

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil Action No. _____

THULE CHILD TRANSPORT SYSTEMS, LTD,
a Canadian limited company,

Plaintiff,

v.

JOOVY, LLC, a Texas limited liability company,

Defendant.

COMPLAINT WITH JURY DEMAND

Plaintiff Thule Child Transport Systems, Ltd. ("Thule"), for its Complaint with Jury Demand for patent infringement against Defendant Joovy, LLC ("Defendant" or "Joovy"), alleges as follows:

I. THE PARTIES

1. Thule is a corporation existing under the laws of Canada with its principal place of business at #105-5760 9th Street SE, Calgary, AB, Canada T2H 1Z9
2. On information and belief, Joovy is a limited liability company existing under the laws of Texas with its principal place of business at 2919 Canton Street, Dallas, Texas 75226.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction over this action for patent infringement pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. Upon information and belief, Defendant is subject to personal jurisdiction within this judicial district pursuant to Tex. Civ. Prac. & Rem. Code §§ 17.041 and 17.042 because it resides and regularly transacts business with the State of Texas and has also committed tortious acts within this State as set forth herein such that it reasonably knew and/or expected that it could be haled into court as a consequence of such activity. Accordingly, this forum is a fair and reasonable one.

5. Venue is proper in this Court under 28 U.S.C. §§ 1391(b) and (c) as Defendant may be found in this judicial district and Defendant is subject to personal jurisdiction within this judicial district. Venue is also proper in this Court under 28 U.S.C. § 1400(b) as Defendant has committed acts of infringement in this judicial district.

III. FACTS

6. By assignment, Thule is the owner of all right, title, and interest in and to United States Patent No. 5,474,316 ("the '316 Patent") entitled "Folding Trailer," including the right to sue and collect damages for past infringement. A true and correct copy of the '316 Patent is attached as Exhibit A.

7. The '316 Patent generally relates to a folding trailer for carrying small children or for transporting goods. The trailer may also be adapted to be towed behind a bicycle or similar pedestrian operated vehicle.

8. The Abstract of the '316 Patent relevantly provides:

A trailer, for example for towing behind a bicycle, has an upper frame member, a lower frame member and a pair of folding frame units. The trailer may be folded into compact position by collapsing the folding frame units allowing the rotation of the upper frame member toward the lower frame member. The trailer is easy to manufacture and offers a simplified folding procedure over previously known trailers. The trailer may be modified for use as a stroller.

9. Independent Claim 1 of the '316 Patent reads as follows:

1. A folding trailer comprising:

an upper elongate frame member having a forward end and a rear end and defining an upper limit of a cargo compartment;

a lower frame member defining a lower limit of a cargo compartment and having a pair of side members extending from a rear end, the side members being pivotally connected to the upper frame member adjacent its forward end; and,

a pair of folding frame units, each folding frame unit having a first end and a second end, the first end of each folding frame unit being pivotally connected adjacent the rear end of the upper portion and the opposite end of each folding frame unit being pivotally connected adjacent the rear end of the lower frame member,

each folding frame unit having a pivot point such that the folding frame unit is foldable from an extended position to a collapsed position allowing the upper frame member to rotate towards the lower frame member and thereby fold the trailer into a compact position; and,

a displacement means.

10. Independent Claim 4 of the '316 Patent reads as follows:

1. A folding trailer comprising:

an upper elongate frame member having a forward end and a rear end and defining an upper limit of a cargo compartment;

a lower frame member having a forward end and a rear end and defining a lower limit of a cargo compartment, the lower frame member and the upper frame member being pivotally connected adjacent their forward ends; and,

a pair of folding frame units, each folding frame unit having a first end and a second end, the first end of each folding frame unit being pivotally connected adjacent the rear end of the upper frame member and the opposite end of each folding frame unit being pivotally connected adjacent the rear end of the lower frame member,

each folding frame unit having a pivot point such that the folding frame unit is foldable from an extended position to a collapsed position allowing the upper frame member to rotate towards the lower frame member and thereby fold the trailer into a compact position; and,

a displacement means.

11. By assignment, Thule is the owner of all right, title, and interest in and to United States Patent No. 5,577,746 ("the '746 Patent") entitled "Folding Transport Vehicle," including the right to sue and collect damages for past infringement. A true and correct copy of the '746 Patent is attached as Exhibit B.

12. The '746 Patent is a continuation-in-part of the application for the '316 Patent and generally relates to a folding transport vehicle adaptable to transporting children or cargo.

13. The Abstract of the '746 Patent relevantly provides:

A transport vehicle has an upper frame, a chassis and a pair of folding frame units. The vehicle may be folded into compact position by collapsing the folding frame units allowing the rotation of the upper frame toward the chassis. The vehicle is easy to manufacture and offers a simplified folding procedure over previously known vehicles. The vehicle may [sic] used as a trailer, a stroller or a sled and may be convertible therebetween.

14. Independent Claim 1 of the '746 Patent reads as follows:

1. A folding transport vehicle comprising:

a lower chassis defining substantially a lower limit of a cargo compartment and having a first end;

an upper frame, formed of at least one elongate member and defining substantially an upper limit of the cargo compartment, the upper frame being pivotally connected to the chassis adjacent the first end;

at least one folding frame unit, each folding frame unit having a first end and an opposite end, the first end of each folding frame unit being pivotally connected to the chassis and the opposite end of each folding frame unit being pivotally connected to the upper frame,

each folding frame unit having a pivot point such that the folding frame unit is foldable from an extended position to a collapsed position allowing the upper frame to rotate towards the chassis and thereby fold the vehicle into a compact position; and,

a displacement means.

15. Joovy has manufactured, made, had made, used, practiced, imported, provided, supplied, distributed, sold, and/or offered for sale a line of strollers, which includes, but is not

limited to, the Cocoon single stroller and CocoonX2 Double Stroller (the "Infringing Products"), within this Judicial District and throughout the United States, that infringe one or more claims of the '316 and '746 Patents. A representative picture of the Joovy Cocoon single stroller is shown below:



IV. FIRST CLAIM FOR RELIEF
(Infringement of the '316 Patent)

16. Thule incorporates the foregoing paragraphs as if fully set forth herein.

17. Joovy has, and continues to, manufacture, make, have made, use, practice, import, provide, supply, distribute, sell, and/or offer for sale products that infringe one or more claims of the '316 Patent in violation of 35 U.S.C. § 271(a).

18. Thule has been damaged as a result of Joovy's infringing conduct. Joovy is thus liable to Thule in an amount that adequately compensates Thule for such infringement which cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

V. SECOND CLAIM FOR RELIEF
(Infringement of the '746 Patent)

19. Thule incorporates the foregoing paragraphs as if fully set forth herein.

20. Joovy has, and continues to, manufacture, make, have made, use, practice, import, provide, supply, distribute, sell, and/or offer for sale products that infringe one or more claims of the '746 Patent in violation of 35 U.S.C. § 271(a).

21. Thule has been damaged as a result of Joovy's infringing conduct. Joovy is thus liable to Thule in an amount that adequately compensates Thule for such infringement which cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

VI. PRAYER FOR RELIEF

Thule requests that the Court find in its favor and against Joovy, and that the Court grant Thule the following relief:

A. Judgment that Joovy has infringed, either literally and/or under the doctrine of equivalents, one or more claims of the '316 and '746 Patents;

B. A permanent injunction, enjoining Joovy along with its officers, directors, agents, servants, employees, affiliates, divisions, branches, subsidiaries, and parents from infringing the '316 and '746 Patents;

C. Judgment that Joovy account for and pay to Thule all damages to and costs incurred by Thule as a result of Joovy's infringing activities and other conduct complained of herein in an amount not less than a reasonable royalty;

D. That Thule be awarded pre-judgment and post-judgment interest on the damages caused to it by reason of Joovy's infringing activities and other conduct complained of herein;

E. That Thule be granted such other and further relief as the Court may deem just and proper under the circumstances, including an award to Thule of enhanced damages pursuant to 35 U.S.C. § 284 and/or determining this to be an exceptional case pursuant to 35 U.S.C. § 285 and awarding Thule its reasonable attorneys' fees.

VII. DEMAND FOR JURY TRIAL

Plaintiff hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Dated: December 9, 2011

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