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*Attorneys for Defendants*

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

JAKKS PACIFIC, INC.,

Plaintiff,

-v-

WICKED COOL TOYS, LLC and, JEREMY  
PADAWER,

Defendants.

INDEX NO. 159812/2015

**ANSWER AND COUNTERCLAIMS**

Wicked Cool Toys, LLC (“WCT”) and Jeremy Padawer (“Mr. Padawer”) (collectively, “Defendants”), by and through their undersigned attorneys Norton Rose Fulbright US LLP, as and for their answer to the Complaint dated September 24, 2015 (the “Complaint”), states as follows:

**ANSWER**

**Nature of the Action**

1. Defendants admit that this case is styled as an action for tortious interference. Defendants deny all other allegations in paragraph 1.

2. Paragraph 2 consists of legal conclusions and characterizations to which no response is required, and Defendants otherwise deny the allegations of paragraph 2 of the Complaint.

3. Defendants admit that Mr. Padawer was an Executive Vice President of Marketing at JAKKS, but deny all other allegations set forth in paragraph 3 of the Complaint.

4. Paragraph 4 consists entirely of legal conclusions and characterizations to which no response is required, and Defendants otherwise deny the allegations of paragraph 4 of the Complaint.

#### **Parties**

5. Defendants admit, upon information and belief, the allegations in paragraph 5 of the Complaint.

6. Defendants admit the allegation in paragraph 6 of the Complaint.

7. Defendants admit the allegation in paragraph 7 of the Complaint.

8. Defendants admit the allegation in paragraph 8 of the Complaint.

#### **Jurisdiction and Venue**

9. Paragraph 9 contains legal conclusions as to which no response is required, and Defendants otherwise deny the allegations in paragraph 9 of the Complaint.

10. Paragraph 10 contains legal conclusions and characterizations to which no response is required, and Defendants otherwise deny the allegations of paragraph 10 of the Complaint.

11. Defendants admit that Plaintiff purports to place Venue in this County, states that whether Venue is appropriate is a conclusion of law as to which no response is required and otherwise deny the allegations in paragraph 11 of the Complaint.

### **General Factual Allegations**

12. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 12 of the Complaint and therefore deny them.

13. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 13 of the Complaint and therefore deny them.

14. Defendants respectfully refer the Court to the Licenses for their contents and denies the allegations of paragraph 14 of the Complaint to the extent they are inconsistent with the Licenses.

15. Defendants respectfully refer the Court to the Licenses for their contents and denies the allegations of paragraph 15 of the Complaint to the extent they are inconsistent with the Licenses.

16. Defendants respectfully refer the Court to the Licenses for their contents and denies the allegations of paragraph 16 of the Complaint to the extent they are inconsistent with the Licenses.

17. Defendants respectfully refer the Court to the Licenses for their contents and denies the allegations of paragraph 17 of the Complaint to the extent they are inconsistent with the Licenses.

18. Defendants respectfully refer the Court to the Licenses for their contents and denies the allegations of paragraph 18 of the Complaint to the extent they are inconsistent with the Licenses.

19. Defendants deny the allegations set forth in paragraph 19 of the Complaint as to the characterization of the sales as “substantial,” but otherwise admit the remaining allegations.

20. Defendants admit that Mr. Padawer was an executive of JAKKS, but otherwise deny the truth of the allegations set forth in paragraph 20 of the Complaint.

21. Paragraph 21 contains legal conclusions and characterizations to which no response is required, and Defendants otherwise deny the allegations of paragraph 21 of the Complaint.

22. Defendants deny the allegations set forth in paragraph 22 of the Complaint.

23. Defendants respectfully refer the Court to the Licenses for their contents, state that paragraph 23 of the Complaint contains legal conclusions and characterizations to which no response is required, and Defendants otherwise deny the allegations of paragraph 23 of the Complaint.

24. Defendants deny the allegations set forth in paragraph 24 of the Complaint.

25. Paragraph 25 contains legal conclusions and characterizations to which no response is required, and Defendants otherwise deny the allegations of paragraph 25 of the Complaint.

26. Paragraph 26 contains legal conclusions and characterizations to which no response is required, and Defendants otherwise deny the allegations of paragraph 26 of the Complaint.

27. Paragraph 27 contains legal conclusions and characterizations to which no response is required, and Defendants otherwise deny the allegations of paragraph 27 of the Complaint.

28. Paragraph 28 contains legal conclusions and characterizations to which no response is required, and Defendants otherwise deny the allegations of paragraph 28 of the Complaint.

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

29. Defendants repeat and reallege their responses to the allegations in paragraphs 1-28 of the Complaint as though fully set forth herein.

30. Paragraph 30 contains legal conclusions and characterizations to which no response is required, and Defendants otherwise deny the allegations of paragraph 30 of the Complaint.

31. Paragraph 31 contains legal conclusions and characterizations to which no response is required, and Defendants otherwise deny the allegations of paragraph 31 of the Complaint.

32. Paragraph 32 contains legal conclusions and characterizations to which no response is required, and Defendants otherwise deny the allegations of paragraph 32 of the Complaint.

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

33. Defendants repeat and reallege their responses to the allegations in paragraphs 1-32 of the Complaint as though fully set forth herein.

34. Defendants respectfully refer the Court to the Licenses for their contents and otherwise denies the allegations of paragraph 34 of the Complaint..

35. Paragraph 35 contains legal conclusions and characterizations to which no response is required, and Defendants otherwise deny the allegations of paragraph 35 of the Complaint.

36. Paragraph 36 contains legal conclusions and characterizations to which no response is required, and Defendants otherwise deny the allegations of paragraph 36 of the Complaint.

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

37. Defendants repeat and reallege their responses to the allegations in paragraphs 1-36 of the Complaint as though fully set forth herein.

38. Paragraph 38 contains legal conclusions and characterizations to which no response is required, and Defendants otherwise deny the allegations of paragraph 38 of the Complaint.

39. Paragraph 39 contains legal conclusions and characterizations to which no response is required, and Defendants otherwise deny the allegations of paragraph 39 of the Complaint.

40. Paragraph 40 contains legal conclusions and characterizations to which no response is required, and Defendants otherwise deny the allegations of paragraph 40 of the Complaint.

**FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS  
(Breach of Fiduciary Duty)**

41. Defendants repeat and reallege their responses to the allegations in paragraphs 1-40 of the Complaint as though fully set forth herein.

42. Defendants deny the allegations set forth in paragraph 42 of the Complaint.

43. Paragraph 43 contains legal conclusions and characterizations to which no response is required, and Defendants otherwise deny the allegations of paragraph 43 of the Complaint.

44. Paragraph 44 contains legal conclusions and characterizations to which no response is required, and Defendants otherwise deny the allegations of paragraph 44 of the Complaint.

45. Paragraph 45 contains legal conclusions and characterizations to which no response is required, and Defendants otherwise deny the allegations of paragraph 45 of the Complaint.

46. Paragraph 46 contains legal conclusions and characterizations to which no response is required, and Defendants otherwise deny the allegations of paragraph 46 of the Complaint.

Defendants deny that Plaintiff is entitled to any relief.

### **AFFIRMATIVE DEFENSES**

Without assuming the burden of proof on any matter for which the burden rests upon Plaintiff, Defendants assert the following defenses.

1. Plaintiff's claims fail to state facts sufficient to state any cause of action under any applicable statutes, laws, rules, or regulations against Defendants.
2. Plaintiff's failure to mitigate its damages, if any, bars recovery.
3. Plaintiff's claims are barred by the doctrine of release.
4. Plaintiff's claims are barred by the doctrine of waiver.
5. Plaintiff's claims are barred by the doctrine of laches.
6. Plaintiff's claims are barred by the doctrine of estoppel.
7. Plaintiff's claims are barred in whole or in part by the statute of limitations.



8. Plaintiff's claims are barred in whole or in part by the terms of its licenses with OAA.

9. Defendants are competitors of Plaintiff and any actions that Defendants have taken with respect to OAA were intended at least in part to advance their competitive interest, no unlawful restraint of trade was effected, and the means employed were not wrongful. Therefore, Plaintiffs may not recover under their claims of Tortious Interference with Contract and Tortious Interference with Prospective Economic Advantage.

10. Mr. Padawer is an officer of WCT and at relevant times was acting within the scope of his authority as such.

11. Any damages that Plaintiff claims to have suffered were caused solely and totally by acts and omissions of other parties whom Defendants do not control, including Plaintiff itself, and for whose conduct Defendants do not take responsibility.

12. Defendants reserve the right to plead additional affirmative defenses as they become known in the course of discovery.

### **PRAYER**

WHEREFORE, Defendants pray that Plaintiff take nothing against Defendants, that judgment be entered in favor of Defendants and against Plaintiff, dismissing the claims with prejudice and with costs, reasonable attorneys' fees and such other and further relief as the Court may deem appropriate.

## **COUNTERCLAIMS**

Counterclaim-Plaintiff Wicked Cool Toys, LLC (“WCT”) asserts the following counterclaims against Counterclaim-Defendant JAKKS Pacific, Inc. (“JAKKS”) as follows:

### **Nature of the Action**

1. This action seeks damages arising from JAKKS’s unfair competition with WCT and tortious interference with WCT under an exclusive global licensing contract (the “License”) that WCT, as exclusive licensee, has with Original Appalachian Artworks, Inc. (“OAA”), as licensor, for the internationally famous CABBAGE PATCH KIDS (“CPK”) line of dolls and toy products, which intellectual property (the “CPK IP”) is owned by OAA.

2. Jeremy Padawer (“Mr. Padawer”) and Michael Rinzler (“Mr. Rinzler”) have collectively been in the toy industry for more than 35 years.

3. Over that time, Mr. Padawer and Mr. Rinzler have individually earned a reputation in the toy industry for integrity, honesty, and transparency, as well as being smart and good at what they do.

4. Although Mr. Padawer and Mr. Rinzler both worked for JAKKS for a time, they separately decided (and at different times) to leave that abusive and litigation-driven environment to pursue more entrepreneurial paths. Mr. Rinzler founded WCT in June 2012 and Mr. Padawer joined him later. They both now serve as Co-Presidents of WCT.

5. At the time they each left JAKKS, both Mr. Padawer and Mr. Rinzler understood that the simple act of leaving that company exposed them to the risk that JAKKS might try to

retaliate in some way, including disparaging their reputations and launching meritless lawsuits, which JAKKS would use to try and financially ruin each of them.

6. Indeed, while Mr. Padawer and Mr. Rinzler were employed at JAKKS, they were personally warned by JAKKS executives that JAKKS may use such improper tactics, regardless of the merits of any legal claim, in order to punish them and keep them out of the toy market. They witnessed how that strategy, which was driven by the executives at the highest levels of the company as well as certain board members, was used to punish people for perceived slights and to prevent inappropriate conduct by JAKKS from becoming public. They also understood JAKKS's very litigious past – nearly 150 lawsuits over just the last ten years – and knew they were best to stay clear of JAKKS as much as possible.

7. WCT has done very well as a new entrant in the toy market, and JAKKS now perceives WCT as a competitor in that space.

8. JAKKS is now following through on the various threats it made to stifle that competition from WCT, regardless of the propriety of its actions or merits of its claim, by purposefully interfering with WCT's agreements and business relations and disparaging the business reputation of WCT as well as its principals.

9. Through this wrongful conduct, JAKKS has caused WCT substantial damages, including lost profits, and because of the egregiousness of JAKKS's conduct, WCT is entitled to punitive damages in an amount to be determined by the Court.

10. Neither WCT nor its principals had any intention of ever raising any of the issues related to JAKKS's threats or abuse. JAKKS's instigation of its unfair and improper scheme to

purposefully damage WCT in the marketplace, however, requires that WCT respond and defend itself against JAKKS's meritless claims to their resolution, and to address the damage that JAKKS has caused and continues to cause to WCT's business relationships and reputation.

### **Parties**

11. Upon information and belief, JAKKS is a publicly-traded Delaware corporation with a principal place of business in California, along with offices in New York, Hong Kong, and London.

12. WCT is a Delaware limited liability company with principal place of business in Pennsylvania and Hong Kong, and a satellite office in California.

### **Jurisdiction and Venue**

13. Upon information and belief, JAKKS conducts 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.

14. This Court has jurisdiction over JAKKS pursuant to CPLR 301 because it regularly is present and conducts business in this state, and pursuant to CPLR 302(a) because one or more of the claims arise from JAKKS's tortious acts within New York.

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

### **General Factual Allegations**

16. In June 2012, WCT was founded by Mr. Rinzler as a children's toy company with Mr. Rinzler as the sole employee. Shortly thereafter in August 2012, WCT expanded its

operations by opening up an office in Hong Kong. Nine months later, WCT expanded again by opening up an office in California. WCT has grown steadily to about 50 current employees. Currently, Mr. Rinzler serves as Co-President of WCT alongside Mr. Padawer.

17. Mr. Rinzler has a B.A. from Washington University and an MBA from The Wharton School. Mr. Rinzler has been in the toy industry for over 20 years, starting as a Product Manager at MGA Entertainment in 1993. In 1995, he moved to Equity Marketing as a National Sales Manager, then to Mattel in 2000 as a Brand Manager. In 2003, he moved to Playmates Toys first as Director, then was promoted to Vice President of Marketing, where he ran the Boys business unit and re-launched the highly popular Teenage Mutant Ninja Turtles lines. In May 2007, he was recruited by JAKKS where he started as Vice President of Marketing. Within two years, he was promoted first to General Manager, and then to President of Creative Designs International (“CDI”), a JAKKS acquisition. In the beginning of June 2011, Mr. Rinzler left JAKKS to co-found Shodogg, a start-up software business outside the toy industry, serving as President during Shodogg’s critical launch phase. Mr. Rinzler currently still serves as an official Advisor and Co-Founder to that company.

18. While at JAKKS, Mr. Rinzler worked on a variety of projects. As Vice President of Marketing, Mr. Rinzler ran JAKKS’s Girls division business unit.<sup>1</sup> Within Mr. Rinzler’s first year, the Girls division underwent significant growth, which included producing one of the highest profile and top-selling toys of that year (2008), which revolutionized the entire toy category of “food activity.” Mr. Rinzler also ran other high profile brands, including Fancy

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<sup>1</sup> JAKKS’s Girls division did not include the CPK line of dolls and toy products, which instead fell under JAKKS’s Play Along division.

Nancy, Club Penguin, and launching the Taylor Swift doll line. In light of his strong performance, and despite his youth at the company, JAKKS promoted Mr. Rinzler to run CDI.

19. During Mr. Rinzler's first full year as General Manager of CDI, that division accounted for a significant portion of JAKKS's net profit and secured the renewal of a license with Disney, a major licensor. Because of his success, Mr. Rinzler was promoted again to President of CDI in 2009. Towards the end of 2010, JAKKS engaged in a discussion with Mr. Rinzler about him taking the position of President of JAKKS.

20. Mr. Rinzler, however, decided not to pursue that opportunity, and thereafter in May 2011 announced he would be leaving JAKKS. Although he had achieved great success at JAKKS in a short amount of time and had the opportunity for a significant promotion, Mr. Rinzler also had endured an abusive and oppressive work environment at JAKKS, personally experiencing consistent verbal abuse as well as physical choking by a senior executive, demands to lie to the Board of Directors and the Chairman, as well as witnessing physical abuse and improper slurs directed to senior executives, and, upon his exit, threats to destroy both his personal and professional lives. This retributive atmosphere was instrumental in Mr. Rinzler's decision to leave, despite factors pushing him to stay at JAKKS, including the accompanying salary increase, the bad state of the economy, and providing security for his growing family.

21. In addition, Mr. Rinzler made it clear to various JAKKS executives that his plan for the next phase of his career would include becoming an entrepreneur. Mr. Rinzler left JAKKS, on or around June 1, 2011, for no salary to co-found Shodogg, a start-up media and enterprise software company.

22. In keeping with the abusive working atmosphere Mr. Rinzler had endured at JAKKS, prior to his leaving, one JAKKS executive threatened: “If you ever try to fuck with me, I will take your fucking house and everything you own.” Mr. Rinzler was instructed not to notify any third parties about his pending departure. JAKKS, however, proceeded to falsely represent to external licensors that JAKKS had fired Mr. Rinzler. In truth, Mr. Rinzler had voluntarily resigned.

23. Mr. Padawer is a graduate of the University of Texas, Austin (B.A. 1996), University of Tennessee Law School (J.D. 1999), and Vanderbilt University (MBA 2001). He has been in the toy industry for over 15 years, beginning with an entrepreneurial stint from 1998-2000 where he owned and operated an online trading/selling post for toy products, becoming one of the early Disney Blast advertising partners. After business school, Mr. Padawer was recruited by Mattel in 2001 as a Brand/Marketing Manager, working on businesses as diverse as Hot Wheels, Masters of the Universe, and Nickelodeon brands.

24. In 2003, Mr. Padawer was recruited by JAKKS, where he started as a Director of Marketing overseeing the Boys Entertainment/Action Figure division. That division grew significantly due to the success of the WWE brand and the addition of Pokémon, and Mr. Padawer was promoted to Vice President in 2007, Senior Vice President in 2009, and finally Executive Vice President of Marketing & Business Development in 2010.

25. Between 2003-2009, due to Mr. Padawer’s efforts, the Boys Entertainment/Action Figure division achieved substantial global growth and represented one of the most significant profit centers for JAKKS.

26. Mr. Padawer was recognized in *ToyFare* Magazine's Hall of Fame in 2010, along with other key industry professionals.

27. From January 2010 through September 2012, as Executive Vice President of Marketing and Business Development, Mr. Padawer oversaw the largest business unit in the company, encompassing a significant share of the promoted Girls division, Boys division, Electronics division, and internally developed toys and brands. Those brands included Monsuno, CPK, and over 20 additional licensed and internally created brands (such as Disney, Nickelodeon, Marvel, and others).

28. In early 2010, Mr. Padawer identified CPK as an asset that needed significant growth, as annualized CPK revenues at JAKKS had been drastically declining since 2007. In preparation for a re-launch and re-establishment of CPK at all major retailers later that year, Mr. Padawer traveled to Cleveland, Georgia, in early 2010 to meet and become acquainted with the executive and creative CPK team at OAA.

29. Upon information and belief, the CPK team at OAA appreciated Mr. Padawer's personal and transparent approach, as well as the accessibility that he provided. Upon information and belief, in part because of Mr. Padawer, JAKKS achieved a licensing renewal from OAA for CPK despite the significant decline in CPK sales during the previous years.

30. By Fall of 2010, Mr. Padawer and his team had substantially increased the brand volume from the previous year. The 2010 re-launch was considered by many within JAKKS to have been a success.



31. In 2011-2012, Mr. Padawer's focus was shifted away from CPK to the development and subsequent launch of Monsuno as well as Winx, a Nickelodeon broadcasted girl's fashion brand. With Monsuno, Mr. Padawer co-created and was the Executive Producer of a 65 episode entertainment property, which aired on Nickelodeon's NickToons in the United States and in over 40 countries worldwide.

32. Like Mr. Rinzler, Mr. Padawer had achieved great success at JAKKS, but also had endured an abusive and oppressive work environment at JAKKS, including: constant verbal abuse, both to himself and to other executives (including witnessing improper homosexual slurs to a senior executive on numerous occasions); repeated physical abuse, both to himself and to other executives; and upon announcement of his resignation, very direct threats to destroy his professional life and reputation.

33. On September 25, 2012, a JAKKS executive approached Mr. Padawer and abruptly demanded to know whether Mr. Padawer was "going to stay or go" after the end of Mr. Padawer's contract term (March 31, 2013).

34. Although an additional half of a year remained on Mr. Padawer's contract, JAKKS wanted a decision immediately.

35. As such, and in good faith, with six months before the end of his contract term, he informed the executive that he would be leaving JAKKS. In an effort to avoid any retaliatory reaction from JAKKS, Mr. Padawer decided to be as transparent as possible about his future plans, including to be an entrepreneur in the toy space. Mr. Padawer's only request was that JAKKS not announce his departure until closer to the expiration date of his contract. To this singular request, one JAKKS executive threatened: "I could destroy your reputation."

36. Mr. Padawer had hoped that his professional and transparent approach would dissuade JAKKS from its typical response of retribution, threats, and abuse. His hopes were misplaced. JAKKS disregarded Mr. Padawer's singular request and within one week, had made public, both internally at the company and externally to licensors and partners, that Mr. Padawer was leaving. Due to the timing of layoffs and corporate restructuring that were announced at JAKKS on or about October 1, 2012, JAKKS's disclosure of Mr. Padawer's impending departure created ambiguity as to whether Mr. Padawer was being terminated or was leaving on his own accord. JAKKS also specifically directed Mr. Padawer to contact licensors, including OAA, to notify them about his transition and subsequent departure despite the fact that it would not take place until the end of March of the following year.

37. Although Mr. Padawer did not know which licensors and partners had already been contacted by JAKKS, he complied and began reaching out to the licensors and business partners with whom he worked. On October 3, 2012, Mr. Padawer contacted OAA, who had already been informed of his transition off the CPK brand. As part of his responsibilities in notifying these parties (including OAA) about his impending departure, he identified the other JAKKS employees who would be replacing him in his roles with respect to those licensors and partners. In those discussions, Mr. Padawer left his future plans indefinite.

38. After these conversations, and again in recognition of JAKKS's retaliatory past, Mr. Padawer significantly limited his conversation with licensors and partners for the remainder of his contract term. Mr. Padawer fielded the occasional call from licensing partners, including at least one from OAA.

39. On October 2, 2012, JAKKS executives asked Mr. Padawer to first ghost write and then send under his own name a very harsh and critical email to a senior level COO within the entertainment industry—an unusual request (and the first of its kind in his almost ten years at JAKKS), and unsettling because it was in line with the executive’s promise to “destroy” Mr. Padawer’s reputation. After significant pushback, and under threats that disobedience would be of a breach of his contract, Mr. Padawer complied.

40. Because of JAKKS’s prompt and harsh response to his professionalism, Mr. Padawer sought to negotiate a shorter contract term, but JAKKS refused, with the same JAKKS executive making it very clear that Mr. Padawer would serve “every fucking day until the end of your deal.” In retaliation for Mr. Padawer wanting to leave the company, JAKKS purposefully side-lined him from the toy industry, his business relations, and even from his fellow co-workers at JAKKS. Indeed, JAKKS intentionally stripped Mr. Padawer of most of his duties, forced Mr. Padawer to sit in an office isolated from other employees, and even ripped the carpeting out of parts of the suite. The apparent hope was that Mr. Padawer would breach his contract thereby relieving JAKKS of paying him certain guarantees. Realizing the importance of him living up to his obligations and responsibilities, Mr. Padawer complied, and for the remainder of his six months, he endured JAKKS’s continued abuse and threats as well as its repeated attempts to force him to leave early.

41. Though experiencing this treatment, Mr. Padawer was very careful then (and now) not to prejudice JAKKS’s partners and potential partners, having experienced first-hand JAKKS’s retributive nature. Mr. Padawer stayed at JAKKS through the final day of his contract, March 31, 2013.

42. Together, Mr. Rinzler and Mr. Padawer have achieved significant success growing WCT. They have obtained several high profile licensing contracts with many key intellectual property holders—including WWE, Disney, Nickelodeon, Garfield, Monster Jam, Marvel, The Wiggles, DC Comics, PBS Wild Kratts, Cabbage Patch Kids, and Girl Scouts of America, and on well-known brands including Spider-Man, Batman, Disney Princesses, Iron Man, SpongeBob SquarePants, and Teenage Mutant Ninja Turtles.

43. While JAKKS was experiencing its last few years of its CPK license with OAA, WCT was taking its initial steps as a company and realizing great growth in its business. On the other hand, JAKKS's stock price was falling from \$18/share in 2012 to as low as \$4/share by May 2014. In addition, JAKKS was fending off a share-holder derivative lawsuit, a takeover bid, and a tremendous amount of very public uncertainty. JAKKS lost other key brands during this time, including but not limited to Pokémon.

44. JAKKS also experienced significant turnover in several key roles from 2012-2013, and more specifically in three of the most visible roles for licensors and retail buyers: head of JAKKS licensing, head of JAKKS marketing, and head of JAKKS sales.

45. Upon information and belief, OAA was aware of both the corporate upheaval and this turnover, as well as the subsequent firing of another employee key to CPK — the Head of JAKKS's Girls division.

46. In July 2013, a representative of OAA approached WCT, unsolicited. OAA inquired if WCT would schedule a meeting with OAA to discuss whether WCT would be interested in pitching against other companies for the opportunity to become OAA's next licensee to the CPK line of dolls and toy products. Although WCT knew (from Mr. Padawer's

earlier days working at JAKKS) that JAKKS had some agreement with OAA regarding the CPK line of dolls and toy products, neither WCT nor Mr. Padawer had any knowledge of its scope or the specifics of the terms that were agreed.

47. Initially, WCT was hesitant to respond to OAA's overture. Mr. Padawer's and Mr. Rinzler's concern over JAKKS's retributive behaviour was still fresh in their minds, and they wanted to steer clear of JAKKS. Although they knew that they had not and would not improperly compete against JAKKS in any way, they understood that there was still risk that JAKKS would live up to its word and seek to destroy them and WCT through whatever means possible, including frivolous litigation. WCT, therefore, proceeded cautiously.

48. Just as OAA had approached WCT to be involved in the pitch process, OAA made clear that it was approaching several other toy companies to meet with them for the opportunity to become the new CPK licensee once the current CPK licensee's contract term expired at the end of 2014. JAKKS also was one of at least four other companies invited by OAA to participate.

49. The pitch process continued to move forward. WCT had two meetings with OAA in Cleveland, Georgia. The first meeting took place on November 4-5, 2013, and the second on April 29-30, 2014.

50. WCT found OAA to be an extraordinarily well-versed licensor and market participant and, as such, understood the industry well. It had been manufacturing CPK products for more than thirty years and its licensees have included Coleco, Mattel, Hasbro, Toys R Us (direct retail program), and PlayAlong. OAA also has sold directly to consumers at Babyland

General Hospital in Cleveland, Georgia, where they have hundreds of thousands of visitors yearly.

51. WCT understood that OAA was very aware of its brand as well as the various manufacturing and sourcing resources that the previous licensees had used to fulfill their various licenses.

52. As such, WCT presented to OAA an abridged proposal that focused on the speed to market that WCT had achieved on existing brands, the breadth of those lines for such an early stage company, and WCT's perspective of the current state of retail with CPK. Most importantly, WCT emphasized its interest in being a true partner with OAA, complete with corporate transparency and world class product support and innovation.

53. In May 2014, OAA awarded WCT with the exclusive CPK License to the CPK line of dolls and toy products, and unlike prior licensees, WCT was awarded the worldwide license. On May 30, 2014, WCT and OAA executed a deal memorandum.

54. Upon information and belief, JAKKS was notified about OAA's decision in May 2014.

55. JAKKS's attempt at retribution was immediate. JAKKS promptly contacted OAA directly in an attempt to convince OAA to change its mind about selecting WCT. Mere days after being notified about OAA's decision, JAKKS, in an email to OAA dated June 4, 2014, misrepresented Mr. Padawer's and Mr. Rinzler's management while at JAKKS, including with respect to the growth of their projects while there.

56. Concurrently, JAKKS also reached out to retail buyers, informing them of OAA's decision to award the CPK License to WCT, and encouraged them to put pressure on OAA to change its mind. Upon information and belief, JAKKS disparaged WCT and sought to generate retailer concern over OAA's selection. By reaching out to retail buyers, JAKKS effectively announced to the retail trade that there would be a new CPK licensee in 2015, even though the news of the selection of WCT had not yet been made public.

57. When its efforts directed to OAA and retail buyers failed, JAKKS then turned its attention directly to WCT and OAA by sending various letters to both companies with the hope of disrupting the new relationship between WCT and OAA. That effort also failed. In one such letter, WCT learned that JAKKS had entirely mischaracterized the CPK license JAKKS then held from OAA.

58. Having failed in its other attempts, JAKKS's scheme of retribution turned to how it could damage the rights of WCT, as the next CPK licensee, as well as to the CPK line of dolls and toy products themselves. In the last half of 2014, JAKKS began a systematic scheme with the sole purpose of damaging WCT's licensee rights and injuring the CPK brand.

59. This wrongful conduct — which included upon information and belief, withdrawing advertising support and “flooding” the market with huge volumes of unusually low-priced CPK products — was undertaken by JAKKS with the specific intent of negatively affecting WCT's business and financial opportunity with OAA.

60. JAKKS's scheme was solely out of malice towards WCT and its relationship with OAA. JAKKS knew and intended its improper actions to harm WCT's business and reputation by hurting WCT's ability to perform under the CPK License with OAA.

61. Even the timing of JAKKS's lawsuit is an element of its retributive scheme. Although it has been more than four years since Mr. Rinzler left JAKKS's employ, more than two and a half years since Mr. Padawer departed, and nearly a year and a half since OAA awarded WCT with the CPK License, JAKKS waited to file the instant case, and to issue press releases about it, until just before one of the largest annual toy fairs in the United States. Upon information and belief, JAKKS specifically timed the filing of this lawsuit to coincide with the toy fair with the specific intent of causing the largest negative impact on WCT as possible.

62. Even now JAKKS is currently using this litigation as an improper marketing tool to harm WCT. JAKKS was, and upon information and belief still is, circulating materials regarding this lawsuit and disparaging commentary directly to WCT's licensing partners, with the specific intent of damaging the product sales of WCT and the reputation of its principals in the marketplace.

63. JAKKS's tortious conduct has caused WCT significant damages, including lost profits for 2015 and the years thereafter, which will continue to have a negative impact and are reasonably calculable.

64. JAKKS's conduct was willful, wanton, malicious, and without regard to WCT's lawful rights, thus entitling WCT to punitive damages.

**FIRST COUNTERCLAIM**  
**(Tortious Interference With Prospective Economic Advantage)**

65. WCT repeats and realleges its allegations in paragraphs 1-64 contained above as though fully set forth herein.



66. WCT and OAA had a business relationship, whereby WCT was awarded an exclusive CPK License.

67. JAKKS knew of this business relationship, knew of the agreement between WCT and OAA, and knew about WCT's license rights.

68. Through its conduct set forth above, including failing to adequately support the CPK brand with advertising and flooding the market with CPK product, JAKKS intentionally interfered with this business relationship between WCT and OAA and the economic value thereof.

69. By its conduct set forth above, JAKKS acted solely out of malice and used improper means.

70. As a result of its conduct set forth above, JAKKS has caused injury to this business relationship between WCT and OAA, and WCT has been damaged in an amount to be proven at trial, but in no event less than \$20 million.

**SECOND COUNTERCLAIM**  
**(Unfair Competition)**

71. WCT repeats and realleges its allegations in paragraphs 1-70 contained above as though fully set forth herein.

72. By engaging in the aforementioned conduct, JAKKS unfairly competed with WCT by misappropriating WCT's right to financially benefit from the CPK brand and products as the exclusive licensee under the CPK License.

73. By its conduct set forth above, JAKKS's misappropriation was in bad faith.

74. As a result of its conduct set forth above, JAKKS has caused WCT to suffer special damages, including direct financial loss, in an amount to be proven at trial, but in no event less than \$20 million.

**THIRD COUNTERCLAIM**  
**(Prima Facie Tort)**

75. WCT repeats and realleges its allegations in paragraphs 1-74 contained above as though fully set forth herein.

76. Through its conduct set forth above, including failing to adequately support the CPK brand through advertising and flooding the market with CPK product, JAKKS has intentionally inflicted harm upon WCT without any excuse or justification and solely to harm WCT.

77. Through its conduct set forth above, JAKKS has caused WCT to suffer special damages, including direct financial loss, in an amount to be proven at trial, but in no event less than \$20 million.

**PRAYER**

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

- (i) On its First Counterclaim against JAKKS in an amount to be proven at trial, but in no event less than \$20 million;
- (ii) On its Second Counterclaim against JAKKS in an amount to be proven at trial, but in no event less than \$20 million;

- (iii) On its Third Counterclaim against JAKKS in an amount to be proven at trial, but in no event less than \$20 million;
- (iv) For the costs and disbursements of this action; and
- (v) For such other and further relief as this Court deems just and proper.

Dated: New York, New York

October 13, 2015

NORTON ROSE FULBRIGHT US LLP

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## General Information

<b>Court</b>	New York Supreme Court, New York County
<b>Docket Number</b>	159812/2015