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FILED
2009 JUN 12 AM 11:19
CLERK OF DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES
BY _____ NL

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15 WESTERN DIVISION

16 MANLEY TOYS, LTD., a Hong Kong
17 limited company,

18 Plaintiff,

19 v.

20 WHAM-O, INC., a Delaware
21 Corporation,

22 Defendant.

CASE NO.

CV09-4198

VBF
(FFMx)

23 MANLEY TOYS, LTD.'S
24 COMPLAINT FOR DECLARATORY
25 RELIEF

26 DEMAND FOR JURY TRIAL

27 Plaintiff Manley Toys, Ltd. ("Plaintiff" or "Manley"), by its attorneys Jeffer,
28 Mangels, Butler & Marmaro LLP, for its Complaint against defendant Wham-O, Inc.
("Defendant" or "Wham-O") alleges as follows:

1. This is an action for declaratory relief.

THE PARTIES

2. Plaintiff Manley is a company organized under the laws of Hong Kong,
with its principal place of business in Kowloon, Hong Kong. Plaintiff conducts
business in the U.S. including in this judicial district.

Jeffer Mangels
Butler & Marmaro LLP
JMBM

H/S
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(T)

1 7. Both Plaintiff and Defendant manufacture and distribute boogie boards.
2 “Boogie board” is a generic term for a short “a short, lightweight surfboard often
3 ridden by lying prone.” See boogie board, Dictionary.com, LLC, Dictionary.com's
4 21st Century Lexicon, available at [http://dictionary.reference.com/ browse/boogie](http://dictionary.reference.com/browse/boogie)
5 board (accessed: June 09, 2009). The inventor of the boogie board called his
6 invention a “boogie” board because of the relative with which it could be used to ride
7 waves. Boogie boards are sometimes also called bodyboards and the two words are
8 synonymous.

9 8. As part of the line of water toys it market and distributes under its
10 BANZAI® mark, Plaintiff markets and offers for sale a line of boogie boards.
11 Plaintiff's boogie boards bear the phrase “boogie board”, as well as, *inter alia*,
12 Plaintiff's well-known BANZAI® mark. Plaintiff's boogie boards are described in
13 marketing, advertising, and packaging as boogie boards and Plaintiff's boogie boards,
14 as well as the marketing, advertising, and packaging materials associated therewith,
15 bear the phrase “boogie board,” as well as, *inter alia*, Plaintiff's well-known
16 BANZAI® mark.

17 9. Defendant owns Federal Trademark Reg. No. 2,496,140 for “boogie” for
18 use in connection with “bodyboards.” Defendant has recently informed Plaintiff that
19 it believes that Plaintiff's above-described use of the term “boogie board,” in
20 connection with its line of boogie boards, infringes Defendant's alleged trademark
21 rights in the term “boogie.” Defendant has demanded that Plaintiff remove from the
22 market all of its boogie boards bearing the phrase “boogie board.” Defendant has
23 demanded that Plaintiff cease all use of the phrase “boogie board.” Defendant has
24 also demanded that Plaintiff provide an accounting of all sales and profits made in
25 connection with the any boogie board bearing the phrase “boogie board” so that
26 Defendant may analyze its purported damages and make a settlement demand from
27 Plaintiff.
28

1 10. Because “boogie board” is simply a generic term describing a short,
2 flexible surf board, often ridden lying down, Plaintiff contends that its use of the
3 phrase “boogie board” in connection with the description, marketing, and sale of
4 boogie boards cannot possibly infringe any rights Defendant may have in the term
5 “boogie.”

6
7 **FIRST CLAIM FOR RELIEF**

8 (Declaratory Relief)

9 11. Plaintiff repeats and realleges each and every allegation contained in
10 paragraphs 1 through 10 above.

11 12. A valid and justiciable controversy has arisen and exists between
12 Plaintiff and Defendant.

13 13. Plaintiff desires a judicial determination and declaration of the respective
14 rights and duties of the parties herein in accordance with Plaintiff’s foregoing
15 contentions, specifically that any use by Plaintiff of the phrase “boogie board” in
16 connection with the description, marketing, and sale of its boogie board products does
17 not infringe any rights Defendant may have in the term “boogie.”

18 14. Such a determination and declaration is necessary and appropriate at this
19 time in order that the parties may ascertain their respective rights and duties.

20
21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays for judgment as follows:

23 1. For a judicial determination and a declaration that any use by Plaintiff of
24 the phrase “boogie board” in connection with the description, marketing, and sale of
25 its boogie board products does not infringe any rights Defendant may have in the
26 term “boogie”;

27 2. Awarding Plaintiff its costs of suit and reasonable attorneys' fees; and
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3. For such other and further relief as the Court deems just and proper.

DATED: June 12, 2009

JEFFER, MANGELS, BUTLER & MARMARO LLP
ROD S. BERMAN
BRIAN W. KASELL
JESSICA C. BROMALL

By: 
ROD S. BERMAN
Attorneys for Plaintiff MANLEY TOYS, LTD.

Jeffery Mangels
Butler & Marmaro LLP
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DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, plaintiff Manley Toys, Ltd. hereby demands a jury trial of any issues in this action so triable.

DATED: June 12, 2009

JEFFER, MANGELS, BUTLER & MARMARO LLP
ROD S. BERMAN
BRIAN W. KASELL
JESSICA C. BROMALL

By: 
ROD S. BERMAN
Attorneys for Plaintiff MANLEY TOYS, LTD.

Jeffer Mangels
Butler & Marmaro LLP

JMBM

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself)
MANLEY TOYS, LTD., a Hong Kong limited company

DEFENDANTS
WHAM-O, INC., a Delaware Corporation

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Attorneys (If Known)

Rod S. Berman, Brian W. Kasell, Jessica C. Bromall
Jeffer, Mangels, Butler & Marmaro LLP
1900 Ave. of the Stars, 7th Floors
Los Angeles, California 90067
Tel: (310) 203-8080

II. BASIS OF JURISDICTION (Place an X in one box only.)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
 (Place an X in one box for plaintiff and one for defendant.)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	Citizen of This State	PTF DEF <input type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF DEF <input type="checkbox"/> 4 <input type="checkbox"/> 4
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5
		Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. ORIGIN (Place an X in one box only.)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify):	<input type="checkbox"/> 6 Multi-District Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge
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V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: Yes No

MONEY DEMANDED IN COMPLAINT: \$

VI. CAUSE OF ACTION (Cite the U. S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Declaratory Relief of Non-Infringement of Trademark pursuant to 28 U.S.C. Section 2201 and 2202 and 15 U.S.C. 1114.

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS PERSONAL INJURY	TORTS PERSONAL PROPERTY	PRISONER PETITIONS	LABOR
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 530 General	<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	BANKRUPTCY	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 790 Other Labor Litigation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 22 Appeal 28 USC 158	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 791 Empl. Rel. Inc. Security Act
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	FORFEITURE/PENALTY	PROPERTY RIGHTS
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input checked="" type="checkbox"/> 840 Trademark
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 630 Liquor Laws	SOCIAL SECURITY
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 61 HIA(1395ff)
<input type="checkbox"/> 891 Agricultural Act	REAL PROPERTY	IMMIGRATION	<input type="checkbox"/> 445 American with Disabilities - Employment	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 446 American with Disabilities - Other	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 863 DIWC/DIWW 405(g)
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 463 Habeas Corpus-Alien Detainee	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 465 Other Immigration Actions			<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 240 Torts to Land				FEDERAL TAX SUITS
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 245 Tort Product Liability				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 290 All Other Real Property				<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

FOR OFFICE USE ONLY: Case Number: **CV09-4198**

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes

If yes, list case number(s):

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes

If yes, list case number(s):

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Kowloon, Hong Kong

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Alameda County, California

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Los Angeles County, California

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):  Date June 12, 2009

ROD S. BERMAN, ESQ. of Jeffer, Mangels, Butler & Marmaro, LLP

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3 -1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))
