

**IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
ACTION NO. 1493 OF 2007**

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**BETWEEN**

SILVERLIT TOYS MANUFACTORY LIMITED                      Plaintiff  
(銀輝玩具製品廠有限公司)

and

CHUNG SHUN CHI SIMON 鍾汎致 trading as                      Defendant  
FOR SHUN COMPUTER TECHNOLOGY  
科汎電腦製作

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**STATEMENT OF CLAIM**

(Writ of Summons filed on 10th July 2007)

1. The Plaintiff is a business incorporated with limited liability under the Laws of Hong Kong whose registered office is situate at Units 1701-03, World Trade Centre, 280 Gloucester Road, Causeway Bay, Hong Kong and carrying on business as a designer, manufacturer, distributor and trader of toys, including the Plaintiff's Product.

2. The Defendant is the sole proprietor of a business named For Shun Computer Technology 科汛電腦製作 whose address of place of business is situate at Shop G3, Young City, Ground Floor, Yan On Building, 1 Kwong Wah Street, Mongkok, Kowloon, Hong Kong SAR (hereinafter refer to as “the Defendant’s Premises”) and carrying on business as a distributor and trader of products, including the Defendant’s Product.

### ***The Registered Design***

3. The Plaintiff is the proprietor of the designs registered under the Registered Designs Ordinance, Cap. 522 of Hong Kong in respect of a toy helicopter under the registration number 0503156.8 (hereinafter referred to as “the said Registered Design”).
4. The said Registered Design is and was at all material times valid and subsisting and the privileges and rights in respect thereof have at all material times been protected in Hong Kong.
5. The said Registered Design was first published when the Plaintiff’s toy helicopter manufactured in accordance with the design of the said Registered Design and embedded in the Plaintiff’s toy product named “PicooZ”, model no.

85615 (hereinabove and hereinafter referred to as “the Plaintiff’s Product”) was offered for sale to the public.

***Defendant’s Infringement***

6. Prior to the issue of the Writ herein and subsequent to the issue of the certificate in respect of the said Registered Design, the Defendant has infringed the said Registered Design by the offer and/or exposure for sale and/or possession in the course of trade without the consent or licence of the Plaintiff toy helicopters to which the said Registered Design had been applied or not substantially different therefrom.

PARTICULARS OF INFRINGEMENT

The Plaintiff will rely upon the following facts and matters:-

- (1) From a date unknown to the Plaintiff, but prior to the issue of the Writ herein, the Defendant has offered and/or exposed for sale, sold, possessed and/or exhibited in public for the purpose of trade toy product named “Pocket” (hereinabove and hereinafter referred to as “the Defendant’s Product”).
- (2) Prior to the issue of the Writ herein, the Defendant offered and/or

exposed for sale and sold the Defendant's Product at the Defendant's Premises.

7. At all material times, the Defendant was aware, or had reasonable grounds for believing that the said Registered Design was registered.

#### PARTICULARS OF KNOWLEDGE

- (1) The Plaintiff relies on the matters particularised under previous paragraphs and in particular the striking resemblance between the Defendant's Product and the Plaintiff's Product, as giving rise to an irresistible inference of conscious copying.
- (2) The Plaintiff avers that it would be reasonable for any honest person in the Defendant's position to make the relevant inquiries before doing any of the acts complained of.
- (3) Since the Defendant was at all material times in the business of toys, it would have known of the Plaintiff's Product and their popularity and legal protection for registered designs generally. The Defendant would have had no reason to believe that the said Registered Design was not registered.

- (4) Nowhere on the body of the Defendant's Product does the name of the manufacturer appear.
  - (5) The Plaintiff's Product has been marketed and sold with reference to the said Registered Design.
  - (6) Insofar as necessary, the Plaintiff will rely on its letters before action. Despite repeated demands, the Defendant has failed to reply the Plaintiff at all prior to the issue of the Writ herein.
8. By reason of the Defendant's wrongful acts and/or by reason of its dealings in the Defendant's Product, the Defendant owes a duty to the Plaintiff to assist the Plaintiff by supplying the Plaintiff with full information and particulars relating to the Defendant's Product, all dealings therein and therewith the identities of all other wrongdoers.
  9. Further, by virtue of sections 48 and 49 of the High Court Ordinance, Cap. 4, the Plaintiff is entitled to and claims to recover interest on any amount found to be due to the Plaintiffs at such rate and for such period as this Honourable Court thinks fit.
  10. By reason of the foregoing, the Plaintiff has suffered, and unless the Defendant is

restrained by this Honourable Court, will suffer further loss and damage.

**AND the Plaintiff claims:-**

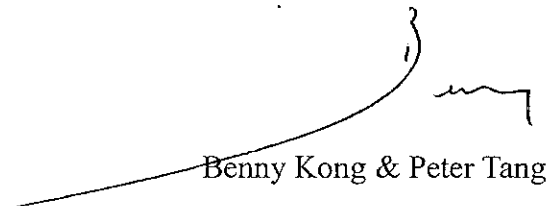
- (1) An injunction to restrain the Defendant whether acting by himself, his partners, employees, servants or agents or any of them or otherwise howsoever from:-
  - (a) infringing the Plaintiff's rights and privileges conferred in the said Registered Design; and
  - (b) directing, procuring, instigating, causing, enabling or assisting others to do any of the aforesaid acts.
  
- (2) An injunction to restrain the Defendant whether acting himself, his partners, employees, servants or agents or any of them or otherwise howsoever from:-
  - (a) selling, offering or exposing for sale, possessing in the course of trade and/or exhibiting and/or distributing in the course of trade the Defendant's Product; and/or
  - (b) directing, procuring, instigating, causing, enabling or assisting others to do any of the aforesaid acts.

- (3) An order for delivery up or destruction upon oath of all goods, documents, tools, dies, casts, moulds, plates silkscreens, photographs, negatives, drawings, packagings, boxes, labels and other articles or materials for the making and/or printing thereof in the possession, custody, power or control of the Defendant, the continue manufacture, retention, use, disposal, sale or supply of which and/or otherwise howsoever dealing in or with which by the Defendant would offend against any of the foregoing injunctions.
  
- (4) Damages or, alternatively, an enquiry as to damages or at the Plaintiff's option an account of profits in respect of the Defendant's act of infringement of the said Registered Design.
  
- (5) An order for discovery on oath by the Defendant of all matters relating to the foregoing.
  
- (6) An order for payment by the Defendant of all sums found due to the Plaintiff upon taking such enquiries and/or accounts together with such interest as this Honourable Court shall deem just.
  
- (7) Costs.

(8) Interests pursuant to Sections 48 and 49 of the High Court Ordinance (Cap. 4).

(9) Further or other relief.

Dated this 23rd day of July 2007



Benny Kong & Peter Tang  
Solicitors for the Plaintiff

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trading as FOR SHUN COMPUTER  
TECHNOLOGY 科汎電腦製作

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**STATEMENT OF CLAIM**

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Filed the 23rd day of July 2007

Served the                      day of July 2007

**江炳滔律師事務所**

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