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

Proceeding	92053617
Party	Plaintiff Blue Box Toy Factory, Ltd.
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Submission	Motion to Suspend for Civil Action
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Date	05/25/2011
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 3,166,567
Registered October 31, 2006

BLUE BOX TOY FACTORY, LTD.,	X	
	:	
	:	
Petitioner,	:	
	:	
v.	:	Cancellation No. 92053617
	:	
	:	
BATTAT INCORPORATED,	:	
	:	
	:	
Registrant.	:	
	X	

PETITIONER’S MOTION TO SUSPEND PROCEEDINGS

Pursuant to 37 CFR § 2.117(a) and TBMP § 510.02(a), Blue Box Toy Factory, Ltd. (“Petitioner”) hereby moves the Trademark Trial and Appeal Board (the “T.T.A.B.” or the “Board”) to suspend this proceeding until the final determination of a federal civil action styled *Battat, Inc. v. Blue Box Toy Factory Limited*, Case No. 1:10-cv-09573-PGG (SDNY) (the “Civil Action”) that is now pending before the Hon. Paul G. Gardephe in the Southern District of New York. The Civil Action will have a direct bearing on the instant proceedings and, as such, suspension of these proceedings is appropriate. Petitioner, through counsel, sought the consent of Battat Incorporated (“Registrant”) for this motion. Registrant refused to consent to any suspension of proceedings.

RELEVANT FACTUAL BACKGROUND

Registrant filed a civil complaint against Petitioner in the Southern District of New York. Registrant’s Complaint asserted several causes of action under the Lanham Act based, in part, on Registration No. 3,166,567 for the mark B CUTE for dolls and doll accessories. A copy of the Complaint is attached as Exhibit A. In response to the Complaint, Petitioner pled several affirmative

defenses, including one (the Thirteenth), that states “[Registrant’s] alleged trademark rights to the mark B CUTE are invalid and unenforceable as plaintiff has abandoned any trademark rights it may have had with respect to the mark B CUTE.” A copy of the Answer is attached as Exhibit B. The Civil Action remains active and pending as of the filing of this motion.

ARGUMENT

The instant action should be suspended until the Civil Action is resolved. Where a party to a case pending before the Board is also involved in a civil action that may have a bearing on the T.T.A.B. matter, the Board may suspend the proceeding until the final determination of the civil action. 37 CFR § 2.117(a); TBMP § 510.02(a). This is because “a decision by the United States District Court would be binding on the Patent Office whereas a determination by the Patent Office as to respondent’s right to retain its registration would not be binding or *res judicata* in respect to the proceeding before the federal district court.” *Whopper-Burger, Inc. v. Burger King Corp.*, 171 U.S.P.Q. 805, 807 (T.T.A.B. 1971). A court’s decision regarding the right to registration is binding on the T.T.A.B. *The Seven-Up Co. v. Bubble Up Co.*, 136 U.S.P.Q. 210, 214 (C.C.P.A. 1963); *see also In re Alfred Dunhill Ltd.*, 224 U.S.P.Q. 501, 503 (T.T.A.B. 1984); J. Thomas McCarthy, 4 *McCarthy on Trademarks and Unfair Competition* § 32:94 (4th ed. 2006).

Registrant and Petitioner are both parties to the Civil Action, which is currently pending and active before the Southern District of New York. The issue of the Registrant’s trademark rights to the mark B CUTE is specifically disputed in the Civil Action and will therefore be subject to final adjudication by the district court. This determination will necessarily involve the validity of Registration No. 3,166,567. As such, the resolution of the issues by the district court will inevitably affect the resolution of the issues now pending before the Board. *See The Other Tel. Co. v. Conn. Nat’l Tel. Co., Inc.*, 181 U.S.P.Q. 125, 126-7 (T.T.A.B. 1974). Accordingly, based on the foregoing,

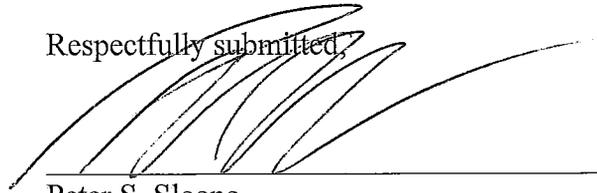
Petitioner respectfully requests that the Board stay this proceeding pending the final determination of the Civil Action.

CONCLUSION

WHEREFORE, Petitioner respectfully requests that the Board suspend this proceeding until the final determination of the Civil Action.

Date: May 25, 2011
White Plains, New York

Respectfully submitted,



Peter S. Sloane
Cameron S. Reuber

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Attorneys for Petitioner

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing **PETITIONER'S MOTION TO SUSPEND PROCEEDINGS** was served upon counsel for Registrant this 25th day of May, 2011, by First-Class mail, postage prepaid, addressed as follows:

Andrew Langsam, Esq.
Pryor Cashman LLP
7 Times Square
New York, New York 10036

A handwritten signature in black ink, appearing to read 'P. Sloane', written over a horizontal line.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE GARDNER

-----X
BATTAT, INC.,

Plaintiff,

- against -

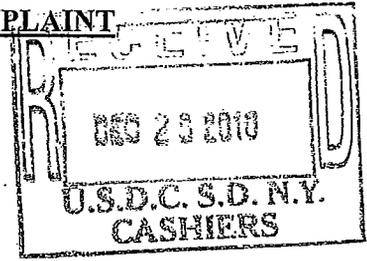
BLUE BOX TOY FACTORY LIMITED,

Defendant.
-----X

10 CIV 9573

Index No.

COMPLAINT



Plaintiff Battat, Inc. ("Battat"), by its attorneys, Pryor Cashman LLP, as and for its
Complaint against defendant Blue Box Toy Factory Limited ("Blue Box"), alleges as follows:

NATURE OF THE ACTION

1. In this action, Battat seeks injunctive relief and damages based upon Blue Box's infringement of Battat's B. trademark (hereafter referred to as Battat's "B. Mark") and acts of unfair competition engaged in by Blue Box.

THE PARTIES

2. Battat is a Delaware corporation authorized to transact business in the State of New York, with an address at 1560 Military Turnpike, Plattsburgh, New York 12901. Battat develops, designs, manufactures, distributes, markets, offers for sale and sells toys and related products within this district, nationwide and internationally. Battat is the originator, first to

adopt and use, and the owner of the trademark "B." as used in connection with young children's hand-manipulative, body and mind development toys.

3. Upon information and belief, Blue Box is a corporation organized under the laws of Hong Kong, having a principal place of business at 98 Granville Road, Tsim Sha Tsui East Room 1203, East Ocean Centre Kowloon HONG KONG. Upon information and belief, Blue Box is doing business in the State of New York and in this District. Blue Box sells and offers for sale its toy products within New York City and is scheduled to exhibit at the International Toy Fair of 2011, at Booth 5767, staffed by its sales agents Cliff Seto, Daniel Poon, and Mona Seto. Ms. Mona Seto has a United States residence, upon information and belief in Livingston, New Jersey.

JURISDICTION AND VENUE

4. This action arises under the Lanham Trademark Act, 15 U.S.C. §1051 et seq. (the "Lanham Act") and the common law of the State of New York. This Court has jurisdiction pursuant to 28 U.S.C §§ 1331, 1332, 1338 and 1367, 15 U.S.C. §1051 et seq., and 15 U.S.C. §§ 1121 and 1125(a).

5. The venue of this action is properly laid in this District pursuant to 28 U.S.C. §1391(b) and (c), and §1400(a).

6. Upon information and belief, Blue Box transacts business in this district giving rise to the claims asserted in this Complaint and has sold and continues to sell infringing products under its trademark "B kids" within this judicial district.

ALLEGATIONS COMMON TO ALL CLAIMS

Battat's Rights in its B. Trademark

7. Battat has been in the toy design, manufacturing and selling business for over 100

years. Founded in 1897, Battat prides itself on being a family-based company that values quality, safety, design, reliability and product value. This attention to detail has consistently earned the rave reviews - not to mention the trust - of parents and consumers in the United States, Canada, and even to those located in Europe. Battat is well established in the toy industry as a company that produces a large variety of high quality children's toys and, in connection with the B. line, toys for young children to facilitate growth and development of the mind and body through hand-manipulation.

8. Battat has achieved a prominent reputation with the consuming public through its wide variety of children's products including art sets, building toys, plush animals, posable dolls and accessories, plastic movable cars and trucks, musical instruments, young children's hand-manipulative development toys, and much more.

9. Battat is primarily engaged in creating, designing, engineering, producing and distributing proprietary, third-party products as well as developing and producing its "own brand" products. It has been responsible for a wide range of popular and renown brands of toys such as PARENTS®, PUCCI PUPS®, BANBURY HORSES®, and OUR GENERATION® -- but especially those toys sold as its own brands -- BATTAT® and under the B. Mark.

10. Battat launched its B. line of toys in 2009. Designed to be and marketed as young children's hand-manipulative mind and body development toys, the B. high-quality toys are manufactured and packaged to encourage tactile and aural manipulation and interaction, all while promoting individuality and artistic expression in children. It is this commitment to young children's development, combined with Battat's continuous efforts to manufacture and supply innovative toys, that has made the B. line highly successful from its inception.

11. B. toys are carried by large numbers of toy specialty stores including Learning

Express, Mary Arnold Toys, Apple Seeds and Cozy's Cuts For Kids and are also prominently sold by Target stores throughout the United States. In addition, consumers can learn about and find stores carrying the B. brand of toys via Battat's website, www.justb-byou.com, which domain name was registered by Battat in August of 2009.

12. Battat has achieved substantial commercial success through the sale of its products under the B. Mark. Indeed, since December 2009, Battat has sold over 3.5 million units of toy products directed at young parents, friends and relatives of young children, all bearing the B. Mark. Accordingly, sales by Battat of its B. toy products were similarly quite substantial, totaling over \$31 million for the prior one year period.

13. The success of the B. line can also be measured in the prestigious accolades Battat has received in connection with its B. toys. Battat's B. line of toys have received awards including but not limited to the Creative Child 2010 Toy of the Year Award (for Battat's Zany Zoo toy sold under the B. Mark); Parents' Choice Awards - Recommended Toy; Top 10 Disney 2010 Family Fun Toy of the Year (T.O.Y.) Award Winner (e.g., the Battat B. Meowsic™ toy placed 6th and the Battat B. Pop Arty™ toy placed 13th out of 500); The National Parenting Center Holiday 2010 First Place Award and Seal of Approval (Battat's B. Critter Clinic™ toy and, again, Battat's B. Meowsic™ toy); Creative Child 2010 Preferred Choice Award; and Parents' Choice Awards. In addition, Battat's B. line of toys are highly rated by an independent entity, known as Able Play™ for children with special needs.

14. Battat owns three U.S. trademark applications filed in the US Trademark Office for its B. trademarks including Serial Nos. 77/851621 (the standard form of the B. Mark for toys in Class 28) and 85/189158 (for a stylized form of the B. Mark for toys in Class 28) and 77/715520 (for the standard form of the B. Mark for children's books in Class 16). Battat also

owns trademark applications for JUST B. (Ser. No. 77/851960 in Class 28, toys); B. YOU (Ser. No. 77/852015 in Class 28, toys) and a U.S. Trademark Registration for the mark B CUTE (Reg. No. 3166567) for use in connection with goods in Class 28, namely, Toys. The Battat-owned marks identified in this paragraph are collectively referred to herein as the “Battat B. Marks.”

15. In addition to the applications and registration for the Battat B. Marks, Battat has well-established common law rights in and to the Battat B. Marks and to its slogan and registered domain name: “Just B. Just You. B. You.”

16. Battat also has a registered domain name for www.justbkids.com-- that domain name being reserved by Battat in July of 2009.

17. Battat has expended over four hundred thousand dollars advertising its B. Mark and the toy products associated therewith with Target stores alone, and has received unsolicited, worldwide accolades and publicity with respect to its business and the B. line or brand of toys. Battat’s B. Mark and brand has been featured in the following prominent publications, among others: Parent’s Magazine; Parenting Magazine; Family Fun; the Boston Herald; Wallet Pop; Time Out Chicago; Dailycandy.com (listed as #8 on Daily Candy Kids’ “8 Hanukkah Gifts for Kids”); and on the website: coolmompicks.com. In addition, Battat’s B. toy, sold under the specific trademark MEOWSIC™, was featured on both Live with Regis and Kelly (a television broadcasted program on the ABC stations) and The Ellen Degeneres television show.

18. Battat’s web site, justb-byou.com, further reinforces the relationship between Battat and its B. Mark, the slogan and the toys for which Battat has become famous. The website frequently replaces the letter “b” or the word “be” in ordinary text with the Battat Mark “B.” to “play on” and emphasize the consumer’s awareness of the B. Mark, such as in the site navigation buttons: “B. Story” (about the B. line of toys); “B.log” (a blog posted by Battat); “B.

Green” (relating to Battat’s commitment to the environment); “B. Ready”; “B. Gifted” (illustrating how the B. line of toys and its patent pending packaging doubles as wrapping paper); “B. Heard” (encouraging parents to post quotes and stories about their children – also under “B. Quotes”); and “B. in Touch” (Battat’s contact information for web site visitors).

19. Battat vigorously protects its trademarks and other intellectual property rights, including its B.Mark, to thwart any dilution, blurring, and/or potential loss of the distinctiveness of the Battat B. Marks and to prevent consumer confusion in the marketplace between, on the one hand, Battat’s B. line of toys, and, on the other hand, the marks used by others to sell competitive products of unaffiliated third parties under the same or a mark likely to cause consumer confusion.

20. As a result of the substantial advertising and sales of goods bearing the B. Mark and the significant amount of positive publicity received by Battat in connection with its B. brand of toys, the consuming public has come to associate the B. Mark solely with Battat and its high quality of developmental children’s toys. The B. Mark has attained enormous goodwill throughout the United States, New York State and within this District.

Blue Box’s Infringing Use of an Infringing Mark

21. Although Battat has never authorized Blue Box to utilize Battat’s B. Mark in any manner, Blue Box is knowingly and willfully, and without any authorization from Battat, selling, distributing, manufacturing, importing, displaying, advertising, marketing and/or promoting young children’s developmental toys, all bearing an infringing and likely-to-confuse variation of the B. Mark, including B kids in interstate and intrastate commerce, including commerce in New York State and within this District (hereafter the “Infringing Merchandise”).

22. Blue Box uses a large B on its toys, along with a severely minimized “kids” so

that the overall visual impression is merely a “B” followed by something small—just like the B. trademark of Battat.

23. As illustrated below, Blue Box is selling Infringing Merchandise which is directed to the same aged children through the same channels of trade, at similar price points by use of a confusingly similar new trademark. As used on its packaging and on the toys themselves, Blue Box’s use of its B kids mark is deceptively and confusingly similar to Battat’s B. Mark, thus misleading consumers by giving the impression that the Infringing Merchandise is genuine Battat’s B. merchandise when, in fact, it is not.

24. In addition, Blue Box is using the slogan “Just Be Kids,” which is striking similar in sound and overall commercial impression to Battat’s JustB-Byou.com domain name for its website and also to Battat’s “Just B. Just You. B. You” slogan, used on its website, on packaging and in advertising. Moreover, Blue Box’s slogan Just Be Kids incorporates and is substantially identically to Battat’s trademark, “JUST B.” In addition, further confusing the Blue Box consumers is the fact that Blue box uses its Just Be Kids slogan and Battat has a registered domain name www.justbkids.com.

25. Upon information and belief, the Infringing Merchandise sold by Blue Box directly bears confusingly similar imitations of the B. Mark and, when removed from the packaging, will deceive the purchasing public into believing that the Infringing Merchandise is manufactured, sold, authorized by or affiliated with Battat. Indeed, actual confusion has already occurred at least once in the media when TOYS N Playthings, an industry magazine, announced the Blue Box launch in its headline article as, “Blue Box launches B Toys,” instead of “B kids,” the actual mark of the Blue Box brand.

26. Recently, counsel for Battat sent Blue Box a letter detailing Battat’s trademarks,

domain names, and other rights and demanding that Blue Box cease and desist from any further infringement of Battat's rights in its B. Mark as used with toys. Blue Box, through its counsel, notified Battat's counsel that it refused to comply with Battat's demands and that it would continue to use the B kids mark on its new toy line and use the same mark affixed directly on the goods.

27. Upon information and belief, Blue Box commenced use in connection with sales to consumers of its B kids line of young child developmental toys well after knowledge of Battat's use of its B. Mark on its toys and after Battat's commercial sales to consumers and customers.

28. Since receiving Battat's letter, Blue Box has continued to willfully sell, distribute, manufacture, import, advertise, market and/or promote the Infringing Merchandise, all in the face of and with full knowledge of Battat's superior rights in and to the B. Mark in connection with young children's development toys.

FIRST CLAIM FOR RELIEF

(Unfair Competition and False Designation of Origin Under 15 U.S.C. §1125(a))

29. Battat repeats and realleges the allegations contained in paragraphs 1 through 28 as if fully set forth herein.

30. Battat owns all right, title and interest in and to, and holds the exclusive rights to market and sell, young children's developmental toys bearing the B. Mark.

31. The B. Mark has achieved secondary meaning associating it in the minds of the purchasing public with Battat and its line of young children's hand-manipulative, body and mind development toys.

32. Blue Box's conduct as alleged herein, including its use of and infringing variant of the B. Mark on the Infringing Merchandise, constitutes a false designation of origin and such

conduct has caused and is likely to cause confusion or to deceive consumers as to the origin, sponsorship, affiliation, connection and/or association of Battat and/or its B. Mark, with Blue Box and its Infringing Merchandise as sold with its mark B kids.

33. Marketing and sales of the Infringing Merchandise is likely to deceive consumers into believing that they are Battat's products. The Infringing Merchandise does not originate from or have the approval or authorization of Battat.

34. The foregoing acts of Blue Box constitute trademark infringement and unfair competition in violation of §43(a) of the Lanham Act, 15 U.S.C. §1125(a).

35. As a direct and proximate result of Blue Box's infringing activities, Battat has suffered substantial damage. Battat will continue to be damaged by the continued unlawful acts of Blue Box, unless such acts are immediately enjoined.

36. Battat is entitled to injunctive relief prohibiting Blue Box from selling, advertising, manufacturing, promoting, distributing the Infringing Merchandise bearing the B kids mark or a mere variant thereof.

37. Battat has no adequate remedy at law.

38. Battat is also entitled to recover from Blue Box all damages it has sustained in an amount to be determined at trial including but not limited to attorneys' fees and all gains, profits and advantages obtained by Blue Box as a result thereof, in an amount not yet known, as well as the costs of this action pursuant to 15 U.S.C. § 1117(a). Damages sought may be multiplied up to three times as a consequence of Blue Box, willful and deliberate continuation of its infringement.

SECOND CLAIM FOR RELIEF
(Common Law Trademark Infringement and Unfair Competition)

39. Battat repeats and realleges the allegations contained in paragraphs 1 through 28 and 30 through 33 as if fully set forth herein.

40. Battat has expended substantial time, resources and effort to develop and obtain an excellent reputation and good will for itself, and for its young children's hand-manipulative, body and mind development toys as sold by Battat under its B. Mark.

41. Blue Box has knowingly and willfully appropriated a mere variant of Battat's B. Mark in an effort to falsely create the impression that the Infringing Merchandise is sanctioned by Battat and in order to take unto itself all of the goodwill associated with the B. Mark and Battat. Blue Box's unlawful acts in appropriating rights in Battat's B. Mark were intended to capitalize on Battat's goodwill to Battat's detriment and for Blue Box's own pecuniary gain.

42. The Infringing Merchandise being sold by Blue Box is calculated to and is likely to create confusion and to deceive and mislead consumers into believing that such merchandise originated with or is authorized by Battat, and has caused and is likely to cause confusion as to the source of Blue Box's Infringing Merchandise, all to the detriment of Battat.

43. Blue Box's acts as alleged above constitute trademark infringement and unfair competition and will, unless enjoined by this Court, result in the destruction and/or diversion of Battat's goodwill in its B. Mark and will result in the unjust enrichment of Blue Box.

44. Upon information and belief, Blue Box committed the acts alleged herein knowingly, intentionally, deliberately, fraudulently, maliciously, willfully, wantonly and oppressively with the intent to confuse the public and to injure Battat in its business and to Blue Box's monetary advantage.

45. Battat has no adequate remedy at law and is suffering irreparable harm and

damage as a result of the aforesaid acts of Blue Box.

PRAYER FOR RELIEF

WHEREFORE, Battat demands judgment against Blue Box as follows:

1. Ordering that Blue Box and its parents, subsidiaries, affiliated companies, officers, agents, directors, employees, shareholders and attorneys and all those persons in active concert or participation with it and those who receive actual notice of the injunction by personal service or otherwise, be permanently restrained and enjoined from:

a. Further infringing Battat's B. Mark and from importing, manufacturing, producing, distributing, circulating, selling, marketing, offering for sale, advertising, promoting, displaying or otherwise disposing of any products, including young children's development toys, not authorized by Battat and yet bearing any simulation, reproduction, counterfeit, copy or colorable imitation of Battat's B. Mark, including the B kids Mark, or any mark confusingly similar thereto;

b. Using any simulation, reproduction, counterfeit, copy or colorable imitation of Battat's B. Mark, including the standard form and its stylized B. design, in connection with the promotion, advertisement, display, sale, offering for sale, manufacture, production, circulation or distribution of any unauthorized products, including young children's development toys, in such a fashion as to relate or connect, or tend to relate or connect, such products in any way to Battat, or to any goods sold, manufactured, sponsored or approved by or connected with Battat;

c. Making any statement or representation whatsoever, including in advertising or on a website, or using any false designation of origin or false description, or performing any act, which can or is likely to lead consumers, the trade or public, or

individual members thereof, to believe that any products, including young children's development toys manufactured, distributed or sold by Blue Box are in any manner associated or connected with Battat or its B. Mark, or are sold, manufactured, licensed, sponsored, approved or authorized by Battat;

d. Using any false descriptions or representations or any false designations of origin or from otherwise committing any acts of unfair competition with respect to Battat and the B. Mark, including use of the B. in standard or stylized form including using such designs or any design, including the B kids mark or any confusingly similar mark thereto without the authorization of Battat;

e. Diluting the distinctiveness and goodwill established by Battat in the B. Mark, by using this or a similar mark or by use of the B kids mark or any designation that is confusingly similar thereto; and

f. Engaging in any other activity constituting unfair competition with Battat, or constituting an infringement of any of Battat's trademarks, including the B. Mark, or of Battat's rights therein, or to use or to exploit, said trademarks, or constituting any dilution of Battat's name, reputation or goodwill or that of the B. Mark.

2. Directing that Blue Box deliver for destruction all Infringing Merchandise, goods, products, signs, labels, brochures, advertising, promotional material, prints, packages, dies, toys, wrappers, receptacles and advertisements in its possession or under its control bearing any of Battat's B. Mark, or Blue Box's B kids mark, or any simulation, reproduction, counterfeit, copy of colorable imitation thereof, and all plates, molds, matrices and other means of making the same.

3. Directing that an accounting and judgment be rendered against Blue Box for:

a. All profits received by Blue Box from the sale of infringing products,

including the Infringing Merchandise, as provided by 15 U.S.C. §§ 1114 and 1117; and

b. All profits received by Blue Box and all damages sustained by Battat on account of Blue Box's trademark infringement and unfair competition and, furthermore, that such profits and damages as found herein be trebled as provided for by 15 U.S.C. §1117.

4. Awarding Battat its costs in this action together with reasonable attorneys' fees and expenses as provided for by 15 U.S.C. §1117.

5. Directing that the Court retain jurisdiction of this action for the purpose of enabling Battat to apply to the Court at any time for such further Orders and directions as may be necessary or appropriate for the interpretation or execution of any Order entered in this action, for the modification of any such Order, for the enforcement or compliance therewith, and for the punishment of any violations thereof.

6. Directing such other relief as the Court may deem appropriate to prevent the trade and public from deriving any erroneous impression that any products, including young children's development toys are manufactured, sold or otherwise circulated or promoted by Blue Box and precluding the erroneous belief that Blue Box is authorized by Battat or related in any way to Battat's products, including its B. line of toys.

7. Awarding to Battat such other and further relief as the Court may deem just and proper.

Dated: New York, New York
December 23, 2010

PRYOR CASHMAN LLP
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Blue Box Toy Factory, Ltd.*

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

<p>BATTAT, INC.,</p> <p>Plaintiff,</p> <p>v.</p> <p>BLUE BOX TOY FACTORY, LTD.,</p> <p>Defendant.</p>	<p>C.A. No.: 10-CV-09573 (PGG) ECF Case</p> <p><u>ANSWER AND COUNTERCLAIMS</u></p>
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Defendant, Blue Box Toy Factory Limited (“Blue Box”), by its attorneys, for its answer to the Complaint, states as follows:

NATURE OF THE ACTION

1. Denies the allegations contained in paragraph 1, except states that no response is

required to the extent the allegations of this paragraph call for a legal conclusion.

THE PARTIES

2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2.

3. Denies the allegations contained in paragraph 3, except admits the allegations regarding Blue Box Toys, Inc.'s business address and asserts that Blue Box's operations in New York are conducted through its wholly-owned subsidiary Blue Box Toys, Inc. and asserts further that Blue Box was an attendee at and participant in the recent International Toy Fair of 2011.

JURISDICTION AND VENUE

4. With respect to the allegations contained in paragraph 4, states that no response is required as the allegations of this paragraph call for legal conclusion.

5. With respect to the allegations contained in paragraph 5, states that no response is required as the allegations of this paragraph call for legal conclusion.

6. Denies the allegations contained in paragraph 6, except states that no response is required to the extent the allegations of this paragraph call for a legal conclusion.

ALLEGATIONS COMMON TO ALL CLAIMS

Battat's Rights in its B. Trademark

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14, except states that no response is required to the extent the allegations of this paragraph call for a legal conclusion.

15. With respect to the allegations contained in paragraph 15, denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15, except states that no response is required to the extent the allegations of this paragraph call for a legal conclusion.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16.

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18.

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19.

20. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20, except states that no response is required to the extent the allegations of this paragraph call for a legal conclusion.

Blue Box's Infringing Use of an Infringing Mark

21. Denies the allegations contained in paragraph 21.

22. Denies the allegations contained in paragraph 22.

23. Denies the allegations contained in paragraph 23.

24. Denies the allegations contained in paragraph 24.

25. Denies the allegations contained in paragraph 25.

26. Denies the allegations contained in paragraph 26, except admits that reference is made to certain correspondence between counsel for the parties and respectfully refers the Court to those correspondences for their full terms, force and effect.

27. Denies the allegations contained in paragraph 27.

28. Denies the allegations contained in paragraph 28.

FIRST CLAIM FOR RELIEF
(Unfair Competition and False Designation of Origin Under 15 U.S.C. §1125(a))

29. Defendant repeats and realleges its responses to paragraph 1 through 28 above, as if fully set forth herein.

30. Denies, upon information and belief, the allegations contained in paragraph 30, except states that no response is required to the extent the allegations of this paragraph call for a legal conclusion.

31. Denies, upon information and belief, the allegations contained in paragraph 31,

except states that no response is required to the extent the allegations of this paragraph call for a legal conclusion.

32. Denies the allegations contained in paragraph 32.

33. Denies the allegations contained in paragraph 33.

34. Denies the allegations contained in paragraph 34, except states that no response is required to the extent the allegations of this paragraph call for a legal conclusion.

35. Denies the allegations contained in paragraph 35.

36. Denies the allegations contained in paragraph 36, except states that no response is required to the extent the allegations of this paragraph call for a legal conclusion.

37. Denies the allegations contained in paragraph 37, except states that no response is required to the extent the allegations of this paragraph call for a legal conclusion.

38. Denies the allegations contained in paragraph 38.

SECOND CLAIM FOR RELIEF
(Common Law Trademark Infringement and Unfair Competition)

39. Defendant repeats and realleges its responses to paragraph 1 through 38 above, as if fully set forth herein.

40. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 40.

41. Denies the allegations contained in paragraph 41.

42. Denies the allegations contained in paragraph 42.

43. Denies the allegations contained in paragraph 43, except states that no response is required to the extent the allegations of this paragraph call for a legal conclusion.

44. Denies the allegations contained in paragraph 44.

45. Denies the allegations contained in paragraph 45, except states that no response is required to the extent the allegations of this paragraph call for a legal conclusion.

AFFIRMATIVE DEFENSES

Blue Box asserts the following affirmative defenses. Blue Box reserves the right to assert additional affirmative defenses after further investigation, including defenses related to validity and enforceability.

FIRST AFFIRMATIVE DEFENSE

The plaintiff has failed, in whole or in part, to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Upon information and belief, the plaintiff's claims are barred, in whole or in part, under the doctrine of laches, estoppel and/or acquiescence.

THIRD AFFIRMATIVE DEFENSE

Upon information and belief, the plaintiff's claims are barred, in whole or in part, because Blue Box's use of its marks represents fair use.

FOURTH AFFIRMATIVE DEFENSE

Upon information and belief, Blue Box has not infringed any valid trademark rights of plaintiff and therefore plaintiff's causes of action against Blue Box are all barred, either in whole or in part, because the asserted trademark rights are void and/or unenforceable.

FIFTH AFFIRMATIVE DEFENSE

Upon information and belief, one or more of plaintiff's asserted trademarks are not inherently distinctive.

SIXTH AFFIRMATIVE DEFENSE

Upon information and belief, one or more of plaintiff's asserted marks did not acquire any distinctiveness prior to Blue Box's adoption and use of its allegedly infringing marks.

SEVENTH AFFIRMATIVE DEFENSE

Upon information and belief, Blue Box possesses rights of priority over one or more of plaintiff's asserted trademarks.

EIGHTH AFFIRMATIVE DEFENSE

Upon information and belief, the plaintiff's state law claims are pre-empted by the asserted Lanham Act claims.

NINTH AFFIRMATIVE DEFENSE

Upon information and belief, Blue Box's use of its marks has not caused consumer confusion and is not likely to cause consumer confusion in the future.

TENTH AFFIRMATIVE DEFENSE

The goods identified in one or more of the plaintiff's applications are noncompetitive and/or unrelated to the goods marketed by Blue Box.

ELEVENTH AFFIRMATIVE DEFENSE

Upon information and belief, the plaintiff had prior notice of Blue Box's prior use of its marks in relation to Blue Box toys and, therefore, to the extent there is any confusion between plaintiff's marks and Blue Box's marks, plaintiff should be barred from asserting any claims for trademark infringement under the doctrine of unclean hands as well as pursuant to equitable principles of consent, acquiescence, ratification, and/or legal justification.

TWELFTH AFFIRMATIVE DEFENSE

Upon information and belief, Blue Box's conduct was at all times lawful, justified, reasonable, in good faith, and with innocent intent based upon the facts known at the time it acted.

THIRTEENTH AFFIRMATIVE DEFENSE

Upon information and belief, plaintiff's alleged trademark rights to the mark B CUTE are invalid and unenforceable as plaintiff has abandoned any trademark rights it may have had with respect to the mark B CUTE.

FOURTEENTH AFFIRMATIVE DEFENSE

Upon information and belief, Plaintiff's trademark rights, if any, in the mark B CUTE are limited to "dolls" and "doll accessories" and, therefore, cannot form the basis of a claim for trademark infringement as against Blue Box.

FIFTEENTH AFFIRMATIVE DEFENSE

Upon information and belief, the plaintiff has not suffered any compensable damages because of any Blue Box conduct.

SIXTEENTH AFFIRMATIVE DEFENSE

Upon information and belief, the plaintiff has failed to mitigate its alleged damages, if any.

COUNTERCLAIMS

Blue Box, by its attorneys, asserts the following counterclaims against Battat, Inc. (“Battat”). Blue Box reserves the right to assert additional counterclaims after further investigation.

JURISDICTION AND VENUE

1. Blue Box alleges counterclaims for trademark infringement and unfair competition pursuant to the Lanham Act, 15 U.S.C. § 1051, et seq. This Court has subject matter jurisdiction pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338 with respect to the claims arising under federal law and supplemental jurisdiction pursuant to 28 U.S.C. §§ 1338 and 1367. In addition, this Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a). This Court has personal jurisdiction over Battat and venue is proper in this district pursuant to 28 U.S.C. § 1391 (b) and (c) because Battat is doing business within this State and judicial district, transacting business within this State and judicial district, derives substantial revenue from intra-state and inter-state commerce and has committed tortious acts within this State and judicial district and without this State and judicial district having injurious consequences within this State and judicial district.

THE PARTIES

2. Defendant/Counterclaim-Plaintiff Blue Box is a company located in Hong Kong, with offices at 1203 East Ocean Center, 98 Granville Road, Tsimshatsui East, Kowloon.

3. Plaintiff/Counterclaim-Defendant Battat is a corporation duly organized and existing under the laws of Delaware, with an address at 1560 Military Turnpike, Plattsburgh, New York 12901.

FACTS COMMON TO ALL COUNTS

4. Blue Box was founded in 1952 as a developer and manufacturer of quality toys. Since its founding, it has developed and expanded the Blue Box brand of toys for distribution worldwide, including in the United States.

5. Blue Box has conducted business in the United States for decades. In 1973, a predecessor entity to what is now known as Blue Box Toys, Inc. (hereinafter "Blue Box USA"), was incorporated in Delaware and began conducting business in the United States through an office located in New York City. Since then, and at all times thereafter, Blue Box USA has been the hub of Blue Box's United States business operations. Blue Box USA currently maintains its offices at 220 South Orange Avenue, Suite #106, Livingston, New Jersey 07039.

6. In the 1980s, Blue Box moved its manufacturing facilities to China. Since that time, Blue Box has been and continues to be a first class, integrated manufacturing, sales and marketing organization for children's toys and related products worldwide. Blue Box employs over 5,000 people in China and an additional 150 people in Hong Kong.

7. Blue Box engages in the design, manufacture, marketing and distribution worldwide of its branded products. Blue Box also develops and manufactures toy products for other major international toy companies.

8. Like companies such as Siemens and Porsche, Blue Box and its factories are compliant with the policies of SAP, the world's leading provider of Enterprise Resource Planning (ERP) systems. Blue Box's well-trained and experienced Quality Assistance/Quality Control team supervises all quality matters and implements the necessary processes to comply with strict international standards.

9. Blue Box's products are tested and certified according to national and international toys directives, endorsed by independent third-party agencies, and recognized laboratories. Copies of just a few of the many awards and certificates received by Blue Box and its related companies attesting to their quality controls and procedures are attached as Exhibit A to the previously submitted Declaration of David Chan. *See Dkt. 14.*

10. Blue Box is also a private label manufacturer of toys for such well-known children's entertainment franchises such as Thomas & Friends trains and Hello Kitty cartoons.

11. Blue Box maintains a comprehensive website at www.blueboxtoys.com to promote its business. Printouts from the website are attached as Exhibit B to the previously submitted Declaration of David Chan. *See Dkt. 14.*

12. Over the years, Blue Box has won many awards for its products. Examples are attached as Exhibit C to the previously submitted Declaration of David Chan. *See Dkt. 14.*

Blue Box's Various Logos

13. Throughout its existence, Blue Box has identified its products with a distinctive "BLUE-BOX" logo and has also utilized variations of its name and its initials in connection with its marketing and distribution of efforts.

14. Beginning at least as early as 1964, Blue Box has used the following logo to designate its goods:

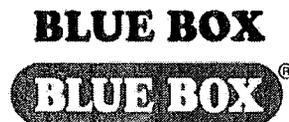


15. In or about 1984, Blue Box began using the following BB mark as a means of identifying the Company's products:



A copy of the cover from the 1984 Blue Box catalog showing the BB logo is attached as Exhibit D to the previously submitted Declaration of David Chan. *See Dkt.* 14.

16. In 1987, Blue Box modified the typeface of its original BLUE BOX logo. The new design (see below) utilized white bubble lettering, written in Copper STD font, surrounded by a light blue background:



Photocopies of product catalogs from 1987 and 1988 are attached as Exhibit E to the previously submitted Declaration of David Chan. *See Dkt.* 14.

17. Over the years, Blue Box has developed new brands for its different product lines and sub-lines.

18. Beginning at least as early as 2000, Blue Box started using the mark BBI for miniature figure models. The BBI product line includes miniature historical figures, animal figures and action figures among others. It also includes papercraft models downloadable from the internet website at www.bbicollectible.com.

19. Blue Box advertises and promotes the BBI branded miniatures through its website at www.bbicollectible.com. Printouts from the website are attached as Exhibit F to the previously submitted Declaration of David Chan. *See Dkt.* 14. Notably, the BBI logo features a prominent bold letter “B” encased in a red circle.

20. In 2006, Blue Box created b2, a new division specializing in the development and introduction of cutting edge products suitable for the music and entertainment markets. The

main business of b2 is the design, manufacture and marketing of Blue Box's branded products and its worldwide distribution of these products. The b2 line of products relates directly to the marketing of digital music devices such as iPod and mp3 players. The launch of b2 was supported by a significant promotional campaign including television advertising in the United States.

21. In January 2006, Blue Box registered the domain name b2stuf.com through Ricky Cheung, who is responsible for information technology (IT) at the company. A printout from a Whois search is attached as Exhibit G to the previously submitted Declaration of David Chan. *See Dkt. 14.*

22. Blue Box currently advertises and promotes B2 through the website at www.b2stuf.com. Printouts from the website are attached as Exhibit H to the previously submitted Declaration of David Chan. *See Dkt. 14.*

The B KIDS Product Line

23. In recent years, the toy industry has experienced a convergence of the pre-school and infant toy categories such that it is no longer viable to maintain separate product lines.

24. Consequently, by the end of 2008, Blue Box recognized the need to consolidate its infant and pre-school lines of products into a single division to be marketed and sold under a new brand and with a new theme.

25. In January 2009, Blue Box solicited bids from various brand consultants to assist it in developing its newly-consolidated brand.

26. After receiving multiple bids, Blue Box engaged JSA International Ltd./Universa Group (hereinafter "JSA/Universa") as a brand consultant.

27. In or around August 10, 2009, JSA/Universa suggested several designs to Blue Box and provided studies on the different “B” fonts.

28. The Blue Box rebrand team thereafter eventually agreed upon the following mark:



29. Blue Box’s internal designers developed a presentation of the above mark suitable for printing on toy packaging. Eventually, the design team came up with the following logo:



A printout showing the new logo design is attached as Exhibit P to the previously submitted Declaration of David Chan. *See Dkt. 14.*

30. The typeface of the letter B and the light blue color scheme of large rounded square is taken directly from the display of the BLUE BOX logo adopted in 1987 as discussed in Paragraph 16 above. This was deliberately done so that consumers would associate Blue Box’s new brand with the Blue Box line of toys in order to capitalize upon Blue Box’s longstanding reputation.

Blue Box’s Launch and Promotion of B KIDS

31. At the Kind + Jugend Toy Show in Cologne, Germany, from September 16th to September 19th, 2009, Blue Box launched its “B” prefix mark. The actual mark used was B BABY and Design, as shown immediately below, because Blue Box was still deciding which variant to adopt:



A photo showing Blue Box's booth at that show is attached as Exhibit T to the previously submitted Declaration of David Chan. *See Dkt. 14.*

32. The B KIDS product line was subsequently displayed in October 2009 at the Kenfair Toy Show in Hong Kong and in January 2010 at the Hong Kong Toys & Games Fair. A copy of a print ad from the fair is attached as Exhibit U to the previously submitted Declaration of David Chan. *See Dkt. 14.*

33. Blue Box registered the domain name www.bkidsfun.com in January 2010. A printout from a Whois search is attached as Exhibit W to the previously submitted Declaration of David Chan. *See Dkt. 14.*

34. Blue Box uses the website at www.bkidsfun.com to advertise and promote its B KIDS line of products. Printouts from the website are attached as Exhibit X to the previously submitted Declaration of David Chan. *See Dkt. 14.*

35. B KIDS toys have been sold to Walgreens Co. ("Walgreens") and Big Lots Stores, Inc. ("Big Lots"), among others, in the United States.

36. The first sale of B KIDS products in the United States took place at least as early as April 2010. *See Dkt. 14, Chan Declaration, Exhibit Z at 3* (showing sales of two different B KIDS toys for \$16,838.56 to Chelsea & Scott on April 13, 2010). Walgreens has been selling B KIDS toys at least as early as the first week of July 2010 at many of its retail locations. *See Dkt. 29, Seto Declaration at ¶¶ 2-4* (indicating Blue Box's May 2010 sale and delivery of 123,000 branded units to Walgreens and referencing weekly sales reports of same commencing on July 6, 2010). Such "off-the-shelf" sales were not limited to Walgreens, but also occurred at other

retailers as well. *See Dkt. 29*, Seto Declaration at ¶¶ 5-7 (indicating Blue Box's July 2010 delivery of 45,476 branded units to Big Lots!).

37. In 2010, Blue Box shipped a total of about 222,500 units of B KIDS branded products to buyers in the United States. A chart identifying sales of product in the U.S. and Canada last year is attached as Exhibit Z to the previously submitted Declaration of David Chan. *See Dkt. 14*.

38. Blue Box promoted B KIDS at the TIA's Fall Toy Preview held in Dallas, Texas from October 5th to October 8th, 2010 (the "TIA Fall Toy Preview"). Photographs taken from the show are attached as Exhibit AA to the previously submitted Declaration of David Chan. *See Dkt. 14*.

39. Upon information and belief, Battat attended the TIA Fall Toy Preview.

40. Blue Box also promoted B KIDS at the ABC Kids Expo held in Las Vegas, Nevada from October 10th to October 13th, 2010. Photographs taken from the show are attached as Exhibit BB to the previously submitted Declaration of David Chan. *See Dkt. 14*.

41. Blue Box has won awards in connection with its B KIDS line of products. Examples are attached as Exhibit CC to the previously submitted Declaration of David Chan. *See Dkt. 14*.

Blue Box's Development of Its Marks and Trademark Rights

42. Blue Box has made a substantial investment of time, effort and expense in developing and protecting its brand and marks.

43. Blue Box is the owner of U.S. Registration No. 919,291 of the mark BLUE –BOX in white bubble letters surrounded by a dark oval for toys in International Class 28 (the "291 Registration"). A copy of the Certificate of Registration is attached as Exhibit A to the

previously submitted Declaration of Peter S. Sloane. *See Dkt. 15.* The '291 Registration issued on August 31, 1971 with a date of first use at least as early as 1957.

44. Blue Box owns U.S. Registration No. 2,732,849 for the mark BBI in stylized letters for toys and games in Class 28. A copy of the Certificate of Registration, dated July 1, 2003, is attached as Exhibit B to the previously submitted Declaration of Peter S. Sloane. *See Dkt. 15.*

45. Blue Box has registered the mark B2 and Design for, among other things, musical toys and games in Class 28 in the U.S. Patent and Trademark Office (the "U.S.P.T.O."). The registration issued on July 28, 2009 under Registration No. 3,662,053. A copy of the Certificate of Registration is attached as Exhibit C to the previously submitted Declaration of Peter S. Sloane. *See Dkt. 15.*

46. On September 25, 2009, Blue Box applied to register the mark B KIDS and Design in black and white for games and playthings for infants and pre-school children in Class 28. A printout from the online records of the U.S.P.T.O. showing details for the application, serial number 77/835,267 is attached as Exhibit E to the previously submitted Declaration of Peter S. Sloane. *See Dkt. 15.*

47. Blue Box is the owner of U.S. Application serial number 85/202,534 of the mark B KIDS and Design in color for games and playthings for infants and pre-school children in Class 28. A printout from the online records of the U.S.P.T.O. showing details for the application is attached as Exhibit G to the previously submitted Declaration of Peter S. Sloane. *See Dkt. 15.*

Battat's Knowledge of Blue Box and its B KIDS mark

48. Upon information and belief, Battat is manufacturer and seller of toy products.

49. Upon information and belief, Battat is competitive with Blue Box in the market for toys.

50. Upon information and belief, Battat started selling toys under the mark B. in the United States in or about December 2009.

51. On or about October 21, 2010, Blue Box received a letter from counsel for Battat objecting to its use of the B KIDS logo (hereinafter the "Demand Letter"). A copy of the Demand Letter is attached as Exhibit DD to the previously submitted Declaration of David Chan. *See Dkt. 14.*

52. On November 3, 2010, Blue Box had its counsel write a response letter (hereinafter the "Response Letter") to the Demand Letter. A copy of the Response Letter is attached as Exhibit EE to the previously submitted Declaration of David Chan. *See Dkt. 14.* Among other things, the Response Letter advised Battat that Blue Box had for many years used a "B" or "BB" in its trademarks.

53. On November 12, 2010, counsel for Battat sent a reply letter (hereinafter the "Reply"), advising that it continued to believe that the B kids trademark infringed on its rights. A copy of the Reply is attached as Exhibit FF to the previously submitted Declaration of David Chan. *See Dkt. 14.* According to the Reply, "[o]ur client will not sit idly by and allow your client to infringe its intellectual property rights. You must cease all distribution and sales, now."

54. Over the following weeks, Blue Box, through its counsel, discussed the possibility of settlement with Battat.

55. On December 23, 2010, Battat filed the instant Complaint for trademark infringement against Blue Box with this Court. *See Dkt 1.*

56. In the Complaint, Battat alleges that it has sold over 3.5 million units of toy products under the trademark B. since December 2009. *See Dkt 1* at ¶ 12.

57. On February 8, 2011, Battat moved this Court for a preliminary injunction, by order to show cause, seeking to enjoin Blue Box from infringing Battat's purported prior rights in the alleged trademark B. *See Dkts. 7-12.*

FIRST COUNTERCLAIM
(Trademark Infringement)

58. Blue Box repeats and realleges the allegations of paragraphs 1 - 57 as if set forth fully herein.

59. In the event that the Court determines that Blue Box has priority over Battat, and that there is a likelihood of confusion between the parties' respective marks, then the acts of Battat described herein should be deemed to be likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Battat with Blue Box, or as to the origin, sponsorship, or approval of Battat's goods in violation of Section 43 (a) of the Lanham Act, 15 U.S.C. § 1125 (a).

60. Despite having constructive notice of Blue Box's rights, Battat nevertheless willfully elected to adopt and use the trademark B. to market and promote with the intent to cause confusion and mistake, to deceive and mislead the purchasing public and the trade and to improperly misappropriate Blue Box's valuable trademark rights in the B KIDS trademark.

61. Battat's advertising and promotion of its trademark B. was so extensive that it saturated the toy market to such an extent that toy consumers may have come to mistakenly believe that the Battat, rather than Blue Box, is the source of the B KIDS product line.

62. The acts of Battat described herein were undertaken without the permission, license or consent of Blue Box and are damaging to Blue Box.

63. By reason of the acts of Battat as alleged herein, Blue Box has, and will, suffer irreparable damage to its reputation and a loss of sales and profits which Blue Box would have made but for said acts of Battat.

64. Battat has been unjustly enriched and Blue Box is entitled to an accounting of the profits of Battat.

65. Battat's foregoing activities have damaged Blue Box in a monetary amount as yet unknown, but to be determined according to proof, and Battat's activities will damage Blue Box in a manner wherein Blue Box has no adequate remedy at law.

SECOND COUNTERCLAIM
(False Designation of Origin/Unfair Competition)

66. Blue Box repeats and realleges the allegations of paragraphs 1 - 65, as if fully set forth herein.

67. Battat's activities constitute false designation of origin, and false descriptions and representations in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

68. All of the acts of Battat as set forth in preceding paragraphs, were without the permission, license or consent of Blue Box, and are irreparably damaging to Blue Box.

69. By reason of the acts of Battat as alleged herein, Blue Box has, and will, suffer irreparable damage to its reputation and a loss of sales and profits, while Battat is profiting at Blue Box's expense.

70. Battat's foregoing activities have damaged Blue Box in a monetary amount as yet unknown, but to be determined according to proof, and Battat's activities will damage Blue Box in a manner wherein Blue Box has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, defendant Blue Box Toy Factory, Ltd., demands judgment as follows:

- A. Dismissing Battat's Complaint in its entirety with prejudice;
- B. Finding that Battat has infringed Blue Box's trademark rights and has committed acts of unfair competition and false designation of origin;
- C. Permanently enjoining Battat and its officers, agents, servants, employees, attorneys and those persons, firms or corporations, acting in concert and participation with them from manufacturing, assembling, advertising, promoting, offering for sale, selling, purchasing, or distributing in any other way any toys bearing any marks that are confusingly similar to any of Blue Box's marks;
- D. Awarding Blue Box the costs and disbursements of this action including reasonable legal fees and expenses.
- E. Awarding Blue Box such other and further relief as is just and proper.

Dated: New York, New York
March 14, 2011

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CERTIFICATE OF SERVICE

I, Tab K. Rosenfeld, hereby certify that on March 14, 2011, a true and correct copy of the foregoing **ANSWER AND COUNTERCLAIMS** was served by email via operation of the Court's ECF filing system upon the following counsel for Plaintiff:

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