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JUL 18 1995
AT 8:30 P.M.
WILLIAM T. WALSH
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

-----X
TYCO INDUSTRIES, INC., :
Plaintiff, :
v. : Civil Action No. 95-1135
TINY LOVE, LTD. and : (MTB)
THE MAYA GROUP, INC., :
Defendants. :
-----X

DECLARATION OF DENNY CONLEY

I, Denny Conley, declare as follows:

I HEREBY CERTIFY that the above and
foregoing is a true and correct copy
of the original on file in my office.
UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
WILLIAM T. WALSH, CLERK
By:  Deputy Clerk

1. I am employed by Paramount Industries, Inc.
("Paramount"), as Director of Manufacturing and Engineering.
Paramount has a place of business at 2475 Big Oak Road,
Langhorne, Pennsylvania 19047.
2. Paramount is a product development company
offering engineering and design services and prototype
manufacturing. Paramount actively engages in product development
for many products, including toy products. Our toy product
clients include: Walt Disney; Ertl Company; General Mills, Inc.;

Hasbro-Bradley Industries; Irwin Toy; Johnson & Johnson Consumer Products; Kenner Products; Mattel Toys; Kiddie Products; Lionel Trains; Little Tykes Co.; Milton Bradley Industries; Nylint Toy Co.; Ohio Art; Galoob Toys; The Original San Francisco Toymakers; Parker Brothers; Playmates; Today's Kids; Toy Biz; Sega, America; and Yes Entertainment.

3. I have been employed by Paramount since May of 1994 and have held my current position since September of 1994.

4. I have worked as a design engineer for over thirty-five years, and in that time, I have accumulated considerable experience in product design of consumer goods, development, and manufacturing, including toy product design, development, and manufacturing. I have been granted ten U.S. patents. A copy of my Curriculum Vitae is attached (Ex. 1).

5. While visual appeal of a product is helpful in making the product sell, it is more important that the product provide a useful and/or desirable function that will make a person want to buy the product. For example, although an automobile should be pleasing to the eye, a person would not normally buy an automobile unless the automobile had an engine, tires, a fuel tank, etc. A typical automobile purchaser is concerned with the color and look of an automobile, and with the

type, size, power, fuel consumption, accessories, reliability, etc. of the automobile.

6. I have studied the Tiny Love Gymini 3-D Activity Gym product ("the Tiny Love product") (Ex. 2), the Tiny Love U.S. Design Patent No. D359,869 ("the Tiny Love design patent") (Ex. 3), the Tyco Cozy Quilt Gym product ("the Tyco product") (Ex. 4), the alternative designs set forth by Michael A. Cousins (Ex. 5), and three preliminary designs produced by Tyco designers during the development of the Tyco product (Ex. 6).

7. Although the Tiny Love product (Ex. 2) as a whole has a pleasing appearance, I note that the combination of (1) a blanket-base or base and (2) diagonal arches arranged with respect to the blanket-base is well-known and is common among children's play tents and adult camping tents. For example, the SASSY play tent (Ex. 7) and the EUREKA SUNRISE camping tent (Ex. 8) both include elements (1) and (2) as set forth above. I also note that the SASSY play tent has corner pockets (Ex. 9), as does the Tiny Love product (Ex. 10). Accordingly, the Tiny Love product does not have a striking or unusual appearance.

8. As shown by Exs. 7 and 8, infant and child play tents and adult camping tents include a base and a pair of diagonal arches arranged with respect to the base. Accordingly, any novelty which can be found in the Tiny Love design patent

(Ex. 3) cannot be based only upon the combination of a base with a pair of diagonal arches, especially since such elements are already present in the prior art.

9. I am a designer of ordinary capability who has designed children's toys, including play tents for pre-school age children. Although the prior art tents shown in Exs. 7 and 8 do not have grommets on the arches and snaps at the periphery of the base, I consider such differences to be obvious so that the overall appearance of the design shown in the Tiny Love design patent is suggested by the prior art tents.

10. Although toy products by their nature require an ornamental appeal, I have found that such toy products must still be functional. After all, a parent may be struck by the appearance of a toy product, but the parent will not buy the product unless the parent considers that the product will serve a purpose. Accordingly, any ornamental design inherent in the Tiny Love product is not of foremost concern to a purchaser of the product. What is of foremost concern are the functional features. For example:

- a. the arches are tensioned rods which act to keep the blanket-base neatly spread out;
- b. the arches allow the Tiny Love product to be folded substantially flat so that the product is easily carried;

c. the Tiny Love product requires no assembly and, because of the tensioned arches, automatically springs to an open, fully constructed position; and

d. the toys may be suspended from the arches within easy reach of a baby.

11. With respect to the article of manufacture shown in the Tiny Love design patent, I note the following features and their respective functions:

a. the blanket-base is necessary as a cushioned support surface for resting a baby or infant, and also to receive and anchor the ends of the diagonal arches;

b. each corner pocket on the base is necessary to receive a respective end of a diagonal arch and to hold the end in place (see Ex. 10);

c. each diagonal arch is necessary to provide an elevated structure from which a hanging toy object may be suspended;

d. each diagonal arch is necessary to provide diagonal tension across the blanket-base to pull taut;

e. the combination of the interconnected diagonal arches (see Ex. 11) is necessary to prevent each diagonal arch from falling over;

f. the combination of the interconnected diagonal arches is necessary to provide substantially equal



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