

AO 120 (Rev. 2/99)

TO: <p style="text-align: center;">Commissioner of Trademarks P.O. Box 1451 Alexandria, VA 22313-1451</p>	<p>REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK</p>
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Colorado on the following Trademarks

DOCKET NO. 12-cv-02279	DATE FILED 8/27/12	U.S. DISTRICT COURT FOR THE DISTRICT OF COLORADO
PLAINTIFF Katherine Dines		DEFENDANT Toys "R" Us, Inc.
PATENT OR	DATE OF PATENT	HOLDER OF PATENT OR TRADEMARK
1 2,078,895		Please see copy of Complaint attached hereto
2		
3		
4		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading
PATENT OR	DATE OF PATENT OR TRADEMARK
HOLDER OF PATENT OR TRADEMARK	
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGMENT

CLERK GREGORY C. LANGHAM	(BY) DEPUTY CLERK	DATE
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Copy 1—Upon initiation of action, mail this copy to Commissioner Copy 3—Upon termination of action, mail this copy to
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner Copy 4—Case file copy

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.:

KATHERINE DINES, an individual,

Plaintiff,

v.

TOYS "R" US, INC., a Delaware corporation,

Defendant.

COMPLAINT AND JURY DEMAND

Plaintiff Katherine Dines, for her Complaint against Defendant Toys "R" Us, states as follows:

NATURE OF THE ACTION

1. This is an action for trademark infringement, false designation of origin and unfair competition, arising under the Lanham Act, 15 U.S.C. §§ 1051, *et seq.* and common law.
2. Defendant has offered for sale a line of children's products that bear confusingly similar imitations of Plaintiff's distinctive HUNK-TA-BUNK-TA trademark. Defendant's children's products are not manufactured by Plaintiff, nor is Defendant connected or affiliated with, or authorized by, Plaintiff in any way. Defendant's merchandise is likely to cause confusion and to deceive consumers and the public regarding its source, and has diluted and tarnished the distinctive quality of Plaintiff's HUNK-TA-BUNK-TA trademark.

PARTIES

3. Plaintiff Katherine Dines (“Dines”) is an individual residing in Denver, Colorado.

4. On information and belief, Defendant Toys “R” Us, Inc. (“Toys “R” Us”) is a Delaware corporation with its principal place of business at One Geoffrey Way, Wayne, New Jersey, 07470.

JURISDICTION AND VENUE

5. The Court has subject matter jurisdiction over this action under the Lanham Act, 15 U.S.C. § 1051 *et seq.*, pursuant to 15 U.S.C. § 1121, and 28 U.S.C. §§ 1331 and 1338(b), and supplemental jurisdiction exists over Dines’ state law claim under 28 U.S.C. § 1367(a). On information and belief, as the parties are citizens of different states and the matter in controversy exceeds the sum or value of seventy-five thousand dollars (\$75,000.00), exclusive of interest and costs, this Court also has jurisdiction over Dines’ state law claim under 28 U.S.C. § 1332.

6. The exercise of *in personam* jurisdiction over Toys “R” Us comports with the laws of the State of Colorado and the constitutional requirements of due process because Toys “R” Us and/or its agents transact business and/or offer to transact business within Colorado. Specifically, Toys “R” Us, doing business through its online store located at *www.ToysRUs.com*, advertises, offers for sale, sells, and distributes products catering to children, such as stuffed animals, throughout the United States, including within the State of Colorado. Through gift registry websites like *www.AmazingRegistry.com*, consumers request Toys “R” Us children’s products throughout the United States. This Court also has personal jurisdiction over Toys “R” Us because Toys “R” Us has committed acts in Colorado causing injury to Dines in Colorado. For example, as alleged below, Toys “R” Us has, without authorization, offered for sale a line of

children's products that bear confusingly similar imitations of Dines' distinctive HUNK-TA-BUNK-TA trademark, which has caused injury to Dines in Colorado.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c) because Toys "R" Us resides in this District.

GENERAL ALLEGATIONS

A. Dines Develops the Distinctive Hunk-Ta-Bunk-Ta® Brand.

8. Katherine Dines is an award-winning children's songwriter, recording and teaching artist who performs children's music throughout the world under the Hunk-Ta-Bunk-Ta® brand. Beginning in the early 1990's, Dines, through Hunk-Ta-Bunk-Ta® Music, dedicated herself to producing and distributing top-quality musical entertainment for educating and entertaining children, their families, teachers, and early childcare providers. Since that time, Hunk-Ta-Bunk-Ta® Music has enjoyed enormous popular and commercial success, as well as brand recognition.

9. For example, Dines' latest music CD received awards from Parents' Choice, an organization touted as "the nation's oldest nonprofit program created to recognize quality children's media" and from Creative Child Magazine. Additionally, Dines' work has received a Grammy nomination, as well as numerous awards and credits from USA Today, National Parenting Publications, Dr. Toy, the Wolf Trap Institute, and the Discovery Channel Website, among many others, for her unique Hunk-Ta-Bunk-Ta® brand of children's music.

10. Dines sells the distinctive Hunk-Ta-Bunk-Ta® products through a variety of online distribution channels, including *www.hunktabunkta.com*, *www.amazon.com*, *www.cdbaby.com*, *www.songsforteaching.com*, iTunes, and others, which enable consumers to

purchase Hunk-Ta-Bunk-Ta® music worldwide, including in the UK, Canada, Australia, and throughout the United States—and specifically within Colorado. Dines, in association with the Hunk-Ta-Bunk-Ta® brand, also advocates for literacy and education, serves on national boards, holds educational workshops, and has performed her songs throughout the country and world.

B. The Distinctive HUNK-TA-BUNK-TA Mark.

11. On July 15, 1997, the U.S. Patent and Trademark Office issued Dines U.S. Trademark No. 2,078,895, for “HUNK-TA-BUNK-TA” (hereinafter the “HUNK-TA-BUNK-TA Mark”), in connection with “sound recordings or reproductions thereof, and audiovisual recordings or reproductions thereof, featuring musical entertainment.” This registration is valid, subsisting, and owned by Dines. A true and correct copy of the Certificate of Registration for the HUNK-TA-BUNK-TA Mark is attached hereto as **Exhibit A**.

12. The word “Hunk-Ta-Bunk-Ta” is conceptually strong; it was chosen specifically for the purpose of denoting a trademark, does not describe any quality or characteristic of the products, and is not generic. It is also commercially strong in the children’s music and products market. Therefore, the HUNK-TA-BUNK-TA Mark is inherently distinctive.

13. Since at least as early as 1997, Dines has continuously used, and is today using, the HUNK-TA-BUNK-TA Mark in connection with children’s music and products. Dines has heavily invested in developing the HUNK-TA-BUNK-TA Mark through her extensive collection of children’s music and related activity guides. Dines has also offered a number of related products under the HUNK-TA-BUNK-TA Mark, including, but not limited to, apparel, mugs, stickers and shakers. Dines also plans to expand her offering of children’s products offered under the HUNK-TA-BUNK-TA Mark. Dines’ Hunk-Ta-Bunk-Ta® products have enjoyed

enormous commercial success and as a result developed substantial and valuable goodwill symbolized by industry accolades and awards, and namely, the HUNK-TA-BUNK-TA Mark.

C. Toys “R” Us’ Infringement of the HUNK-TA-BUNK-TA Mark.

14. Toys “R” Us sells its merchandise in hundreds of brick-and-mortar stores across the country and overseas. Toys “R” Us also has a substantial online presence through its use of numerous e-commerce websites including but not limited to *www.ToysRUs.com*, *www.BabiesRUs.com*, *www.eToys.com*, *www.FAO.com*, and *www.toys.com*. On information and belief, Toys “R” Us additionally permits consumers and merchants to resell its products on sites like *www.amazon.com*, *www.ebay.com*, and *www.buzzillion.com*.

15. Recognizing the substantial goodwill and consumer recognition of the HUNK-TA-BUNK-TA Mark, Toys “R” Us has used, offered for sale, sold, and/or imported a line of stuffed animal toys using the HUNK-TA-BUNK-TA Mark throughout the United States, including within the State of Colorado. As recently as April 2012, Toys “R” Us marketed its infringing products under its private label “Animal Alley by Hunk Ta Bunk Ta” as shown below:



A true and correct copy of an example of the Toys “R” Us webpage for the “Animal Alley by Hunk Ta Bunk Ta” product listing is attached hereto as **Exhibit B**.

16. Moreover, a recent Google search displayed nearly 7,000 unique website addresses where Toys “R” Us was identified as selling Hunk Ta Bunk Ta® brand products. An example of some of these search results is attached hereto as **Exhibit C**.

17. In addition to this obvious association between Toys “R” Us and Dines’ line of Hunk-Ta-Bunk-Ta® brand products, Dines is aware of additional instances of actual consumer confusion regarding the source of Toys “R” Us’ infringing “Animal Alley by Hunk Ta Bunk Ta” products. For example, Dines has received inquiries from potential consumers regarding how to order the infringing “Animal Alley by Hunk Ta Bunk Ta” stuffed animal products from Dines.

D. Toys “R” Us’ Continued Infringement of the HUNK-TA-BUNK-TA Mark.

18. On May 4, 2012, Dines notified Toys “R” Us of its infringing activities and informed Toys “R” Us that neither it nor any other entity was authorized to use the HUNK-TA-BUNK-TA Mark in connection with the sale or marketing of stuffed animals. Dines also requested, among other things, that Toys “R” Us cease its infringement, stop marketing and selling products under the HUNK-TA-BUNK-TA Mark, and provide a full accounting of all products sold, stocked, controlled, or ordered under the HUNK-TA-BUNK-TA Mark.

19. In response, Toys “R” Us refused to take down the infringing “Animal Alley by Hunk Ta Bunk Ta” products and denied responsibility for using the HUNK-TA-BUNK-TA Mark. In fact, Toys “R” Us responded that it was “unable to identify any products sold by Toys “R” Us using the Hunk-Ta-Bunk-Ta name.”

20. Despite Dines' continued efforts to request that Toys "R" Us cease its infringement of the HUNK-TA-BUNK-TA Mark, Toys "R" Us continued to advertise and sell the infringing "Animal Alley by Hunk Ta Bunk Ta" products on the Toys "R" Us website and in stores. It was only after subsequent, additional efforts by Dines to get Toys "R" Us to cease its infringement that Toys "R" Us recently stopped using the HUNK-TA-BUNK-TA Mark in connection with the Animal Alley plush items on the Toys "R" Us website.

21. However, on information and belief, Toys "R" Us continues to use the HUNK-TA-BUNK-TA Mark, both in its website metadata, and in keyword advertising. For example, Toys "R" Us is still identified, both by its own advertising or through third-party advertising and marketing-related websites, as associated with Dines and her Hunk-Ta-Bunk-Ta® line of products.

22. Therefore, Toys "R" Us' continuing infringing use of the HUNK-TA-BUNK-TA Mark, as alleged above, has also created substantial and irreparable harm to Dines for which Dines has no adequate remedy at law.

FIRST CLAIM FOR RELIEF
Federal Trademark Infringement – 15 U.S.C. § 1114

23. Dines hereby incorporates each of the preceding paragraphs as if fully set forth herein.

24. Dines owns a valid and enforceable federal trademark registration for the HUNK-TA-BUNK-TA Mark.

25. Dines' trademark rights in the HUNK-TA-BUNK-TA Mark are senior to any alleged rights of Toys "R" Us.

26. Toys “R” Us is not authorized to use or license the HUNK-TA-BUNK-TA Mark, any confusingly similar mark, or any mark that in any way represents or implies that Toys “R” Us and/or Toys “R” Us goods are in any way associated with Dines or the HUNK-TA-BUNK-TA Mark.

27. Toys “R” Us’ unauthorized use of the HUNK-TA-BUNK-TA Mark or confusingly similar marks as alleged above are likely to cause, and on information and belief, have actually caused, confusion, mistake, and deception among the purchasing public as to the source, origin, sponsorship, or affiliation of Toys “R” Us and/or its products. Such conduct constitutes trademark infringement in violation of the Lanham Act, 15 U.S.C. § 1114.

28. Further, Toys “R” Us is not authorized to use or license the HUNK-TA-BUNK-TA Mark or any mark confusingly similar or that in any way represents or implies Toys “R” Us and/or Toys “R” Us goods are in any way associated with Dines or the HUNK-TA-BUNK-TA Mark for noncompeting products that are related in consumers’ minds.

29. Toys “R” Us’ infringement has been with knowledge of Dines’ prior and exclusive rights in the HUNK-TA-BUNK-TA Mark and with an intent to trade on and take advantage of Dines’ goodwill in the HUNK-TA-BUNK-TA Mark.

30. As a direct and proximate result of Toys “R” Us’ knowing, deliberate, and willful infringement of the HUNK-TA-BUNK-TA Mark, Dines has suffered damages in an amount that will be shown at trial.

31. As a direct and proximate result of Toys “R” Us’ infringing conduct, Dines is entitled to disgorgement of Toys “R” Us’ profits flowing from its infringement.

32. As a direct and proximate result of Toys “R” Us’ knowing, deliberate, and willful actions and infringement of the HUNK-TA-BUNK-TA Mark, Dines has suffered, and will continue to suffer, irreparable injury to her business, reputation, and goodwill, unless and until Toys “R” Us’ actions as alleged herein are permanently enjoined.

SECOND CLAIM FOR RELIEF
Federal Unfair Competition – 15 U.S.C. § 1125(a)

33. Dines hereby incorporates each of the preceding paragraphs as if fully set forth herein.

34. Dines has used the HUNK-TA-BUNK-TA Mark in association with children’s music and related products since 1997. As a result of Dines’ continued use of the HUNK-TA-BUNK-TA Mark, the HUNK-TA-BUNK-TA Mark has come to signify that the children’s music and related products are derived from a single source.

35. As a result of Dines’ experience, care, and service in producing and providing Hunk-Ta-Bunk-Ta® products, the HUNK-TA-BUNK-TA Mark has acquired a reputation for award-winning children’s education- and entertainment-related products within the United States and abroad. Accordingly, the HUNK-TA-BUNK-TA Mark has become associated with Dines’ products and has come to symbolize the reputation for the top-quality of Dines’ products. As such, the HUNK-TA-BUNK-TA Mark has acquired distinctiveness and secondary meaning.

36. Toys “R” Us’ unauthorized use of the HUNK-TA-BUNK-TA Mark in association with a competing product classified in the same children’s product category is likely to cause, and on belief and information, has actually caused, confusion, mistake, or deception as to the source, origin, sponsorship, or affiliation of Toys “R” Us’ products. Such conduct constitutes false designation of origin in violation of the Lanham Act, 15 U.S.C. § 1125(a).

37. Toys “R” Us’ infringing actions have been with knowledge of Dines’ prior and exclusive rights in the HUNK-TA-BUNK-TA Mark, and with an intent to trade on and take advantage of Dines’ goodwill in the HUNK-TA-BUNK-TA Mark.

38. As a direct and proximate result of Toys “R” Us’ knowing, deliberate, and willful infringement of the HUNK-TA-BUNK-TA Mark, Dines has suffered damages in an amount that will be shown at trial.

39. As a direct and proximate result of Toys “R” Us’ infringing conduct, Dines is entitled to disgorgement of Toys “R” Us’ profits flowing from its infringement.

40. As a direct and proximate result of Toys “R” Us’ knowing, deliberate, and willful actions and unfair competition of the HUNK-TA-BUNK-TA Mark, Dines has suffered, and will continue to suffer, irreparable injury to its business, reputation, and goodwill, unless and until Toys “R” Us’ actions as alleged herein are permanently enjoined.

THIRD CLAIM FOR RELIEF
Common Law Unfair Competition

41. Dines hereby incorporates each of the preceding paragraphs as if fully set forth herein.

42. Toys “R” Us has displayed, distributed, sold, and used merchandise that infringes Dines’ rights in the HUNK-TA-BUNK-TA Mark, thereby usurping Dines’ goodwill and business reputation through unfair methods. Thus, Toys “R” Us’ conduct constitutes unfair competition, in violation of the common law.

43. Toys “R” Us has willfully engaged in unfair competition with a bad faith intent to injure Dines. Toys “R” Us’ unauthorized use of the HUNK-TA-BUNK-TA Mark in association with products in the children’s product category is likely to cause, and on belief and information,

has actually caused, confusion, mistake, or deception as to the source, origin, sponsorship, or affiliation of Toys “R” Us’ products.

44. Dines has suffered, and will continue to suffer, substantial injuries, loss, and damage to her business as a direct and proximate result of Toys “R” Us’ unfair competition.

45. As a direct and proximate result of Toys “R” Us’ knowing, deliberate, and willful conduct associated with respect to the HUNK-TA-BUNK-TA Mark, Dines has suffered damages in an amount that will be shown at trial.

46. As a direct and proximate result of Toys “R” Us’ unfair competition, Dines is entitled to disgorgement of Toys “R” Us’ profits flowing from its infringement.

47. As a direct and proximate result of Toys “R” Us’ knowing, deliberate, and willful actions and unfair competition, Dines has suffered, and will continue to suffer, irreparable injury to its business, reputation, and goodwill, unless and until Toys “R” Us’ actions as alleged herein are permanently enjoined.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Katherine Dines requests entry of judgment in her favor and against Defendant Toys “R” Us, Inc. as follows:

A. Declaring that Defendant has infringed the HUNK-TA-BUNK-TA Mark by the acts complained of herein in violation of 15 U.S.C. § 1114;

B. Declaring that Defendant’s infringement was deliberate, willful, and in conscious disregard of Plaintiff’s rights pursuant to 15 U.S.C. §§ 1117 and 1125(a), and at common law;

C. Awarding Plaintiff her actual damages in an amount according to proof;

D. Requiring Defendant to account to Plaintiff for any and all gross and net sales, revenues, and profits received or derived by Defendant from the manufacture, marketing, sale, offering for sale, and/or distribution of products or services bearing or using any copy or colorable imitation of the HUNK-TA-BUNK-TA Mark and award Plaintiff Defendant's profits not taken into account in calculating actual damages;

E. Declaring this case exceptional, pursuant to 15 U.S.C. § 1117;

F. Awarding Plaintiff her costs, including reasonable attorney's fees pursuant to 15 U.S.C. § 1117; and

G. Awarding Plaintiff such other relief as this Court deems just and equitable.

JURY DEMAND

Plaintiff hereby requests a trial by jury on any and all issues on which a trial by jury is available under applicable law.

Respectfully submitted this 27th day of August, 2012.

s/ Jared B. Briant

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