

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS**

TRU KIDS INC.,

Plaintiff,

vs.

Ali Afzal Enterprises Inc. D/B/A TOYZ,

Defendant.

Civ. Action No.: _____

(JURY DEMAND)

**PLAINTIFF’S PETITION AND APPLICATION FOR TEMPORARY RESTRAINING
ORDER AND TEMPORARY INJUNCTION**

Plaintiff TRU Kids Inc. (“Toys R Us” or “Plaintiff”), files this Petition and Application for Temporary Restraining Order and Temporary Injunction (“Petition”) against Ali Afzal Enterprises Inc. D/B/A TOYZ (“TOYZ” or “Defendant”). In support of its Petition, Plaintiff respectfully alleges and states the following:

I. NATURE OF THE ACTION

1. This case arises from Defendant’s intentional copying of Toys R Us’s trademarks and trade dress, whereby Defendant is using a confusingly similar logo and identical fixtures as those previously used by a Toys R Us store.

2. Toys R Us is the most famous and well-known toy store in the history of the United States, endearing itself to generations of consumers of all ages.

3. In a blatant and obvious bad-faith effort to trade on the significant goodwill and fame that Toys R Us has developed over decades, with tens of millions of dollars investment by Toys R Us, TOYZ is now operating online at <https://toyzdistributor.com/> (the “TOYZ Website”) and in four brick-and-mortar retail toy stores (the “Infringing Stores”), including a store in the identical store space within the identical mall (the “Galleria Mall Store”) where Toys R Us

previously operated a retail toy store.

4. Indeed, in an effort to confuse the average toy consumer, TOYZ is imitating the famous and distinct Toys R Us bubble-font, with each letter appearing in a different color, on its signage and promotional materials for its Infringing Stores and on the TOYZ Website.

5. Furthermore, in an obvious effort to trade off the significant goodwill and fame that Toys R Us has developed, at least one of the Infringing Stores, the Galleria Mall Store, is clearly designed to mirror the look and feel of a Toys R Us branded store, using the distinctive signs, trade fixtures, and trade dress that were integral parts of the previous Toys R Us store and that are well known to consumers.

6. For example, the Galleria Mall Store features the exact same “Let’s Play” sign above a colorful block wall fixture, Tree House, Magical Mirror, candy stand, Play-A-Round Theater, orange and yellow stars, and display stands that were in the Toys R Us store and that form distinctively recognizable parts of the Toys R Us brand.

7. These distinctive signs, trade fixtures, and trade dress intentionally remain there to deceive customers into falsely believing that they are shopping at a store operated by, or for, Toys R Us.

8. It is clear that TOYZ seeks to capitalize on the goodwill and fame of the Toys R Us brand, as demonstrated by TOYZ’s continued, improper, and unauthorized use of Toys R Us’s intellectual property.

9. These intentional acts by TOYZ are likely to create confusion such that a reasonable consumer would be justified in falsely believing that TOYZ is affiliated with, or a spin-off of, Toys R Us.

10. As such, Toys R Us is entitled to temporary, preliminary, and permanent injunctive

relief to stop TOYZ from using Toys R Us's intellectual property as well as a significant award of damages that includes disgorgement by TOYZ of any profits, actual damages to Toys R Us, a reasonable royalty payment by TOYZ, attorneys' fees, and costs of suit.

II. THE PARTIES, JURISDICTION, AND VENUE

11. This is a civil action alleging False Designation of Origin and Trade Dress Infringement in violation of 15 U.S.C. § 1125(a)(1)(A); Federal Trademark Infringement in violation of the Lanham Act (15 U.S.C. § 1114); Trademark Dilution in violation of 15 U.S.C. § 1125(c); Trademark Dilution in violation of TEX. BUS. & COM. CODE § 16.103; Unfair Competition in violation of Tex. Bus. & Com. Code § 17.46; Trademark Infringement in violation of the common law of the State of Texas; Unfair Competition in violation of the common law of the State of Texas; Unfair Competition By Misappropriation in violation of the common law of the State of Texas; and Unjust Enrichment in violation of the common law of the State of Texas.

12. This Court has subject matter jurisdiction of Toys R Us's claims for relief for violation of the Trademark Act of 1946, as amended, 15 U.S.C. §§ 1051, *et seq.* (the Lanham Act), jurisdiction being conferred in accordance with 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331 and 1338.

13. This Court also has subject matter jurisdiction over this dispute under 28 U.S.C. § 1332(a)(1) because there is complete diversity of citizenship among the parties and the amount in controversy, exclusive of interest and costs, exceeds \$75,000.

14. This Court also has jurisdiction for the claims made under Texas statutory and common law in accordance with the principles of supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

15. This Court has personal jurisdiction over TOYZ because, on information and belief,

TOYZ resides and has substantial contacts in the State of Texas and within this judicial district. Furthermore, on information and belief, TOYZ has deliberately engaged in significant and continuous business activities within Texas and within this judicial district. Accordingly, TOYZ has established minimum contacts with the Southern District of Texas.

16. Venue is proper under 28 U.S.C. § 1391(b) and (c) in that the Defendant is located in Texas and a substantial part of the events occurred in Texas and in this judicial district. Defendant has store locations in Texas and in this judicial district, including stores owned or leased in at least four locations in Houston (Galleria Mall, Harwin, Almeda Mall, and First Colony Mall).

17. Toys R Us is, and at all relevant times was, a Delaware corporation with a place of business at 5 Wood Hollow Road, Parsippany, New Jersey. Toys R Us is the owner of the Toys R Us Trademarks and Toys R Us Trade Dress (listed and described below).

18. TOYZ is a corporation of unknown origin, doing business in this judicial district, with places of business at:

- a. Harwin, 6910 Harwin Dr., Houston, TX 77036;
- b. Almeda Mall, 555 Almeda Mall, Houston, TX 77075;
- c. First Colony Mall, 16535 Southwest Freeway, Houston, TX 77479; and
- d. Galleria Mall, 5085 Westheimer Rd., Houston, TX 77056.

19. On information and belief, TOYZ committed this infringement willfully and in bad faith, with actual knowledge of the infringing activity or at least with objective recklessness or willful blindness that its acts constituted, induced, or contributed to infringement.

20. On information and belief, TOYZ committed acts of trademark and trade dress infringement, dilution, unfair competition, and has been unjustly enriched within this judicial district.

III. FACTUAL BACKGROUND

A. THE TOYS R US INTELLECTUAL PROPERTY

21. Toys R Us operates toy stores, and manufactures, distributes, and sells retail toys, games, novelties, children’s jewelry, children’s clothing, computers, and numerous other products.

22. The Toys R Us brand, including its many well-known trademarks and other intellectual property, has been in continuous use in commerce in the United States, and abroad, since as early as 1960.

23. Plaintiff uses its famous logo, having multiple famous branding elements including letters in distinct bubble font and different colors for each letter:





24. Including its famous logo, Plaintiff owns several trademark registrations for the Toys R Us brand.

25. Plaintiff has expended considerable resources to protect its intellectual property, including filing trademark applications in the United States and throughout the world.

26. Set forth below is a chart detailing the trademarks registered with the United States Patent and Trademark Office at issue in this matter:

Trademark	Reg. No.	Reg. Date	Int. Class(es)
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	3859458	October 12, 2010	35
TOYS "R" US	2364201	July 4, 2000	35
TOYS "R" US	2019153	November 26, 1996	42
	1215353	November 2, 1982	42
	3724925	December 15, 2009	35
	2362269	June 27, 2000	35
	0902125	November 10, 1970	28
C'MON, LET'S PLAY	4805187	September 1, 2015	35
GEOFFREY'S TREE HOUSE	6065730	May 26, 2020	35
GEOFFREY'S TREE HOUSE	6065729	May 26, 2020	41
GEOFFREY'S MAGICAL MIRROR	6316574	April 6, 2021	35

PLAY-A-ROUND THEATER	6089903	June 30, 2020	41
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27. Copies of certificates of registrations for the marks listed above are attached as **Exhibit 1**. The term “Toys R Us Trademarks” collectively refers to the marks shown in all the foregoing registrations.

28. All the foregoing marks are valid and subsisting.

29. At least U.S. trademark registration nos. 3856458, 2364201, 2019153, 1215353, 3724925, 2362269, 902125, and 4805187 are incontestable and constitute conclusive evidence of Plaintiff’s exclusive right to use the marks for the goods specified in the registrations. 15 U.S.C. §§ 1065, 1115(b).

30. In addition to its proprietary trademarks, Plaintiff owns protectable trade dress in its distinctive tree house, color schemes, and store design (the “Toys R Us Trade Dress”).

31. The Toys R Us Trademarks and Toys R Us Trade Dress (collectively, the “Toys R Us Intellectual Property”) have been used extensively to identify and promote the Toys R Us brand and represent the Toys R Us brand as a distinct provider of retail toys and related goods and services. Plaintiff enjoys significant goodwill in the Toys R Us Intellectual Property.

32. Considerable resources have been expended on the Toys R Us brand to promote the Toys R Us Intellectual Property to the consuming public, including multi-million-dollar media campaigns to advertise and develop its brand and promote its marks.

33. Those efforts have made Toys R Us well-known and, indeed, famous, to generations of children. The Toys R Us Intellectual Property distinguishes Plaintiff’s goods and services from all others and is a strong, distinctive identifier of its goods and services.

34. Toys R Us had operated stores nationwide, including in Houston, Texas.

35. Toys R Us had operated a store in the Galleria Mall in Houston, Texas, which closed shortly prior to TOYZ opening its store in that same store space.

36. Photographs of Toys R Us's Galleria Mall Store are attached as **Exhibit 2**.

37. Plaintiff is currently using the Toys R Us Trademarks in commerce and plans to continue such use in the future.

38. Toys R Us brand is now available online and will be rolling out in stores nationwide in 2022.

B. TOYZ'S WRONGFUL ACTS

39. Upon information and belief, TOYZ owns and operates four retail toy stores in Houston, Texas, including the Galleria Mall Store.

40. Toys R Us has learned that a toy store in the identical store space in the Galleria Mall in Houston, Texas is now operating under the name "TOYZ."

41. The TOYZ store sells identical products at similar price points to similar customers as Toys R Us.

Infringing Logo

42. Like the Toys R Us famous logo, the "TOYZ" logo has each letter appearing in bubble font.

43. Furthermore, like the Toys R Us famous logo, the "TOYZ" logo uses a different color for each letter.

44. The “TOYZ” logo is a shortened and misspelled version of the famous Toys R Us logo.

45. Like the Toys R Us famous logo, the “Y” in the “TOYZ” logo is green.

46. And, like the Toys R Us famous logo that features a star inside the “R”, the “TOYZ” logo features a design element inside the “O.”

47. The similarity is obvious:



Signs, Fixtures, and Overall Look and Feel of the Galleria Mall Store

48. There are particularly clear violations of Toys R Us Intellectual Property throughout the Galleria Mall Store, through the use of the distinctive signs, trade fixtures and trade dress that were integral parts of the previous Toys R Us store and well known to consumers.

49. For example, the same sign reading “Let’s Play” still hangs along the back wall by the register, with the same colorful block wall fixture hanging beneath it. Shown below is the “Let’s Play” sign with the colorful block wall fixture displayed in the TOYZ Galleria Mall Store:



Shown below is the identical sign displayed in the previous Toys R Us store:



50. Plaintiff owns trademark registration no. 4805187 for the phrase “C’MON, LET’S PLAY.”

51. “Let’s Play” is a shortened and confusingly similar version of Plaintiff’s trademarked phrase.

52. The displaying of this sign constitutes trademark infringement.

53. Additionally, the exact same Tree House that was previously featured as the centerpiece of the previous Toys R Us store is prominently displayed in the Galleria Mall Store. Shown below is the Tree House in the TOYZ Galleria Mall Store (on the left), and the Tree House in the identical location with the identical “Tree House” sign and the identical colorful letters placed on the outside of the Tree House staircase in the previous Toys R Us store (on the right):







54. Plaintiff owns trademark registration nos. 6065729 and 6065730 for “GEOFFREY’S TREE HOUSE.”

55. The Tree House found in the Galleria Mall Store still displays the word “Tree House” in Plaintiff’s distinctive bubble font with colored lettering, which is a clear and blatant infringement of Plaintiff’s trademarks.

56. This exact Tree House was featured in Toys R Us stores and is a distinctive identifier of the Toys R Us brand.

57. The colorful and unique lettering spelling out “Tree House” and the colorful letters placed on the outside of the Tree House staircase remain affixed to the structure exactly how these were seen in Toys R Us stores.

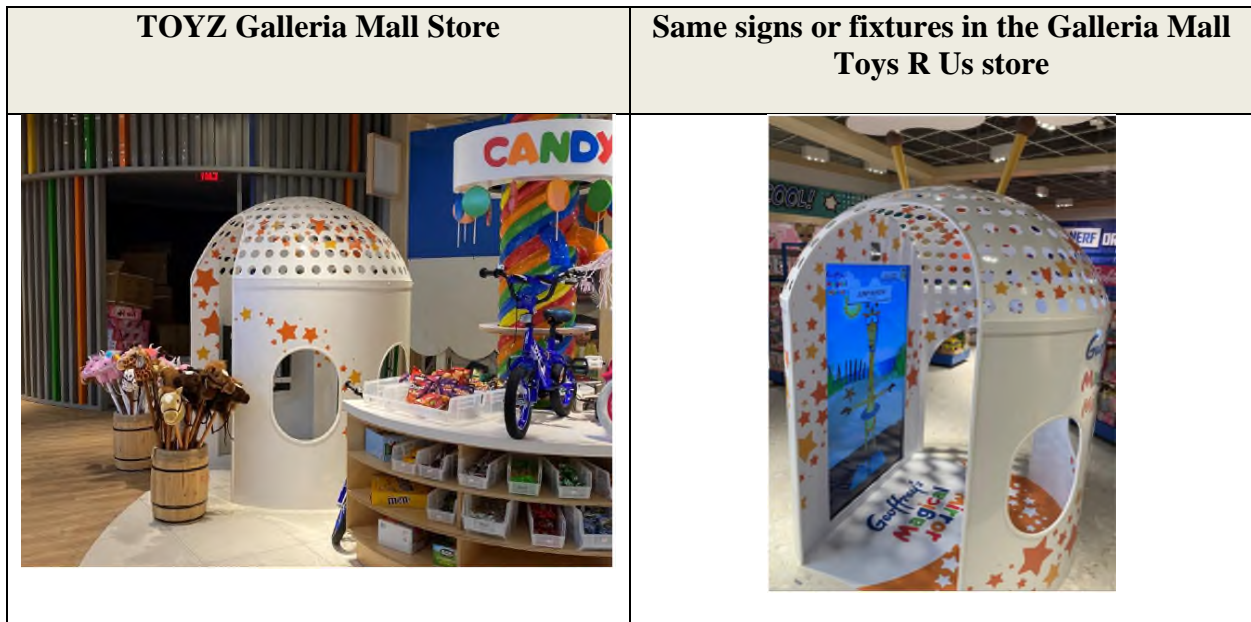
58. The continued use of the protected phrase “Tree House,” and using the remaining Tree House fixture, violate the Toys R Us Trademarks and Toys R Us Trade Dress.

59. In an obvious effort to trade off the significant goodwill and fame that Plaintiff has developed, the Galleria Mall Store is clearly designed to mirror the look and feel of a Toys R Us branded store.

60. For instance, as explained above, the “Let’s Play” Sign, hanging above the colorful

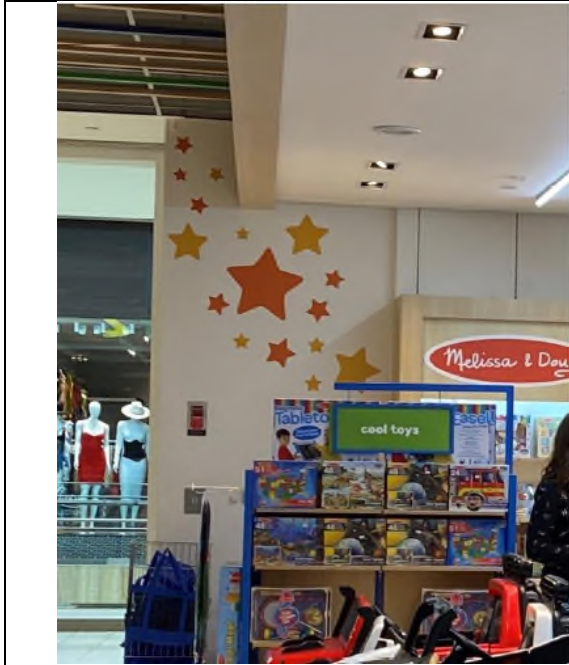
block wall fixture, and the Tree House were both part of the Toys R Us store that was previously operated in the exact same store space at the Houston Galleria.

61. The Galleria Mall Store further features the exact same Magical Mirror, candy stand, Play-A-Round Theater, orange and yellow stars, and display stands that were in the Toys R Us store that form distinctively recognizable parts of the Toys R Us brand. Shown below are the Magical Mirror, candy stand, Play-A-Round Theater, orange and yellow stars, and display stands in the TOYZ Galleria Mall Store (on the left). Also shown below are the Magical Mirror, candy stand, Play-A-Round Theater, orange and yellow stars, and display stands in the previous Toys R Us store (on the right)¹:



¹ More images of the previous Toys R Us store may be seen in Exhibit 2.





62. The use of bubble fonts, rotating colored letters, the “Let’s Play” sign, the colorful block wall fixture, Tree House, Magical Mirror, candy stand, Play-A-Round Theater, orange and yellow stars, and display stands are unique elements that create and identify the distinctiveness of a Toys R Us store, and the use of the Toys R Us Intellectual Property throughout the Galleria Mall Store constitutes clear trade dress infringement.

63. The Infringing Stores and the TOYZ Website have been designed so that Toys R

Us's actual and prospective customers falsely believe that the Infringing Stores are affiliated with, associated with, licensed, sponsored, or endorsed by Toys R Us.

64. The Infringing Stores and the TOYZ Website have also been designed in a bad faith effort to attract customers based on Toys R Us's reputation and to trade on the goodwill associated with Toys R Us Intellectual Property.

65. TOYZ has no relationship or affiliation with Toys R Us, and Toys R Us did not consent to the display of, or use of, the Toys R Us Intellectual Property.

IV. TOYZ'S WRONGFUL CONDUCT HAS CAUSED, AND WILL CONTINUE TO CAUSE, HARM

66. On September 22, 2021, Toys R Us served TOYZ with a letter demanding that the Infringing Stores and TOYZ Website cease and desist from using the Toys R Us Intellectual Property no later than September 30, 2021.

67. Defendant never provided a substantive response to the cease and desist demand.

68. TOYZ's use of the Toys R Us Intellectual Property continues to this day, is likely to cause confusion and deceive customers, and cause customers to falsely believe that there is an affiliation between TOYZ and Toys R Us.

69. TOYZ knew that it was infringing upon the Toys R Us Intellectual Property. TOYZ adopted the Toys R Us Intellectual Property in bad faith, deliberately intending to imitate the famous Toys R Us Intellectual Property, and in an effort to trade on Toys R Us's reputation and goodwill and otherwise confuse the toy consuming public.

70. As a direct and proximate result of TOYZ's activities, as set forth above, which invades Toys R Us's rights, Toys R Us has been irreparably injured.

71. TOYZ's conduct continues to damage the reputation and goodwill associated with Toys R Us. Unless and until TOYZ is immediately enjoined from its trademark and trade dress

infringement and continued use of the Toys R Us Intellectual Property, Toys R Us will continue to suffer irreparable injury. It would be difficult to ascertain the amount of compensation that could afford Toys R Us adequate relief for TOYZ's acts, present and threatened, and Toys R Us's remedy at law is not adequate to compensate it for this harm and damage.

**V. COUNT I - FALSE DESIGNATION OF ORIGIN / TRADE DRESS
INFRINGEMENT
(15 U.S.C. § 1125(a)(1)(A))**

72. Toys R Us hereby restates and re-alleges the allegations set forth in the preceding paragraphs and incorporates them by reference as if fully set forth herein.

73. In violation of Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A), TOYZ used in commerce a word, term, name, symbol or device, or any combination thereof, or a false designation of origin, false or misleading description of fact or false or misleading representation of fact, which was or is likely to cause confusion or to cause mistake, or to deceive as to an affiliation, connection or association with Plaintiff as to the origin, sponsorship, or approval of TOYZ by Plaintiff.

74. TOYZ's identical and confusing use of bubble fonts, rotating colored letters, the "Let's Play" sign, colorful block wall fixture, Tree House, Magical Mirror, candy stand, Play-A-Round Theater, orange and yellow stars, and display stands constitutes clear infringement of the Toys R Us Trade Dress and are unique elements that create and identify the distinctiveness of a Toys R Us store.

75. The purchasing public is likely to attribute to Plaintiff TOYZ's use of the Toys R Us Trademarks and Toys R Us Trade Dress as a source of origin, sponsorship, approval and/or authorization for the products TOYZ sells and, further, purchase products from TOYZ in the erroneous belief that TOYZ is authorized by, associated with, sponsored by, or affiliated with Plaintiff, when TOYZ is not.

76. TOYZ's actions have been conducted intentionally and willfully, with the express intent to cause confusion and mistake, to deceive and mislead the purchasing public, to trade upon the high-quality reputation of Plaintiff, and/or to improperly appropriate to themselves the valuable Toys R Us Trademarks and Toys R Us Trade Dress.

77. TOYZ's unlawful conduct has deceived, and is likely to continue to deceive, a material segment of the consumers to whom TOYZ has directed its marketing activities. TOYZ's false and/or misleading statements are material in that they are likely to influence consumers to purchase products from TOYZ and cause competitive and other commercial injuries to Plaintiff. TOYZ has made, and continues to make, false and/or misleading statements with the intent to cause confusion and mistake, or to deceive the public into falsely believing that TOYZ is authorized by, associated with, sponsored by, or affiliated with Plaintiff, when TOYZ is not. Plaintiff has been damaged as a result.

78. As a result of TOYZ's misconduct, Plaintiff has suffered, and will continue to suffer, irreparable harm to its goodwill and reputation with both its customers and its authorized distributors.

79. Plaintiff has no adequate remedy at law for the above immediate and continuing harm. Plaintiff has been, and absent injunctive relief will continue to be, irreparably harmed by TOYZ's actions.

VI. COUNT II - FEDERAL TRADEMARK INFRINGEMENT
(15 U.S.C. § 1114)

80. Toys R Us hereby restates and re-alleges the allegations set forth in the preceding paragraphs and incorporates them by reference as if fully set forth herein.

81. Section 32 of the Lanham Act provides, in pertinent part, that:

(1) Any person who shall, without the consent of the registrant—

(a) use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or

(b) reproduce, counterfeit, copy, or colorably imitate a registered mark and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive,

shall be liable in a civil action[.]

15 U.S.C. § 1114.

82. Section 43(a) of the Lanham Act provides, in pertinent part, that:

(1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which—

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person,

shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

15 U.S.C. § 1125(a)(1)(A).

83. Toys R Us is the federally registered owner of the Toys R Us Intellectual Property.

84. As the federally registered owner of the Toys R Us Intellectual Property, Toys R Us has the exclusive and unfettered right to use the Toys R Us Intellectual Property.

85. TOYZ's acts as alleged herein constitute infringement and are likely to cause confusion and/or deceive consumers into falsely believing that there exists an affiliation, connection, or association between TOYZ and Toys R Us, in violation of Section 32 of the Lanham Act (15 U.S.C. § 1114).

86. TOYZ's stores have created a substantial likelihood of confusion or caused mistake

or deception in consumers' minds.

87. A likelihood of confusion for the customer exists because of TOYZ's identical and confusing use of the Toys R Us Intellectual Property, including the use of letters in the same bubble-font on its sign, as the famous Toys R Us logo.

88. A likelihood of confusion for the customer exists because by TOYZ's identical and confusing use of the Toys R Us Intellectual Property, including the use of a different color for each letter on its sign, as the famous Toys R Us logo.

89. A likelihood of confusion for the customer exists because of TOYZ's identical and confusing use of the Toys R Us Intellectual Property, including the words "Let's Play," an excerpt of "C'Mon, Let's Play" that is part of the Toys R Us Intellectual Property.

90. A likelihood of confusion for the customer exists because of TOYZ's identical and confusing use of the Toys R Us Intellectual Property, including the words "Tree House," an excerpt of "Geoffrey's Tree House" that is part of the Toys R Us Intellectual Property.

91. TOYZ's acts, as alleged herein, constitute trademark infringement on their face, and are also causing and/or are likely to cause a likelihood of confusion, in violation of 15 U.S.C. § 1114.

92. TOYZ's acts as alleged herein have caused and will continue to cause Toys R Us irreparable harm for which Toys R Us has no adequate remedy at law, in that (i) Toys R Us has unique and valuable property rights in the Toys R Us Intellectual Property; (ii) TOYZ's trademark infringement constitutes a substantial interference with Toys R Us's goodwill and customer relationships; and (iii) TOYZ's activities, and the harm resulting to Toys R Us, continues. Therefore, Toys R Us is entitled to preliminary and permanent injunctive relief.

93. Because TOYZ's acts have been committed with intent, Toys R Us is entitled to

recover TOYZ's profits and reasonable royalties, together with Toys R Us's damages, as well as costs of the action and reasonable attorneys' fees pursuant to Section 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

VII. COUNT III – TRADEMARK DILUTION
(15 U.S.C. § 1125(c))

94. Toys R Us hereby restates and re-alleges the allegations set forth in the preceding paragraphs and incorporates them by reference as if fully set forth herein.

95. Section 43(c) of the Lanham Act provides, in pertinent part, that:

(1) Subject to the principles of equity, the owner of a famous mark that is distinctive, inherently or through acquired distinctiveness, shall be entitled to an injunction against another person who, at any time after the owner's mark has become famous, commences use of a mark or trade name in commerce that is likely to cause dilution by blurring or dilution by tarnishment of the famous mark, regardless of the presence or absence of actual or likely confusion, of competition, or of actual economic injury.

15 U.S.C. § 1125(c).

96. The Toys R Us Intellectual Property is famous within the definition and meaning of the term "famous" under the Lanham Act.

97. The Toys R Us Intellectual Property is widely recognized by the general consuming public as a designation of source of Toys R Us branded products.

98. TOYZ's actions began after the Toys R Us Intellectual Property became famous, and TOYZ's actions and unauthorized use of the famous Toys R Us Intellectual Property is impairing and diluting the distinctiveness of the Toys R Us Intellectual Property with the consuming public.

99. The Toys R Us Intellectual Property is valid and distinctive, and TOYZ's use of the Toys R Us Intellectual Property without Toys R Us's authorization or consent is diluting and/or is likely to dilute the distinctive quality of the Toys R Us Intellectual Property.

100. Such dilution is being caused by "blurring" due to the association arising from the

similarity between the famous Toys R Us Intellectual Property, and the identical and confusing use of the Toys R Us Intellectual Property, including the distinctive use of letters in a bubble-font, by TOYZ.

101. Such dilution is being caused by “blurring” due to the association arising from the similarity between the famous Toys R Us Intellectual Property, and the identical and confusing use of the Toys R Us Intellectual Property, including the distinctive use of a different color for each letter, by TOYZ.

102. The dilution is further exacerbated by TOYZ’s identical and confusing use of the Toys R Us Intellectual Property, including the words “Let’s Play,” an excerpt of “C’Mon, Let’s Play” that is part of the Toys R Us Intellectual Property.

103. The dilution is further exacerbated by TOYZ’s identical and confusing use of the Toys R Us Intellectual Property, including the words “Tree House,” an excerpt of “Geoffrey’s Tree House” that is part of the Toys R Us Intellectual Property.

104. The dilution is further exacerbated by TOYZ’s identical and confusing use of the Toys R Us Trade Dress through the use of bubble fonts, rotating colored letters, the “Let’s Play” sign, colorful block wall fixture, Tree House, Magical Mirror, candy stand, Play-A-Round Theater, orange and yellow stars, and display stands, which are famous and unique elements of the Toys R Us Intellectual Property.

105. As a result, TOYZ’s acts constitute trademark dilution in violation of Section 43(c) of the Lanham Act (15 U.S.C. § 1125(a)(1)(C)).

106. As a direct and proximate result, Toys R Us has been, and will continue to be, damaged.

107. Because TOYZ’s acts have been committed with intent, Toys R Us is entitled to

recover TOYZ's profits and reasonable royalties, together with Toys R Us's damages, as well as costs of the action and reasonable attorneys' fees and any other remedies provided by 15 U.S.C. § 1116 and 1117.

VIII. COUNT IV – TRADEMARK DILUTION
(Tex. Bus. & Com. Code § 16.103)

108. Toys R Us hereby restates and re-alleges the allegations set forth in the preceding paragraphs and incorporates them by reference as if fully set forth herein.

109. The acts complained of herein constitute trademark dilution in violation of Tex. Bus. & Com. Code § 16.103.

110. The Toys R Us Trademarks and Toys R Us Trade Dress are famous and distinctive and are widely recognized by the public, including throughout Texas and the United States as a designation of source of Toys R Us branded products.

111. TOYZ's acts as described herein began after the Toys R Us Trademarks and Toys R Us Trade Dress became famous and are likely to and have tarnished Plaintiff's valuable business reputation and goodwill and are likely to blur the distinctiveness of the famous Toys R Us Trademarks and Toys R Us Trade Dress.

112. On information and belief, TOYZ's stores have been deliberately and willfully designed to copy the Toys R Us Intellectual Property, with knowledge of Plaintiff's exclusive rights and goodwill in the Toys R Us Trademarks and Toys R Us Trade Dress and with a bad faith willful intent to cause dilution of the Toys R Us Trademarks and Toys R Us Trade Dress.

113. TOYZ's acts greatly and irreparably damage Plaintiff and will continue to so damage Plaintiff unless restrained by this Court; wherefore, Plaintiff is without an adequate remedy at law. If not restrained, TOYZ will have unfairly derived and will continue to unfairly derive income, profits, and business opportunities as a result of their acts of dilution. Accordingly,

Plaintiff is entitled to, among other things, an order enjoining and restraining TOYZ from operating its Infringing Stores and TOYZ Website, as well as to TOYZ's profits, Plaintiff's reasonable attorneys' fees and any other remedies provided under the law.

IX. COUNT V – UNFAIR COMPETITION BY DECEPTIVE TRADE PRACTICE
(TEX. BUS. & COM. CODE § 17.46)

114. Toys R Us hereby restates and re-alleges the allegations set forth in the preceding paragraphs and incorporates them by reference as if fully set forth herein.

115. In violation of Tex. Bus. & Com. Code § 17.46, TOYZ engaged in unfair competition, at least by passing off its Infringing Stores and TOYZ Website as a product of Plaintiff, causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of its Infringing Stores and TOYZ Website, and/or causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another with respect to its Infringing Stores and TOYZ Website.

116. As a direct and proximate result of TOYZ's unfair competition, Plaintiff has suffered irreparable harm to the valuable Toys R Us Trademarks and Toys R Us Trade Dress and its reputation in the industry. Unless TOYZ's conduct is restrained, Plaintiff will continue to be irreparably harmed.

117. Plaintiff has no adequate remedy at law that will compensate for the continued and irreparable harm it will suffer if TOYZ's acts are allowed to continue.

118. As a direct and proximate result of TOYZ's unfair competition, Plaintiff has suffered damages, including lost profits and damages to the valuable Toys R Us Trademarks and Toys R Us Trade Dress and other damages in an amount to be proved at trial.

X. COUNT VI – COMMON LAW TRADEMARK INFRINGEMENT

119. Toys R Us hereby restates and re-alleges the allegations set forth in the preceding

paragraphs and incorporates them by reference as if fully set forth herein.

120. The acts complained of herein constitute trademark infringement in violation of the common law of the State of Texas and elsewhere.

121. As a direct and proximate result of TOYZ's conduct, Plaintiff has suffered damages to the Toys R Us Trademarks and Toys R Us Trade Dress and other damages in an amount to be proved at trial.

122. Plaintiff is entitled to, among other things, an order enjoining and restraining TOYZ from operating its Infringing Stores and TOYZ Website, as well as to TOYZ's profits, Plaintiff's reasonable attorneys' fees and any other remedies provided for under the law.

XI. COUNT VII –COMMON LAW UNFAIR COMPETITION

123. Toys R Us hereby restates and re-alleges the allegations set forth in the preceding paragraphs and incorporates them by reference as if fully set forth herein.

124. TOYZ's acts as alleged herein constitute infringement and are likely to cause confusion and/or deceive consumers into falsely believing that there exists an affiliation, connection, or association between TOYZ and Toys R Us. These acts also constitute unfair competition.

125. TOYZ's acts as alleged herein have caused and will continue to cause to Toys R Us irreparable harm for which Toys R Us has no adequate remedy at law, in that (i) Plaintiff has unique and valuable property rights in the Toys R Us Intellectual Property; (ii) TOYZ's trademark infringement and trade dress infringement constitutes a substantial interference with Toys R Us's goodwill and customer relationships; and (iii) TOYZ's activities, and the harm resulting to Toys R Us, continues. Therefore, Toys R Us is entitled to preliminary and permanent injunctive relief.

XII. COUNT VIII – COMMON LAW UNFAIR COMPETITION BY MISAPPROPRIATION

126. Toys R Us hereby restates and re-alleges the allegations set forth in the preceding paragraphs and incorporates them by reference as if fully set forth herein.

127. The acts complained of herein constitute unfair competition by misappropriation in violation of the common law of the State of Texas and elsewhere.

128. Plaintiff created the Toys R Us Trademarks and Toys R Us Trade Dress and the goods and services on which they are authorized to appear in the U.S. through extensive time, labor, skill and money.

129. TOYZ's use of the Toys R Us Trademarks and Toys R Us Trade Dress in its unauthorized Infringing Stores and TOYZ Website creates competition with Plaintiff, thereby conferring TOYZ with a special advantage in that competition because TOYZ is burdened with little or none of the expense incurred by Plaintiff.

130. As a direct and proximate result of TOYZ's unfair competition, Plaintiff has suffered irreparable harm to the valuable Toys R Us Trademarks and Toys R Us Trade Dress and its reputation in the industry. Unless TOYZ's conduct is restrained, Plaintiff will continue to be irreparably harmed.

131. Plaintiff has no adequate remedy at law that will compensate for the continued and irreparable harm it will suffer if TOYZ's acts are allowed to continue.

132. As a direct and proximate result of TOYZ's unfair competition, Plaintiff has suffered damages, including lost profits and damages to the valuable Toys R Us Trademarks and Toys R Us Trade Dress and other damages in an amount to be proved at trial.

XIII. COUNT IX – UNJUST ENRICHMENT

133. Toys R Us hereby restates and re-alleges the allegations set forth in the preceding

paragraphs and incorporates them by reference as if fully set forth herein.

134. By operating the TOYZ stores bearing Plaintiff's valuable Toys R Us Trademarks and Toys R Us Trade Dress, TOYZ has been unjustly enriched to Plaintiff's detriment in violation of the common law of Texas and elsewhere.

135. Under principles of equity, Plaintiff is entitled to damages, restitution and/or disgorgement of TOYZ's ill-gotten gains.

XIV. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. For judgment that:
 - a. Defendant has engaged in False Designation of Origin and Trade Dress Infringement in violation of 15 U.S.C. § 1125(a)(1)(A);
 - b. Defendant has engaged in Federal Trademark Infringement in violation of the Lanham Act (15 U.S.C. § 1114);
 - c. Defendant has engaged in Trademark Dilution in violation of 15 U.S.C. § 1125(c);
 - d. Defendant has engaged in Trademark Dilution in violation of Tex. Bus. & Com. Code § 16.103;
 - e. Defendant has engaged in Unfair Competition in violation of Tex. Bus. & Com. Code § 17.46;
 - f. Defendant has engaged in Trademark Infringement in violation of the common law of the State of Texas;
 - g. Defendant has engaged in Unfair Competition in violation of the common law of the State of Texas;
 - h. Defendant has engaged in Unfair Competition By Misappropriation in violation of the common law of the State of Texas;
 - i. Defendant has engaged in Unjust Enrichment in violation of the common law of the State of Texas; and

2. For a temporary restraining order and preliminary injunction and, thereafter, a permanent injunction after hearing on the matter:

- a. Restraining, barring, and enjoining Defendant and all of its agents, servants, employees, successors and assigns, and all persons in active concert or participation with Defendant (or its agents) from:
 - i. Advertising, marketing, promoting, selling, or otherwise offering for sale any products in that infringe, or otherwise use without authorization the Toys R Us Trademarks or Toys R Us Trade Dress;
 - ii. Using a logo and/or sign that infringes on the Toys R Us logo including the distinctive colorful font, as registered with the USPTO on October 12, 2010, under Registration No. 3859498;
 - iii. Using a sign that infringes on, or otherwise use without authorization the “C’MON, LET’S Play” mark, as registered with the USPTO on September 1, 2005, under Registration No. 4805187;
 - iv. Using a sign that infringes on, or otherwise use without authorization the “GEOFFREY’S TREE HOUSE” mark, as registered with the USPTO on May 26, 2020, under Registration Nos. 6065730 and 6065729;
 - v. Representing, by any means whatsoever, that any products manufactured, distributed, advertised, offered or sold by Defendant are Plaintiff’s products or vice versa, and from otherwise acting in a way likely to cause confusion, mistake or deception on the part of purchasers or consumers as to the origin or sponsorship of such products;
 - vi. Using any logo, trade dress, or trade name or trademark confusingly similar to any of the Toys R Us Trademarks or Toys R Us Trade Dress which may be calculated to falsely represent or which has the effect of falsely representing that the services or products of any or all of the restrained parties or others are sponsored by, authorized by or in any way associated with Plaintiff;
 - vii. Using any signs, trade fixtures, and/or trade dress that infringe on the Toys R Us Trademarks or Trade Dress, including without limitation the “Let’s Play” sign, the colorful block wall fixture, the Tree House, the Magical Mirror, the candy stand, the Play-A-Round Theater, the orange and yellow stars, and the display stands;
 - viii. Otherwise unfairly competing with Plaintiff in the manufacture, sale, offering for sale, distribution, advertisement, or any other use of the Toys R Us brand;

- ix. Using any signage or advertising that is likely to dilute the distinctive quality of the Toys R Us Trademarks or Trade Dress;
 - x. Assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs (i) through (ix) above; and
3. An order:
- a. Awarding Plaintiff, under 15 U.S.C. § 1117 and 15 U.S.C. § 15, all profits received by Defendant from the sales and revenues of any kind made as a result of Defendant's sales in its Infringing Stores and TOYZ Website, and damages, to be determined, that Plaintiff has suffered as a result of Defendant's sales and marketing of the Infringing Stores and TOYZ Website (including, but not limited to, Plaintiff's lost profits, price erosion, and damages awarded pursuant to 15 U.S.C. § 1117 and 15 U.S.C. § 15, trebled);
 - b. Awarding Plaintiff damages, attorneys' fees, and costs to the fullest extent provided for by the United States statute and the common law of Texas, including exemplary and punitive damages;
 - c. Awarding Plaintiff pre-judgment and post-judgment interest; and
 - d. Awarding Plaintiff such other and further relief as this Court deems just and equitable.

XV. DEMAND FOR A JURY TRIAL

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

Dated: October 12, 2021

Respectfully submitted,

By: /s/ Paul Morico
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