

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X	
JAKKS PACIFIC, INC.,	:
	:
Plaintiff,	: Index No.:
	:
-- against --	:
	:
WICKED COOL TOYS, LLC and, JEREMY	:
PADAWER,	:
	:
Defendants.	:
	:
-----X	

COMPLAINT

Plaintiff JAKKS Pacific, Inc. (“JAKKS”), by its attorneys Feder Kaszovitz LLP, as and for its complaint against Defendants Wicked Cool Toys, LLC (“WCT”) and Jeremy Padawer (“Padawer”), alleges as follows:

Nature of the Action

1. This action seeks damages arising from Defendants’ tortious interference with two exclusive licensing contracts (collectively, the “Licenses”) that JAKKS, as licensee, had with Original Appalachian Artworks, Inc. (“OAA”), as licensor, for, *inter alia*, the creation of derivative works, development, promotion, advertisement, production, marketing, manufacture, and sale of products based on the internationally famous CABBAGE PATCH KIDS (“CPK”) line of dolls and toy products, which intellectual property (the “CPK IP”) is owned by OAA.

2. Despite Defendants’ knowledge of the Licenses, and the exclusive rights granted thereunder to JAKKS through and including December 31, 2014, Defendants, during the Licenses’ term, unlawfully induced OAA to breach the Licenses by engaging in, and allowing

WCT to engage in, activities in violation of the exclusive rights granted to JAKKS by the Licenses.

3. Prior to becoming a co-president of WCT, Defendant Padawer was a senior executive at JAKKS, to wit, its Executive Vice President of Marketing, who, while at JAKKS, breached his fiduciary duties and the duty of loyalty he owed to JAKKS. As a result, JAKKS, which had been the exclusive licensee for CPK doll and toy products under licenses which were regularly renewed for 10 years, lost the CPK Licenses. Instead, the new CPK licenses, entered into in May 2014 and running through December 31, 2018, were impermissibly granted to Padawer's new company, WCT, during the term of JAKKS' exclusivity, with prohibited licensing activities beginning immediately and continuing throughout the period of JAKKS' exclusivity and to date.

4. As a result of the foregoing, Defendants have caused JAKKS substantial damages, including lost profits, should disgorge their ill-gotten gains, and pay punitive damages in an amount to be determined by the Court.

Parties

5. Plaintiff JAKKS is a Delaware corporation with a principal place of business in California.

6. JAKKS is a multi-brand public company principally engaged in the business of designing, developing, producing, marketing and distributing toys, leisure products and video games around the world. Among other things, JAKKS sells toys, games, dolls, and action figures based on licensed properties, including, from 2004 through 2014, CPK licensed products under licenses from OAA.

7. Upon information and belief, Defendant WCT is a Delaware limited liability company, with offices in Pennsylvania and California.

8. Defendant Padawer is a natural person who is a citizen and resident of California.

Jurisdiction and Venue

9. Upon information and belief, Defendants conduct regular, continuous, meaningful, and purposeful business activities in New York, specifically by making sales, meeting with customers and potential customers, and attending trade shows and conferences, including the New York Toy Fair, a trade show for the toy industry that is annually held in New York.

10. This Court has jurisdiction over Defendants pursuant to CPLR 301 because they regularly are present and conduct business in this State, and pursuant to CPLR 302(a)(1) because one or more of the claims arise from Defendants' transaction of business in New York, including by offering and impermissibly promoting CPK licensed products for sale that, but for their tortious conduct, would not have otherwise been available.

11. Venue is proper in this County pursuant to CPLR 509.

General Factual Allegations

12. From 2004 through the end of 2014, JAKKS was OAA's exclusive licensee for the design, development, promotion, manufacture, and sale of CPK products in the United States and select international territories.

13. JAKKS' exclusive licenses were renewed from time to time, most recently in 2012 for the international license, and 2013 for the domestic license.

14. Both Licenses granted JAKKS exclusive rights with respect to the licensed activities, including, *inter alia*, to create derivative works, develop, promote, advertise, produce, market, manufacture and sell CPK products, which period of exclusivity, by the express terms of the Licenses, ran through December 31, 2014.

15. The Licenses provided that during the last year of their terms, OAA could only enter into negotiations with other parties for the licensing of the rights contained therein for succeeding periods, but could not grant any new licenses pursuant to which licensing activities could be performed prior to the expiration of JAKKS' period of exclusivity on December 31, 2014.

16. The Licenses expressly prohibited anyone else from using JAKKS' licensed products during their exclusive term.

17. The Licenses required OAA, *inter alia*, to monitor and protect the CPK IP and to take necessary steps to prevent infringement and wrongful activity by anyone else.

18. The Licenses also required that JAKKS' licensed products be promoted by OAA during their exclusive term.

19. From 2004 through 2014, JAKKS made substantial sales of CPK products under its licenses with OAA.

20. During this period, Padawer was a senior executive of JAKKS and he, together with other former employees of JAKKS who are now employed by WCT, was privy to JAKKS' sensitive and proprietary business information, including the Licenses and their material terms, including the exclusive rights conferred on JAKKS thereunder.

21. Upon information and belief, in 2013, while still a highly compensated senior management employee of JAKKS, Padawer breached his fiduciary duties, including the

duty of loyalty by, among other things, disclosing to OAA confidential and proprietary information belonging to JAKKS, including information about JAKKS' profit margin, sales of non-CPK products, future plans, and the performance of its employees, disparaging and denigrating JAKKS, its personnel, its performance, and its abilities with respect to its Licenses, conveying false and misleading information about JAKKS and its employees, including the state of JAKKS' business, its performance and projected performance under its Licenses.

22. Upon information and belief, Padawer's purpose and intent in disparaging JAKKS and its employees, disclosing JAKKS' proprietary information, and disseminating false information about JAKKS and its employees to OAA was to induce OAA not to renew the Licenses, but rather to grant WCT (which Padawer joined shortly thereafter as co-president and co-owner) a similar license for succeeding years.

23. In or around May, 2014, OAA disclosed that it would not renew the Licenses with JAKKS at the expiration of their terms, as it had previously done, but rather, in breach of the Licenses, granted new licenses to WCT, a relative newcomer to the toy business, and immediately began, in concert with WCT, to engage in activities prohibited by the Licenses, including (i) entering into a license agreement during the term of JAKKS' exclusive rights under the Licenses, and engaging in licensing activities thereunder; (ii) misappropriating and using JAKKS' designs, sculpts, and licensed products for their own promotional purposes; (iii) creating derivative works and designing new CPK products; (iv) promoting and advertising and offering for sale a proposed new line of CPK products, among other places, at the Dallas Toy Fair in October 2014, and at the New York Toy Fair in 2015; and (v) manufacturing WCT's 2015 line of CPK toys.

24. But for Defendants' wrongful conduct as set forth above, WCT would not have been able to bring a new line of CPK products to market until in or about January 2016.

25. The wrongful conduct of Defendants caused JAKKS to lose an opportunity for additional sales and for sales at higher margins, thereby causing it to sustain a loss of profits through the term of its Licenses and the four-month sell-off period thereafter.

26. As a result of Defendants' tortious interference, improper performance of activities that were prohibited by the Licenses, breach of duties owed to JAKKS, and their unlawful and unfair competition, JAKKS also lost the opportunity to renew the Licenses for the succeeding four-year period from 2015 through 2018.

27. By reason of the foregoing, JAKKS is entitled to damages in the form of lost profits due to Licenses not being renewed and extended and for WCT's profits derived from its CPK licenses during that time period.

28. Defendants' conduct set forth herein was willful, wanton, malicious, and without regard to JAKKS' lawful rights, thus entitling JAKKS to punitive damages.

**FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS
(Tortious Interference With Contract)**

29. JAKKS repeats and realleges each and every allegation contained in paragraphs 1 through 28 above as if each were fully set forth herein.

30. Had Defendants not induced OAA to breach the Licenses, WCT would not have been able to enter the market until January 2016.

31. Had WCT not prematurely entered the market and begun promoting its new CPK product line, JAKKS would have realized, at minimum, substantial additional sales and profits in 2014 and 2015.

32. By reason of the aforementioned wrongful conduct, JAKKS has been damaged in an amount to be proven at trial, but in no event less than \$5 million.

**SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS
(Tortious Interference With Prospective Economic Advantage)**

33. JAKKS repeats and realleges each and every allegation contained in paragraphs 1 through 32 above as if each were fully set forth herein.

34. Defendants knew that the Licenses were to expire on December 31, 2014, and that OAA had, for a period of over 10 years, regularly renewed its licenses with JAKKS.

35. By reason of their conduct set forth above, Defendants unlawfully interfered with JAKKS' prospective business opportunities and relationship by inducing OAA not to renew such Licenses with JAKKS, but instead, to grant new licenses to WCT.

36. As a result of the aforementioned conduct, JAKKS has been damaged in an amount to be proven at trial, but in no event less than \$15 million.

**THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS
(Unfair Competition)**

37. JAKKS repeats and realleges each and every allegation contained in paragraphs 1 through 36 above as if each were fully set forth herein.

38. By engaging in the aforementioned conduct, Defendants unfairly competed with JAKKS

39. As a result of Defendants' unfair competition, JAKKS has been damaged in an amount to be proven at trial, but in no event less than \$15 million.

40. Defendants should be required to disgorge their profits from any sales under their Licenses with OAA, in an amount to be proven at trial.

**FOURTH CAUSE OF ACTION AGAINST PADAWER
(Breach Of Fiduciary Duty)**

41. JAKKS repeats and realleges each and every allegation contained in paragraphs 1 through 40 above as if each were fully set forth herein.

42. During the last year of his employment by JAKKS, Padawer received substantial remuneration and benefit from JAKKS on condition that he properly render services in the best interests of JAKKS.

43. While employed by JAKKS, Padawer owed it fiduciary duties, including a duty of loyalty, which included the obligation not to disparage JAKKS to licensors and potential licensors.

44. As set forth above, Padawer breached his fiduciary duties to JAKKS, *inter alia*, by disclosing confidential and proprietary information to WCT and OAA, disparaging JAKKS to OAA, making false representations about JAKKS and its employees to OAA, and using such information, disparagement, and misrepresentations to unlawfully compete with JAKKS.

45. As a result of his wrongful actions, Padawer should return to JAKKS the remuneration and benefits paid to him during the final year of his employment at JAKKS.

46. As a result of Padawer's wrongful actions, JAKKS has been damaged in an amount to be proven at trial, but in no event less than \$15 million.

WHEREFORE, JAKKS respectfully requests that the Court grant judgment in its favor:

- (i) On its First Cause of Action against all Defendants, jointly and severally, in an amount to be proven at trial, but in no event less than \$5 million;

- (ii) On its Second Cause of Action against all Defendants, jointly and severally, in an amount to be proven at trial, but in no event less than \$15 million;
- (iii) On its Third Cause of Action against all Defendants, jointly and severally, in an amount to be proven at trial, but in no event less than \$15 million;
- (iv) On its First, Second and Third Causes of Action against all Defendants, jointly and severally, the disgorgement of any profits Defendants made as a result of their tortious conduct;
- (v) On its First, Second, and Third Causes of Action against all Defendants, jointly and severally, for punitive damages in an amount to be set by the Court;
- (vi) On its Fourth Cause of Action against Padawer, in an amount to be proven at trial, but in no event less than \$15 million, including the return to JAKKS of the remuneration and benefits paid to him during the final year of his employment by JAKKS, and for punitive damages in an amount to be set by the Court;
- (vii) For the costs and disbursements of this action; and
- (viii) For such other and further relief as this Court deems just and proper.

Dated: New York, New York
September 24, 2015

FEDER KASZOVITZ LLP

By:  _____

Bruce Robins
David Sack

845 Third Avenue
New York, New York 10022
Telephone: (212) 888-8200

Attorneys for Plaintiff JAKKS Pacific, Inc.

General Information

Court	New York Supreme Court, New York County
Docket Number	159812/2015