S

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1 BECKY CANNON,
2 produced as a witness, having been first duly sworn,
3 testified as follows:

4 MR. SCHNEDLER: We are on the record. I want
5 to first, Mr. Kochanski, do the stipulation regarding the
6 Rule 2.123 regarding the submission of the evidence, that
7 we are going to waive that, and we will submit the
8 evidence ourselves as opposed to having the court
9 reporter do this.

10 MR. KOCHANSKI: That is fine.

11 MR. SCHNEDLER: And we will then submit the
12 exhibits along with the notice of the testimony.

13 MR. KOCHANSKI: That will be fine.

14 MR. SCHNEDLER: And also all the exhibits that
15 we are offering today as exhibits are being offered to be
16 entered into evidence as well.

17 DIRECT EXAMINATION

18 BY MR. SCHNEDLER:

19 Q. All right, with that, Ms. Cannon, will you
20 please state your name and your address.

21 A. Becky Cannon, 6 Childs Avenue. My business
22 address?

23 Q. Home address is fine.

24 A. Asheville, North Carolina 28803.

25 Q. And your capacity, your relationship to i play?

BBC
9/24/08

1 A. I'm the owner and president.

2 Q. So I am presenting the first exhibit to be
3 marked and entered.

4 MR. SCHNEDLER: Let's go off the record.

5 (Discussion was held off the record.)

6 (Petitioner Exhibit 1 was marked for
7 identification & received in evidence.)

8 BY MR. SCHNEDLER:

9 Q. Ms. Cannon, can you please describe this
10 document for me?

11 A. This is from -- I think this is from when we
12 had hired a marketing company to -- after we had come up
13 with the name i play, we hired a marketing company to
14 help us develop a mission statement and vision and values
15 for our company.

16 Q. And on the second page of that document, the
17 second paragraph from the bottom, it refers to the name i
18 play being created and registered in 1995?

19 A. That's correct.

20 Q. Is that an accurate statement?

21 A. Yes.

22 Q. And on the following page is a list of products
23 and the market. Is that an accurate statement as of
24 1999?

25 A. Yes. And actually we did those products

1 earlier, which you can see in the catalogs, earlier than
2 1999, but at that time we had those, also.

3 Q. Okay, that is all for that one.

4 MR. KOCHANSKI: Just to note, I object to this
5 document as being hearsay, because I have to maintain my
6 objections. You know that. Okay, continue.

7 MR. SCHNEDLER: I am offering Exhibit Number 2
8 for marking.

9 (Petitioner Exhibit 2 was marked for
10 identification & received in evidence.)

11 BY MR. SCHNEDLER:

12 Q. Can you identify this document?

13 A. This is our trademark registration.

14 Q. And this certificate says that this is for
15 non-disposable swim diapers. At that time in 1997, were
16 your products limited to non-disposable swim diapers or
17 did you have other products?

18 A. We had other products.

19 Q. And what happened, what is the status of this
20 registration? What happened to it?

21 A. Well, we had an attorney in California who got
22 sick, and there was a period of time where he was -- it
23 was hard to communicate with him because he was sick.
24 And then he died. And then there was a long time, I
25 think it was almost a year before we got our files back,

1 because he didn't have any partners and his office was
2 closed. And we had to leave messages on the answering
3 machine and then somebody had to call us back. And so
4 our registration expired.

5 Q. Was there any intention on your part to abandon
6 this registration or to abandon the trademark?

7 A. No, because we continued with using the name.

8 Q. Okay. The next exhibit number 3 will be
9 marked.

10 (Petitioner Exhibit 3 was marked for
11 identification & received in evidence.)

12 BY MR. SCHNEDLER:

13 Q. Let me revert one time back to the previous
14 exhibit, Exhibit Number 2, and ask you about that, the
15 actual trademark that is presented. Is that the
16 trademark as you typically used it at that time?

17 A. Yes.

18 Q. Now, moving to Exhibit Number 3, describe what
19 Exhibit 3 is.

20 A. Exhibit 3 is our -- actually we hired a
21 marketing company this year to update our logo, and we
22 weren't satisfied with what they did, so we just did it
23 ourselves in-house.

24 Q. So this is a newer logo that you devised?

25 A. Right.

1 Q. Beginning this year, 2008?

2 A. Yes.

3 Q. Exhibit Number 4 is really a collection of
4 looseleaf things for the period '96 through '98, that we
5 are marking as Exhibit 4, the whole set there.

6 (Petitioner Exhibit 4 was marked for
7 identification & received in evidence.)

8 BY MR. SCHNEDLER:

9 Q. So describe to me what this Exhibit Number 4
10 is.

11 A. This is our first catalog and price list that
12 we had in 1996. That is this part. Well, we used the
13 same catalog with different price lists in 1997. So,
14 yes, this is the 1996, 1997, 1998 price list. We used it
15 for three years. We printed -- it was in a folder, a
16 plastic folder, and we had pages, loose pages, that went
17 in there.

18 Q. So this Exhibit 4 is an accurate listing of the
19 products that you were selling during that period of
20 time, '96, '97, '98?

21 A. Yes.

22 Q. Now, the next set of exhibits, it looks like 11
23 all together, I just want to go through quickly just to
24 identify them as your catalogs for these periods of time.
25 And so beginning in 2000, how did your approach to

1 catalogs change?

2 A. Let's see, in 2000 we --

3 Q. Or I guess '99.

4 A. Yes, this one went through '98; '96, '97, '98,
5 yes. Starting in 1999, we printed a complete catalog,
6 although we still had a price list separate.

7 MR. SCHNEDLER: This is Exhibit 5.

8 (Petitioner Exhibit 5 was marked for
9 identification & received in evidence.)

10 BY MR. SCHNEDLER:

11 Q. So just briefly describe what Exhibit 5 is.

12 A. Exhibit 5 is 1999 catalog and price list.

13 Q. The next exhibit I am presenting is Exhibit
14 Number 6.

15 (Petitioner Exhibit 6 was marked for
16 identification & received in evidence.)

17 THE WITNESS: This is the 2000 catalog and
18 price list.

19 MR. SCHNEDLER: Mr. Kochanski, let me say at
20 this point, this is the catalog that we did not produce
21 during discovery.

22 MR. KOCHANSKI: You produced all the others and
23 it is inadvertent, no problem.

24 MR. SCHNEDLER: Next we have for 2001, this
25 would be Exhibit 7.

1 (Petitioner Exhibit 7 was marked for
2 identification & received in evidence.)

3 THE WITNESS: The 2001 catalog and price list.

4 MR. SCHNEDLER: The next catalog is 2002,
5 Exhibit 8.

6 (Petitioner Exhibit 8 was marked for
7 identification & received in evidence.)

8 THE WITNESS: And price list.

9 MR. SCHNEDLER: And the next one for 2003 will
10 be Exhibit Number 9.

11 (Petitioner Exhibit 9 was marked for
12 identification & received in evidence.)

13 MR. SCHNEDLER: The next one for 2004 is
14 Exhibit Number 10.

15 (Petitioner Exhibit 10 was marked for
16 identification & received in evidence.)

17 MR. SCHNEDLER: The next one for 2005 is
18 Exhibit Number 11.

19 (Petitioner Exhibit 11 was marked for
20 identification & received in evidence.)

21 BY MR. SCHNEDLER:

22 Q. So just to recap, these last exhibits that we
23 have put into the record, exhibits 5, 6, 7, 8, 9, 10, 11,
24 represent -- this is the question -- represent your
25 annual catalogs for each of those years?

1 A. That's correct.

2 Q. And Exhibit 12 is slightly different, so we
3 will mark this one.

4 (Petitioner Exhibit 12 was marked for
5 identification & received in evidence.)

6 BY MR. SCHNEDLER:

7 Q. So tell me what this Exhibit Number 12 is.

8 A. This is inserts that we sent out, it seems like
9 in January, or in the spring for the next year, that
10 year.

11 Q. It is titled, "All collection 2005," you sent
12 it out --

13 A. In the spring.

14 Q. In the spring of 2005?

15 A. Yes, so it would be for that year.

16 Q. The next catalog is for 2006, Exhibit 13.

17 (Petitioner Exhibit 13 was marked for
18 identification & received in evidence.)

19 MR. SCHNEDLER: The next catalog for 2007 is
20 Exhibit 14.

21 (Petitioner Exhibit 14 was marked for
22 identification & received in evidence.)

23 MR. SCHNEDLER: And the last catalog for 2008
24 is Exhibit 15.

25 (Petitioner Exhibit 15 was marked for

1 identification & received in evidence.)

2 BY MR. SCHNEDLER:

3 Q. My question, now that we have gone through all
4 the catalogs, is to ask you once again to confirm that
5 these are in fact your catalogs for those years.

6 A. Yes.

7 MR. SCHNEDLER: So I am now asking to be marked
8 this next collection of -- I have it identified as a
9 collection of packaging from 1996 to 1998 as Exhibit 16.

10 (Petitioner Exhibit 16 was marked for
11 identification & received in evidence.)

12 THE WITNESS: Yes.

13 BY MR. SCHNEDLER:

14 Q. So tell me briefly what Exhibit 16 is as a
15 collection.

16 A. It's just different packages we had for
17 different products over the years. Of course, there were
18 a lot more packaging. There's a lot of packaging every
19 year, but these are just a few samples.

20 Q. And on the second page I notice a telephone
21 number down there, a fax telephone number with the area
22 code 704. And how many years ago would you say 704 was
23 before we lost that area code?

24 A. Well, now, this was some of the very first
25 packaging we did back in 19 -- probably '96, I think this

1 was the very first packaging we did.

2 MR. SCHNEDLER: So the next exhibit to be
3 marked as Exhibit 17 is another similar collection,
4 packaging and hang tags.

5 THE WITNESS: Yes, these are a little more
6 recent, but not so, the next phase, and then we are
7 getting up to more current.

8 (Petitioner Exhibit 17 was marked for
9 identification & received in evidence.)

10 BY MR. SCHNEDLER:

11 Q. So just tell me briefly what these are. I
12 don't see many dates. I see packages. I see tags.

13 A. Well, these are packages. Some of this in the
14 front is from the beginning because it has the same
15 artwork of the babies that was on that first catalog.
16 And then farther on back we get into things that happened
17 maybe 2000, then this one is fairly recently, must have
18 been three or four years ago. My niece is the baby and
19 she is four years old, almost five now. So over the
20 years, different packaging.

21 Q. So that I want to just confirm that these are
22 representations of actual packaging labels that you have
23 used over the years?

24 A. Yes.

25 MR. SCHNEDLER: Next we are offering Exhibit

1 Number 18.

2 (Petitioner Exhibit 18 was marked for
3 identification & received in evidence.)

4 BY MR. SCHNEDLER:

5 Q. Tell me what Exhibit 18 is.

6 A. This is the Juvenile Products Merchants
7 Association, the JPMA, directory, and it has our ad along
8 with our listing in the directory for 1996 and 1998.

9 Q. Now, does this represent a show that you went
10 to?

11 A. Yes. This is our trade show that we go to. I
12 think 1996 was the first year that we went under i play.
13 That's the first year that we went and had a booth. And
14 we have been every year since then. And just last year,
15 JPMA ended and it's all merging into ABC, All Baby and
16 Child Show. It's all consolidating down to one show.

17 Q. So your testimony is that beginning with 1996,
18 every year you have gone and presented an exhibit at the
19 JPMA show except for this year when JPMA no longer exists
20 and it has been replaced by ABC?

21 A. That's correct.

22 MR. KOCHANSKI: I object to the question as
23 leading. Go ahead.

24 THE WITNESS: I was just trying to remember.
25 Last year, there wasn't a JPMA, was there? Yes, there

1 was. I think there was last year. And then this is the
2 first year there is no JPMA.

3 BY MR. SCHNEDLER:

4 Q. Okay. Can you just briefly then just summarize
5 the status of your JPMA shows without my leading you?

6 A. We've been to the JPMA show every year since
7 1996 and had a booth under i play.

8 Q. Thank you. Okay, the next exhibit will be 19.
9 (Petitioner Exhibit 19 was marked for
10 identification & received in evidence.)

11 BY MR. SCHNEDLER:

12 Q. So tell me what Exhibit 19 is.

13 A. I think this is printed out from our computer
14 for the amount of money that we spent on the advertising.
15 In 2004 it was \$34,106.17; 2005 was \$43,417.97; 2006 was
16 \$60,038.42; 2007 was \$61,386.54. And so far year to date
17 for 2008 when this was done, July 9th, was \$27,047.68.

18 Q. Did you do advertising in the years prior to
19 2004?

20 A. Yes. It seems that the accountant looked up
21 and she said that it averaged about 20,000 a year that we
22 spent on advertising previously. Now, this is
23 advertising which I guess we are including catalog and
24 ads. It was also packaging. It is kind of hard to know
25 exactly where to draw the line in advertising. But we

1 spent more than this on packaging, if that's part of
2 advertising. But trade shows, like trade journals, we
3 have been advertising in Earnshaw's I don't know how many
4 years, many years, and different Waterpark magazines.

5 Q. What percentage of this advertising is directed
6 towards the i play trademark, the products being sold
7 under the i play trademark?

8 A. I think just everything, everything. We do
9 have another brand, but most of our advertising has been
10 for i play.

11 MR. SCHNEDLER: Okay, Exhibit Number 20 is a
12 very thick pile of invoices.

13 (Petitioner Exhibit 20 was marked for
14 identification & received in evidence.)

15 BY MR. SCHNEDLER:

16 Q. And I just want to say for the record that we
17 used a sequential numbering stamp and stamped numbers
18 from 1 to 197 on individual invoices. So my question is
19 a general question asking you to authenticate these as a
20 representative sampling of your invoices and to what
21 extent do these invoices represent sales of i play
22 branded products?

23 A. These are i play products. Without looking at
24 every exact one, I think that -- I think pretty much most
25 of them are i play products. I mean I think all of them

1 might be but I'm not totally sure. I haven't looked at
2 each one, but flipping through it looks like these are i
3 play products.

4 Q. Let me ask that another way. Is i play your
5 primary brand?

6 A. Yes, I'd say maybe 90 percent, 95 percent --
7 well, I don't know.

8 MR. SCHNEDLER: The next exhibit here to be
9 marked is number 21.

10 (Petitioner Exhibit 21 was marked for
11 identification & received in evidence.)

12 BY MR. SCHNEDLER:

13 Q. So tell me what Exhibit 21 is.

14 A. This is the monthly sales since 1996.

15 Q. So could you read off for me the yearly totals
16 beginning with '96 in dollars?

17 A. 920,000, 1,366,000.

18 Q. And state, also, the year with that.

19 A. Sorry, 1996, 920,000. 1997, 1,366,000; 1998,
20 1,451,000; 1999, 2,113,000; 2000, 2,113,000 -- no, 2,11,000;
21 2001, 2,846,000; 2002, 2,873,000; 2003, 3,264,000; 2004,
22 4,700,000; 2005, 7,442,00; 2006, 5,886,000; 2007,
23 7,654,000. And these were shipments. It doesn't count
24 discounts and returns.

25 Q. What percentage of these sales would you

1 estimate represent i play branded products?

2 A. I think the majority of these sales do. There
3 were a couple of years when we were at Target and we did
4 things under their brand. But other than that -- well,
5 we had a couple of other brands, too. But I'd say the
6 majority of these sales were i play.

7 BY MR. SCHNEDLER:

8 Q. The next exhibit is marked as 22.

9 (Petitioner Exhibit 22 was marked for
10 identification & received in evidence.)

11 BY MR. SCHNEDLER:

12 Q. So tell me what the three pages of this exhibit
13 are.

14 MR. KOCHANSKI: Just objecting to these as
15 being hearsay. The witness can testify.

16 THE WITNESS: What?

17 BY MR. SCHNEDLER:

18 Q. The objection is that these are hearsay. The
19 objection is on the record and we continue on.

20 MR. KOCHANSKI: Correct.

21 THE WITNESS: I don't understand what that
22 means.

23 MR. SCHNEDLER: It means that later the
24 Trademark Trial and Appeal Board can decide to disregard
25 your testimony as hearsay later, but we go on.

1 Q. So the question is just tell me what these
2 letters are.

3 A. Okay, I still don't understand.

4 MR. SCHNEDLER: Let's go off the record for
5 just a second.

6 MR. KOCHANSKI: Sure.

7 (Discussion was held off the record.)

8 BY MR. SCHNEDLER:

9 Q. So my question is, Ms. Cannon, are these
10 letters which you received?

11 A. These are letters that I received from our
12 customers. Two of them are our customers and one is from
13 a consumer, so it wasn't our direct customer, about
14 confusion between i play and the i play of International
15 Playthings.

16 Q. Thank you.

17 MR. SCHNEDLER: The next one is Exhibit
18 Number 23. Mr. Kochanski, this is a new web site that we
19 did not previously have.

20 MR. KOCHANSKI: Okay.

21 (Petitioner Exhibit 23 was marked for
22 identification & received in evidence.)

23 BY MR. SCHNEDLER:

24 Q. So tell me what this Exhibit 23 is.

25 A. This is the new ABC show which has gone

1 together with JPMA for this year which will be in two and
2 a half weeks in Las Vegas. And I was surprised when I
3 looked on the web site a couple days ago to see that
4 International Playthings is now attending this show which
5 this has been our main show that we attend. So this, I
6 think, makes it more confusing for customers if we are
7 going to be at the same show. In the past International
8 Playthings was at the Toy Fair and we didn't attend that.
9 And their position was that it was different industries,
10 different channels, and that they were in toys and we
11 were in juvenile products, apparel, but now we will both
12 be at the same trade show.

13 Q. And read for me that first sentence on the
14 opening page of the web site there.

15 A. "The ABC Kids Expo is the primary trade show
16 for the juvenile products industry."

17 Q. Flipping back through that exhibit, the very
18 last page is what?

19 A. The very last page is International Playthings,
20 I guess their company information, the booth number 1630,
21 the contact information and the company description and
22 they have i play listed as one of the brands that they
23 have and the product categories.

24 Q. And then the page before that one, describe
25 that one.

1 A. The i play company information with the booth
2 number, contact information, the company description and
3 the product categories.

4 Q. And that i play is your company?

5 A. Yes.

6 Q. Here's the final exhibit, Exhibit Number 24 to
7 be marked.

8 (Petitioner Exhibit 24 was marked for
9 identification & received in evidence.)

10 BY MR. SCHNEDLER:

11 Q. So briefly describe this document.

12 A. This is a lawsuit that we received from
13 International Playthings based on an article in the Wall
14 Street Journal. The Wall Street Journal had made a
15 mistake and said that we were using the name i play for
16 toys, and that was not the truth. It would have been
17 nice if they, if International Playthings, had written a
18 letter to say, are you doing this and if you are, please
19 stop this. We have had other situations similar,
20 Kimberly Clark or Babies "R" Us or different other
21 companies where we have had some -- maybe using the same
22 name or something. And I thought it was really strange
23 to have a lawsuit. It cost me \$30,000 for something we
24 didn't even do. Anyway, that was it.

25 Q. So did you receive any advanced warning before

1 this lawsuit was filed?

2 A. No. I had to hire attorneys in New Jersey
3 along with my attorney here, and it was a costly thing
4 and it seemed like a very unfriendly gesture.

5 Q. On page four of that document, turn to page
6 four, paragraph 17, which alleges, and I am reading, "The
7 defendant adopted and is anticipating to sell children's
8 toy products including children's toy tea sets and
9 dinnerware under the i play trademark." So my question
10 is had you in fact adopted or anticipated to sell those
11 items?

12 A. No.

13 Q. And my final question is what has been the
14 disposition of this lawsuit?

15 A. We agreed not to sell toys under the i play
16 brand, but that was a marketing decision. We never
17 intended to sell toys under the i play brand, although I
18 feel like that we should be able to if we wanted to. But
19 I guess the lawsuit has been settled now based on that.
20 Is there anything else on that?

21 MR. SCHNEDLER: As far as I'm concerned we are
22 done with our testimony.

23 MR. KOCHANSKI: Your direct, okay.

24 CROSS EXAMINATION

25 BY MR. KOCHANSKI:

1 Q. I have a few questions. Do you want to take a
2 break or anything before we start?

3 A. Yes.

4 MR. KOCHANSKI: Okay, that is fine.

5 (Recess)

6 BY MR. KOCHANSKI:

7 Q. Ms. Cannon, you said you advertise. Okay,
8 other than attending the trade show that you mentioned,
9 where do you advertise?

10 A. We advertise in EarnShaw's.

11 Q. I'm sorry?

12 A. EarnShaw's, Small World.

13 MR. KOCHANSKI: Can we just go off the record a
14 second?

15 (Discussion was held off the record.)

16 BY MR. KOCHANSKI:

17 Q. EarnShaw's, that is E-R-N-S-H-A-W-S?

18 A. E-A-R-N-S-H-A-W'S.

19 Q. What is EarnShaw's?

20 A. Well, it's combined. It used to be -- well,
21 there used to be a magazine called Small World that we
22 advertised in that was more of a juvenile products
23 magazine, and now they are merged with EarnShaw's which
24 is an apparel magazine. It's a trade journal for apparel
25 and juvenile products.

1 Q. When you say juvenile products, what do you
2 mean?

3 A. It's an industry for newborn babies, products
4 for newborn babies.

5 Q. Other than Earnshaw's, where else do you
6 advertise?

7 A. World Waterpark? Is that the one? No, is that
8 it? World Waterpark.

9 Q. And what is Royal Waterpark?

10 A. World Waterpark.

11 Q. World, I am sorry.

12 A. It's a trade journal for water parks.

13 Q. Is that where you advertise the baby swimwear
14 and swimming diapers and that type of product?

15 A. Right.

16 Q. Any place else that you advertise?

17 A. We advertise in Mothering Magazine. That's a
18 retail magazine. Retail? It's a consumer magazine, not
19 a trade journal. And we advertise in Hudson's which is
20 an apparel magazine, and Outdoor Retailer and Kiwi
21 Magazine.

22 Q. Kiwi, K-I-W-I?

23 A. Yes.

24 Q. That is an apparel magazine?

25 A. Yes. In the past we have advertised in

1 American Baby Magazine and some other parents consumer
2 magazines.

3 Q. It looks like you advertise primarily in
4 apparel magazines?

5 A. No. American Baby is a baby magazine.

6 Q. How would you define the genre?

7 A. It's for pregnant -- it's for parents, pregnant
8 women, pregnant parents and new parents of babies.

9 Q. What would you consider to be your channels of
10 trade where you sell your goods?

11 A. We sell to juvenile products, stores. We sell
12 to gift stores, apparel stores, natural product stores,
13 outdoor stores, swim schools, municipalities, hotels. We
14 sell to mass merchants.

15 Q. What mass merchants?

16 A. Babies "R" Us, Target, Meyer's, Burlington,
17 Wal-Mart, Sears, Bye Bye Baby. What else? Penney's,
18 J. C. Penney's, Kohl's. We've sold to them before.

19 Q. Do you sell to each one of these mass merchants
20 presently?

21 A. We aren't selling to Kohl's right now. I'm
22 trying to think if there's anybody else.

23 Q. Okay. Ms. Cannon, do you know what the basis
24 is for your company's trying to cancel International
25 Playthings i play trademark?

1 A. The basis for it?

2 Q. Yes.

3 A. I don't -- I don't think I understand the
4 question.

5 Q. Okay, that's fine. Let me ask you this: Did
6 you ever hear the term "likelihood of confusion"?

7 A. Yes.

8 Q. And what is your understanding of likelihood of
9 confusion?

10 A. When something is confusing to someone.

11 Q. Do you believe there is a likelihood of
12 confusion between your use of the i play trademark and
13 International Playthings use of the i play trademark?

14 A. Yes.

15 Q. How long have you felt that this is the case?

16 A. From the beginning.

17 Q. And from the beginning, what do you mean?

18 A. Ever since i play -- ever since International
19 Playthings applied for that trademark.

20 Q. Has your company ever used the i play trademark
21 on toys?

22 A. We have a different brand that we use for toys.

23 Q. I will ask you the question again. It is a
24 yes-or-no answer. Have you ever used the i play
25 trademark on toys?

1 A. No. Well, our toys, we have had like blanky
2 animals and those kind of things, but not the kind of
3 toys that International Playthings has.

4 Q. When you say blanky animal, when did you start
5 using it on the blanky animal?

6 A. We have little blankets, little security
7 blankets. It's questionable whether that's a toy or not.

8 Q. When did you start using it on that?

9 A. I don't know. We have had it for several
10 years.

11 Q. Your catalog would identify when you started
12 using it?

13 A. Our catalog should have it in there.

14 Q. Other than the three letters that Mr. Schnedler
15 has marked as Exhibit 22, do you have any other documents
16 of evidence other than what's evidence in those letters?

17 A. There have been numerous occasions when people
18 have been confused, but those are the only things that I
19 have that are documented right here now. I don't know,
20 there might be some other things at the office.

21 MR. KOCHANSKI: Let me have this marked as
22 Petitioner's Exhibit 25, marked for identification a
23 document entitled, "Request for reconsideration after
24 final action."

25 (Registrant's Exhibit 25 was marked for

1 identification & received in evidence.)

2 BY MR. KOCHANSKI:

3 Q. I would ask you to look at Petitioner's
4 Exhibit 25, Ms. Cannon. Use the exhibit that has been
5 marked. Looking at the third page, this document
6 identifies, "Trademark Co-Existence and Consent
7 Agreement," do you see that?

8 MR. SCHNEDLER: I am going to enter an
9 objection for the record based on paragraph Roman numeral
10 III.B which I will read in part, "In the event the USPTO
11 maintains the Section 2(d) refusals" and then skipping
12 on, "The parties' consents and agreements under paragraph
13 III.A above are nullified, Family Clubhouse may initiate
14 a cancellation proceeding. IPI may set out any defenses
15 as it sees fit, and no part of this agreement may be
16 referenced or relied upon to the contrary." On that
17 basis I am objecting to the admissibility of this
18 agreement as evidence.

19 MR. KOCHANSKI: Okay, that's fine.

20 Q. Do you remember ever entering into the
21 Trademark Co-Existence and Consent Agreement?

22 A. I think it was part of that process that we
23 were trying to get our trademark back, and I didn't
24 believe that it was not a likelihood of confusion, I
25 believe that there was a likelihood of confusion, but I

1 was willing to work it out at the time if you -- if
2 International Playthings had been willing to work it out.

3 Q. And I will ask you to look at the fourth page,
4 that is your signature?

5 A. Right.

6 Q. Correct?

7 A. Yes. I was willing to do that at the time, to
8 co-exist.

9 Q. And as I understand it you presently have two
10 applications pending, is that correct?

11 A. What do you mean?

12 Q. Two trademark applications pending, one for the
13 logo and one for the word mark i play?

14 A. I don't know. Yes.

15 Q. If you don't know, you don't know. Are you
16 aware of any other party that is using the i play
17 trademark other than International Playthings?

18 A. No.

19 Q. I'd like to ask you to look at Petitioner's
20 Exhibit 3 for a second. I'm just looking for a
21 clarification.

22 MR. SCHNEDLER: That is the new logo.

23 THE WITNESS: Okay.

24 BY MR. KOCHANSKI:

25 Q. What I didn't understand when you testified

1 about -- you said that you hired a marketing company to
2 update your logo. Is the logo that is shown on
3 Petitioner's Exhibit 3 the logo that the marketing
4 company came up with or is that the logo that you came up
5 with inside?

6 A. Inside.

7 Q. Okay. If you can give me a couple of minutes
8 just to look at my notes, maybe we will be finished.

9 A. Okay.

10 (Recess)

11 MR. KOCHANSKI: I have no further questions of
12 the witness.

13 THE WITNESS: I have a couple more things.

14 MR. SCHNEDLER: I have two more redirect
15 questions.

16 REDIRECT EXAMINATION

17 BY MR. SCHNEDLER:

18 Q. Two questions that are clarifications based on
19 the cross examination. One of the questions Mr.
20 Kochanski asked you concerned whether your company i play
21 had ever made toys, and the question was how do you
22 define a toy? So is there anything else you want to say
23 regarding the subject of whether you have made i play
24 toys.

25 A. We do have -- we have made several different

1 kinds of soft toys. I'm remembering we had a little
2 teddy bear, a natural teddy bear, that is probably one of
3 the first things that we did, and then we had these
4 little blankets with tabs on them. And we have had some
5 bath toys. They've all been soft kind of toys,
6 plush-type things. So it hasn't been a big part of what
7 we have done, but there have been a few things that have
8 been in there over the past few years. Well, actually
9 that teddy bear, I think, was from the beginning when we
10 did the first Natural line.

11 Q. And are those items in your catalogs?

12 A. They are all in the catalogs, everything
13 that -- well, I think probably most of the products that
14 we have produced and sold are in those catalogs under i
15 play, I think probably everything that we have done under
16 i play.

17 Q. Okay. The second followup question is Mr.
18 Kochanski asked you whether you were aware of any other
19 companies using the trademark i play.

20 A. Yes. This other company that has the web site,
21 I think it's a video game company based in England.
22 Anyway, they have the i play web site and I didn't
23 remember them at the time. And that is the only thing I
24 can recall right now that I can remember.

25 MR. SCHNEDLER: I have no more questions.

1 MR. KOCHANSKI: Just a short question.

2 RECROSS EXAMINATION

3 BY MR. KOCHANSKI:

4 Q. With respect to the bear, are there any
5 documents you have here today that show the labels that
6 were used on the bear or the packaging of the bear?

7 A. Probably it's just in the catalog. I don't
8 know if we have the -- I don't know if we have any
9 documents here today. We might have some back at the
10 office.

11 Q. And the blankets that you talked about, that is
12 just the recent products, isn't it?

13 A. We have had different kind of security blankets
14 on and off over the years.

15 MR. KOCHANSKI: I have nothing further.

16 MR. SCHNEDLER: We are done.

17 (The deposition concluded at 2:18 p.m.)

18 --o0o--

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25

1 STATE OF NORTH CAROLINA)

2 COUNTY OF BUNCOMBE)

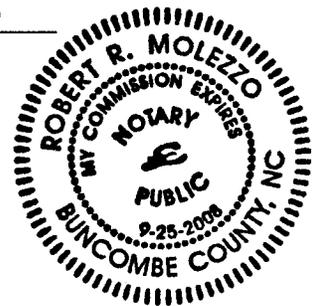
3 I, ROBERT R. MOLEZZO, CM, a notary public in
 4 and for the State of North Carolina, do hereby certify
 5 that on Wednesday, August 20, 2008, 1:05 p.m. - 2:18
 6 p.m., there appeared before me, BECKY CANNON, who was
 7 duly sworn by me; that the appearances were as shown in
 8 the caption hereof; that the foregoing testimony was
 9 taken by me in stenotype and thereafter reduced to
 10 typewritten form by me; that the foregoing deposition is
 11 a true record of the testimony given by the witness; that
 12 the reading and signing of the deposition by the witness
 13 were not waived;

14 I further certify that I am not of kin or
 15 associated with any of the parties to this action or
 16 their counsel and that I am not interested in the event
 17 thereof; I further certify that I was not disqualified as
 18 specified in Rule 28 of the Federal Rules of Civil
 19 Procedure.

20 August 23, 2008.

21
 22 

23 ROBERT R. MOLEZZO, CM
 24 Notary Public No. 20032620017



1 I, BECKY CANNON, have read the foregoing pages
2 of testimony given by me on Tuesday, August 20, 2008, in
3 Asheville, North Carolina. This testimony should be
4 corrected as follows:

5 PAGE LINE CORRECTION AND REASON THEREFOR

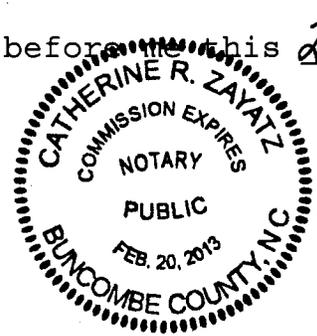
6 Throughout the document "i play." should
7 have a period at the end.
8
9
10
11
12
13
14

15 Subject to the foregoing corrections, my
16 testimony is as contained in the foregoing transcript.

17 SIGNED AT Buncombe County,
18 this 24th day of September, 2008.

19 Becky Cannon
20 BECKY CANNON

21 Subscribed and sworn to before me this 24th
22 day of September, 2008.



23 Catherine R. Zayatz
24 NOTARY PUBLIC

25 Catherine R. Zayatz
My commission expires: February 20, 2013.

Cancellation No. 92048260

***i play. inc. (change of name from FAMILY
CLUBHOUSE, INCORPORATED d/b/a i play), a
North Carolina corporation,
Cancellation Petitioner,***

v.

***INTERNATIONAL PLAYTHINGS, INC,
a Delaware corporation,
Registrant.***

Exhibit offered by i play. inc.

1

i play. Executive Summary

September 1999

Who We Are

i play. develops and manufactures innovative, fun children's and infants' products for specialty retailers which are functional, durable, comfortable, and affordable.

Mission Statement

i play. is committed to quality, customer satisfaction, and profit through a focus by all associates on efficient use of resources, continuous improvement, and teamwork.

Values

- o We are dedicated to children and the learning experience that comes from play.
- o We value parents, providing them with products which help make parenting fun and easy.
- o We contribute to our community with conscious and sustainable actions, i.e., we practice good corporate citizenship.
- o We produce good quality merchandise for affordable prices, with reasonable profits.
- o We believe strongly in teamwork, and are committed to the value of each individual.

Company History

In 1979, Becky Cannon, founder of Family Clubhouse (now i play.), had her first daughter while living in Japan. It was there she used many unique baby products, and the idea for a children's garment business was born. In 1982, her second daughter was born in the US, and she started her own business in the States importing wool diaper covers—using the name

Woolies—with the help of her Japanese in-laws. This product was sold via mail order, beginning with an advertisement in *East West Journal*.

In 1983, Cannon became a distributor for Nikky, a manufacturer and distributor of diapering products. The name Family Clubhouse was conceived in 1985, along with a color catalog marketing the Nikky line. In 1989, Family Clubhouse started manufacturing its own reusable diapering products. One year later, with the explosion of environmental consciousness and Earth Day, Family Clubhouse sales reached the \$1million mark. Unfortunately, a recession later that year seriously impacted this growing business.

After a period of reflection, a new company, Creature Comforts, was formed. Another company, The Diaper Service, was purchased in 1992 and subsequently sold in 1993. Cannon began developing products in this market for mail order catalogs, working initially with contractors. Soon after, she revived Family Clubhouse and began manufacturing, hiring a cutter and home seamstresses. During this period, the Swim diaper was conceived and achieved significant commercial success as a product standard; the resulting profits more than repaid her previous business losses.

In 1983, consultation with Gerber Business Development Program helped Cannon develop a more intensive understanding of business practices in this field, and she developed systems and a clearer direction for her business. Consultations with experts in textiles, marketing, accounting, and business management further helped develop the business.

Working with a marketing company in 1995, Family Clubhouse's direction moved away from more utilitarian products and toward more fun, playtime gear for little children. The new name, i play., was created and registered.

In the mid-90s, i play. increased its product volume by supplying American Baby Products, an international distributor. When American Baby Products closed in 1996, the owner gifted Cannon with its assets, including the products, customers, reps, showroom, 800 number, and more. Although i play. was not in the strongest position to assimilate this merger, the company has absorbed this gift and continues to develop sales, customers, and great products.

The Products

The hallmark of i play. products is their quality, functionality, and value to the purchaser. The products are fashionable, aesthetically pleasing to the eye and touch, durable, and environmentally friendly. The products are positioned in the market in a medium price range, and deliver good value for a good price.

Product categories follow:

Swim Gear—swim diapers, sunhats, t-shirts, boy's and girl's swimsuits, lifeguard suits, coverups, and the new distribution of Soft Shades (soft sunglasses for babies)

Nursery Gear—scented drawer liners, garment extenders, knee pads, and other nursery accessories

Cotton Gear—preemie and newborn layette items in 100% cotton interlock knit, cotton flannel, natural cotton and (new!) organic cotton

Play Gear—polar fleece and rainwear

Feeding Gear—a full line of unusual and reasonably priced bibs in infant and toddler sizes

The Market

Our market is segmented in three levels as follows:

Level A. This includes companies such as Target, Toys 'R Us, and Mervyn's; mail order companies in the US and UK; juvenile specialty stores; swim schools; and export, especially in France, UK, Israel, Japan, and Germany.

Level B. This middle tier includes swim distributors such as Pool Supply, Waterparks, Ys, municipalities; Internet e-commerce sites such as babycenter.com; apparel; aqua therapy; and environmental stores.

Level C. This barely tapped market includes other Internet e-commerce sites; military; hotel/motel gift shops; hospital gift shops; surf/beach shops; outdoor stores; museum gift shops; maternity; and athletic clubs.

Swim
Bath
Feed
Layette

unique functions
fun & harmonious
colors

quality

specialty
market

affordable
competitive

Level A includes our highest volume customers. Level B includes current customers with good potential for additional revenues. Level C includes potential customers, although currently we have minimal market penetration in these areas.

Market Potential

Potential growth in this market is huge due to the nature and diversity of the product line. Level A customer sales can increase substantially with appropriate time and attention to marketing and customer service. Levels B and C are virtually untapped, with tremendous potential if marketing efforts are focused and clear.

To continue to increase profits, existing customers must increase volume and new customers must be won. This demands more marketing attention. One way to accomplish this in a cost-effective manner is to consolidate manufacturing operations, thereby freeing up management to focus more on marketing. Other options are also under consideration.

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

United States Patent and Trademark Office

Reg. No. 2,115,786

Registered Nov. 25, 1997

**TRADEMARK
PRINCIPAL REGISTER**



FAMILY CLUBHOUSE (NORTH CAROLINA CORPORATION)
6 CHILES AVENUE
ASHEVILLE, NC 28803

FIRST USE 2-8-1996; IN COMMERCE 2-8-1996.

FOR: NON-DISPOSABLE SWIM DIAPERS, IN CLASS 25 (U.S. CLS. 22 AND 39).

SER. NO. 75-172,487, FILED 9-26-1996.

RAUL CORDOVA, EXAMINING ATTORNEY

Cancellation No. 92048260

i play. inc. (change of name from FAMILY CLUBHOUSE, INCORPORATED d/b/a i play), a North Carolina corporation,

Cancellation Petitioner,

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3

i play.®