

JUDGE CARTER 14 CV 1869

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

IDEA NUOVA, INC.)

Plaintiff,)

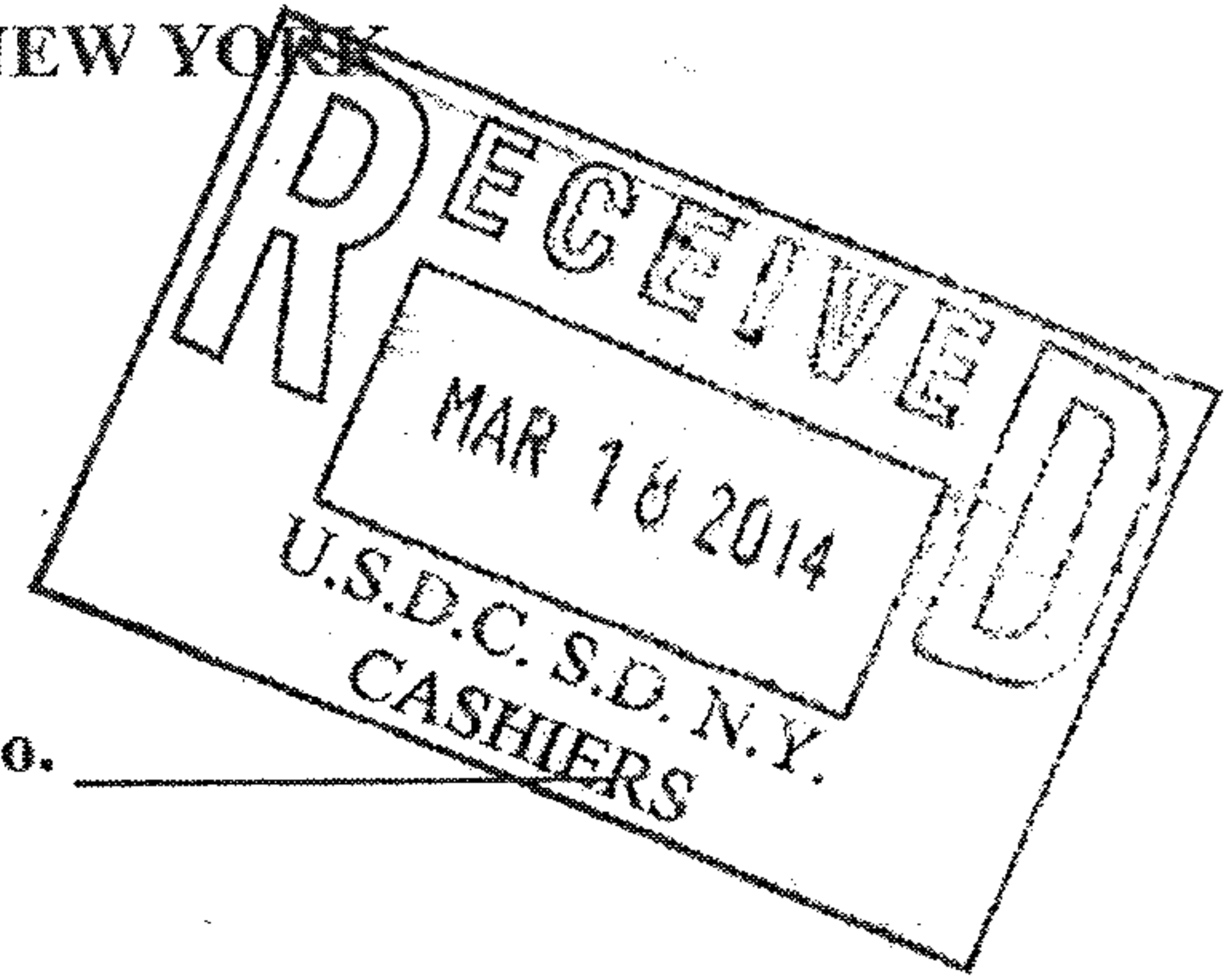
vs.)

TWEEN BRANDS, INC.)
(d/b/a Justice))

Defendant.)

Civil Action No. _____

JURY TRIAL DEMANDED



COMPLAINT

COMES NOW, plaintiff Idea Nuova, Inc. ("Idea Nuova"), by and through its undersigned counsel, and for its complaint against the defendant, Tween Brands, Inc. (d/b/a Justice) ("Tween Brands"), avers as follows:

NATURE OF THE ACTION

1. This is a civil action arising under the laws of the United States, specifically for patent infringement arising under the Patent Laws of the United States, Title 35 of the United States Code, §§ 1 *et seq.*

THE PARTIES

2. Plaintiff Idea Nuova, Inc. is a New York corporation having a principal place of business at 302 Fifth Avenue, New York, New York 10001.

3. Upon information and belief, defendant Tween Brands, Inc. is a Delaware corporation having a principal place of business at 8323 Walton Parkway, New Albany, Ohio 43054.

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Plaintiff,)	
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(d/b/a Justice))	
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Defendant.)	
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JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331-32 and 1338(a).

5. This Court has personal jurisdiction over Tween Brands at least because Tween Brands has substantial, continuing, and on-going contacts with this State and judicial district, and Tween Brands has and continues to sell into this State and judicial district the products at issue in this case to and through its distributor, GMA Accessories, Inc. (“GMA”), which lists 1 East 33rd Street, 9th Floor, New York, New York 10016 as a business address on the products at issue.

6. Venue is proper in this judicial district pursuant to Title 28, U.S.C. §§ 1391(b)-(d) and § 1400(b) in that acts of patent infringement are occurring within this judicial district.

7. Tween Brands is in the business of manufacturing, selling, offering for sale, and importing foldable chairs.

FACTS

8. On August 20, 2009, Benjamin S. Akkad (“the Inventor”), filed U.S. Patent Application No. 12/544,256 (“the ‘256 application”). In August 2009, the Inventors assigned his interest in and to the ‘256 application and all divisionals, continuations, substitutes, renewals, reissues, and reexaminations thereof and any patents that issued therefrom to Idea Nuova, Inc., and this assignment was recorded in the United States Patent and Trademark Office (“USPTO”) on August 20, 2009 at Reel 023121, beginning at Frame 0704.

9. On June 28, 2011, the ‘256 application was issued by the USPTO as U.S. Patent No. 7,967,374 (“the ‘374 patent”) assigned to Idea Nuova, Inc. A copy of the ‘374 patent is attached hereto as Exhibit A and is incorporated by reference as if fully set forth herein.

10. The '374 patent is valid and enforceable. The term of the '374 patent will expire on or about August 20, 2029.

11. The '379 patent discloses and claims various novel and unique features relating to a foldable chair.

12. Plaintiff Idea Nuova is the assignee of all right, title, and interest in and to the '374 patent and possesses all rights of recovery under the '374 patent, including the right to sue for infringement, recourse for damages, and to seek injunctive relief.

13. Beginning in or about 2005, Idea Nuova supplied Tween Brands with foldable chairs that were sold by Tween Brands in its "Justice" stores.

14. In or about 2010, Tween Brands ended the supply relationship with Idea Nuova and, upon information and belief, entered into an agreement with GMA to distribute chairs supplied by GMA.

15. Tween Brands has made, used, manufactured, sold, offered for sale, and/or imported at least a foldable chair ("Infringing Product") in the U.S. A representative photograph of the Tween Brands' Infringing Product is attached to this Complaint as Exhibit B.

16. Tween Brands has neither sought nor obtained a license under the '374 patent and is not authorized or permitted to market, manufacture, use, offer for sale, sell or import the invention claimed in the '374 patent.

17. Since about October 12, 2012, plaintiff Idea Nuova has substantially and continuously marked its foldable chairs with the '374 patent number on a label affixed to the chairs.

COUNT I
INFRINGEMENT OF THE '374 PATENT

18. Plaintiff realleges and incorporates by reference paragraphs 1 through 18 of this Complaint as though fully set forth herein.

19. The '374 patent is presumed valid pursuant to 35 U.S.C. § 282.

20. Upon information and belief, Tween Brands has been and is currently infringing, contributorily infringing and/or inducing others to infringe one or more claims of the '374 patent in the United States, either literally or under the doctrine of equivalents, by making, causing to be made, using, offering for sale, selling and/or importing into the United States, without license or authority, at least the Infringing Product, which is claimed in the 374 patent including, but not limited to, within this judicial district, in violation of 35 U.S.C. § 271.

21. Upon information and belief, Tween Brands has willfully infringed and will continue to willfully infringe upon one or more claims of the '374 patent by the use, manufacture, offer for sale, sale, and/or importation of the Infringing Product unless this Court enjoins Tween Brands' infringing activities.

22. As a result of Tween Brands' infringement of the '374 patent, Plaintiff has been damaged to an extent not yet determined.

23. Plaintiff is entitled to monetary damages adequate to compensate Plaintiff for the infringement of Tween Brands, increased damages under 35 U.S.C. § 284, together with interest, costs, and attorneys fees, and is entitled to enjoin Tween Brands from further infringement of the '374 patent.

JURY DEMAND

Plaintiff hereby demands a jury trial on all issues appropriately triable by jury.

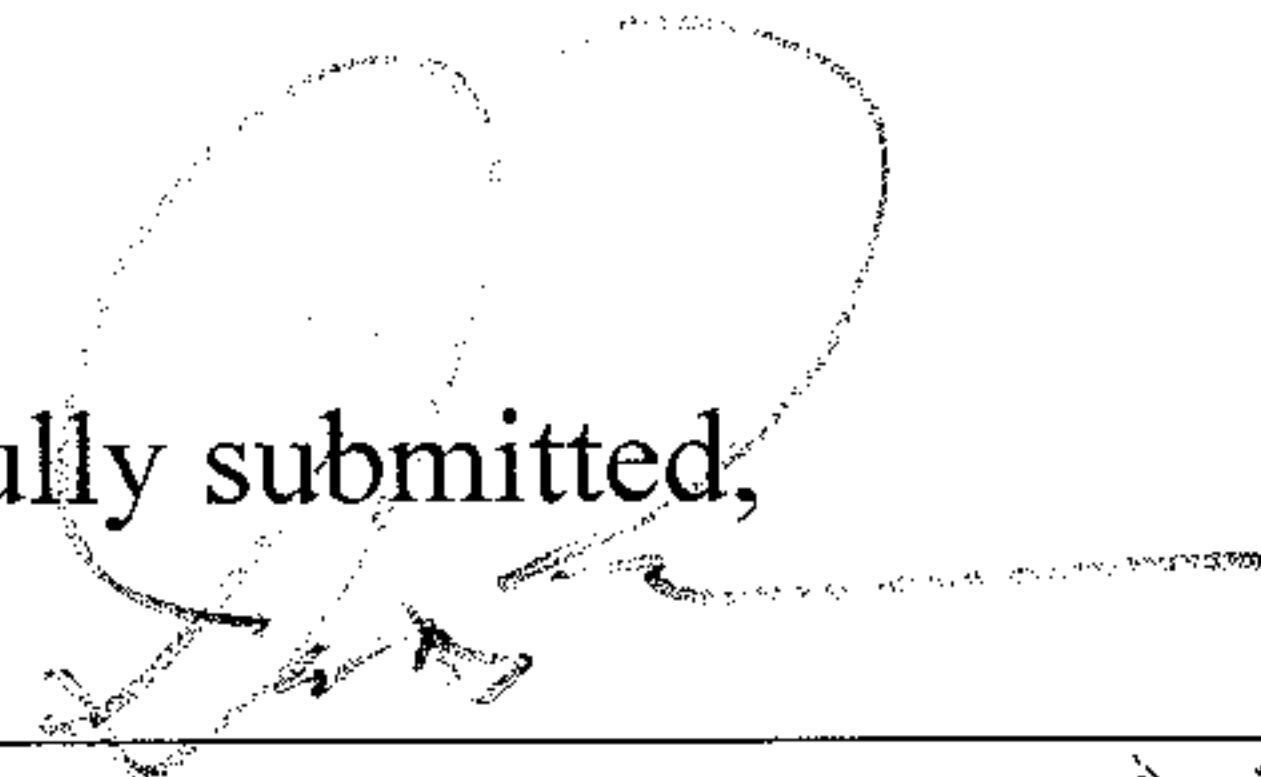
PRAYER FOR RELIEF

WHEREFORE, plaintiff Idea Nuova, Inc. prays for judgment in its favor and against defendant Tween Brands, Inc. and requests that this Court:

- (a) enter a finding and a judgment in favor of plaintiff Idea Nuova and against Tween Brands for patent infringement in an amount to be ascertained and in an amount adequate to compensate plaintiff Idea Nuova for Tween Brands' infringement of one or more claims of the '374 patent, including, but not limited to, Tween Brands' profits, but in no event less than a reasonable royalty for the use made of the invention by Tween Brands together with prejudgment and post-judgment interest and costs as fixed by the Court, as provided by 35 U.S.C. § 284;
- (b) enter a preliminary and permanent injunction against further and continued infringement of the claims of the '374 patent by Tween Brands as provided by 35 U.S.C. § 283;
- (c) declare that this case is exceptional and award plaintiff Idea Nuova its reasonable attorney fees as the prevailing party, as provided by 35 U.S.C. § 285; and
- (d) grant plaintiff Idea Nuova such other and further relief as the Court may deem just and appropriate.

Dated: 3/17, 2014

Respectfully submitted,



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