

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C. 20436**

In the Matter of

CERTAIN SOFT-EDGED TRAMPOLINES
AND COMPONENTS THEREOF

Investigation No. 337-TA-_____

**COMPLAINT UNDER SECTION 337
OF THE TARIFF ACT OF 1930, AS AMENDED**

COMPLAINANTS

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COUNSEL FOR COMPLAINANTS

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PROPOSED RESPONDENT

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LIST OF EXHIBITS

Exhibit Number	Description
1	Certified Copy of U.S. Patent No. 6,319,174
2	Certified Assignment Documents for U.S. Patent No. 6,319,174
3	CONFIDENTIAL: Copy of Springfree's Exclusive License to U.S. Patent No. 6,319,174 and Amendment
4	Photographs of the Vuly Thunder Trampoline
5	Vuly Thunder Trampoline Assembly Manual
6	Claim Charts Demonstrating Infringement of U.S. Patent No. 6,319,174 by the Vuly Thunder
7	CONFIDENTIAL: Declaration of Steven D. Holmes
8	Springfree S155 Jumbo Square Trampoline Assembly Manual
9	Claim Charts Demonstrating Springfree's Technical Domestic Industry with Respect to U.S. Patent No. 6,319,174
10	Print-out of Relevant Webpages from www.aldenpoolsandplay.com Offering the Accused Products for Sale
11	Screen Capture of Webpage at www.trampolinesamerica.com
12	Electronic Copy of June 15, 2013, Article Published by The Australian
13	E-mail Invoice for November 19, 2013, Sale of Vuly Thunder Trampoline and Related E-mail Correspondence

LIST OF APPENDICES

Appendix	Description
A	Certified Copy of the Prosecution History of U.S. Patent No. 6,319,174
B	Patents and Applicable Pages of Technical References Mentioned in the Prosecution History of U.S. Patent No. 6,319,174

I. INTRODUCTION

1.1 Springfree Trampoline, Inc., Springfree Trampoline USA Inc., and Spring Free Limited Partnership (collectively, “Complainants” or “Springfree”) respectfully request that the United States International Trade Commission institute an investigation pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 (“Section 337”).

1.2 Proposed respondent Vuly Trampolines Pty. Ltd. (“Vuly” or “Respondent”) has violated Section 337 by its unlawful and unauthorized importation into the United States, sale for importation, and/or sale within the United States after importation, of certain soft-edged trampolines and components thereof that infringe at least claims 1 and 13 of U.S. Patent No. 6,319,174, titled “Soft-Edged Recreational Trampoline” (“the ’174 patent”).

1.3 A certified copy of the ’174 patent accompanies this Complaint as Exhibit 1. Springfree is the exclusive licensee to the ’174 patent, having licensed all substantive rights thereunder, including the right to enforce the ’174 patent. The exclusive license, as amended, grants Springfree the exclusive right to make, use, offer for sale, sell, and import products that employ or are produced by the practice of the ’174 patent. The exclusive license further grants Springfree the exclusive right to bring suit in its own name based on infringement of the ’174 patent. A certified copy of the recorded assignments of the ’174 patent accompanies this Complaint as Exhibit 2. Springfree’s exclusive license and amendment to the ’174 patent accompanies this Complaint as Confidential Exhibit 3.

1.4 As required by Section 337(a)(2) and defined in Section 337(a)(3), an industry in the United States exists relating to articles protected by the ’174 patent.

1.5 Springfree seeks relief from the Commission in the form of a permanent limited exclusion order, pursuant to Section 337(d), prohibiting entry into the United States respondent’s products that infringe one or more claims of the ’174 patent. Springfree further seeks a

permanent cease and desist order, pursuant to Section 337(f), prohibiting the importation, sale, offer for sale, marketing and/or advertising, distribution, or solicitation of products that infringe the '174 patent.

II. THE PARTIES

2.1 Complainant Springfree Trampoline, Inc. is a corporation organized under the laws of Canada. Springfree Trampoline, Inc. is the exclusive licensee of the '174 patent.

Complainant Spring Free Limited Partnership is a partnership organized under the laws of Canada and has sub-licensed the right to practice the '174 patent from Springfree Trampoline, Inc. Complainant Springfree Trampoline USA Inc. is a corporation organized under the laws of Canada, and is the general partner to Spring Free Limited Partnership. All complainants share a principal place of business at 151 Whitehall Drive, Unit 2, Markham, Ontario L3R 9T1 Canada.

2.2 Springfree is a pioneer in the global market for trampolines. Its innovative soft-edged trampolines are based on the invention of Dr. Keith Alexander of the University of Canterbury in Christchurch, New Zealand, who was inspired to design a new type of trampoline after considering purchasing a trampoline for his own children and discovering their poor track record for safety. Today, Springfree's trampolines are the culmination of over fifteen years of injury prevention research and are sold in fifteen countries.

2.3 On information and belief, respondent Vuly Trampolines Pty. Ltd. is a limited liability company organized under the laws of Australia with its principal place of business located at 95 Ingleston Road, Wakerly, Brisbane, Queensland 4154 Australia.

2.4 On information and belief, Vuly is in the business of designing, manufacturing, distributing, and/or selling trampolines. On information and belief, Vuly sells for importation, imports, and/or sells after importation into the United States certain soft-edged trampolines and components thereof that infringe the '174 patent.

III. THE TECHNOLOGY AND PRODUCTS AT ISSUE

3.1 The technology and products at issue relate to certain soft-edged trampolines and components thereof. Specifically, the trampolines at issue in this proceeding have a novel design in which no hard surfaces or components are situated adjacent to the surface of the trampoline mat. Unlike traditional trampolines in which a hard peripheral metal frame and coiled extension springs are located adjacent to the surface of the trampoline mat, these soft-edged trampolines use a frame and flexible elongated rods located beneath the trampoline mat to allow the user to bounce on the mat. This arrangement prevents the user of the trampoline from inadvertently landing on hard surfaces or components such as a metal frame or springs, reducing the risk of injury to the user.

3.2 Figure 2 of the '174 patent illustrates an exemplary trampoline featuring such a soft-edged design. The trampoline mat (2) is connected to a supporting frame (3) by a plurality of flexible elongated rods (4). In one embodiment, the supporting frame (3) is in turn supported above the ground by a number of legs (8). *See Exhibit 1.*

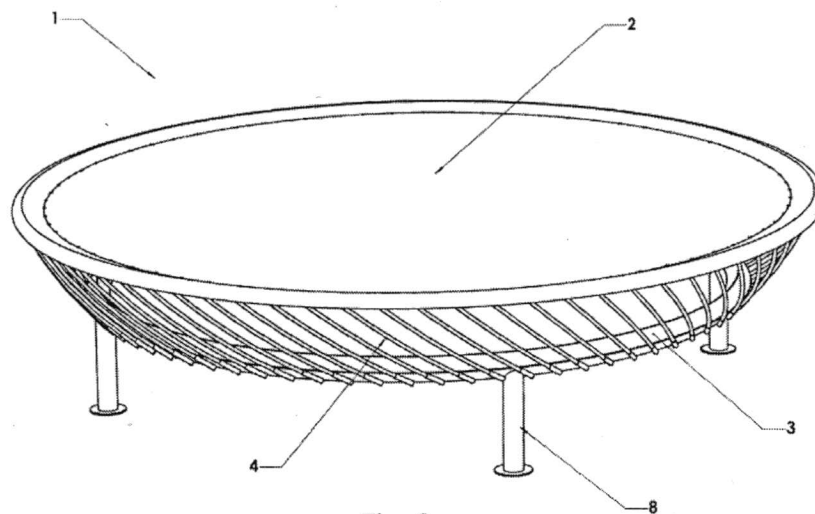


Fig.2

3.3 The accused products are trampolines marketed and sold under the name “Vuly Thunder.” At issue in this investigation is Vuly’s infringement of the ’174 patent. The technology protected by the ’174 patent is described below.

IV. THE ’174 PATENT

A. Identification and Ownership of the ’174 Patent

4.1 The ’174 patent is entitled “Soft-Edged Recreational Trampoline” and issued on November 20, 2001, identifying Keith Vivian Alexander as the inventor. The ’174 patent issued from U.S. Patent Application No. 09/695,829, filed October 26, 2000. A certified copy of the ’174 patent is attached as Exhibit 1.

4.2 The ’174 patent is currently owned, pursuant to valid assignment, by Board & Batten International Inc., which has exclusively licensed all substantive rights thereunder, including the right to enforce the ’174 patent, to Springfree Trampoline, Inc. This exclusive license to enforce the ’174 patent expressly authorizes Springfree Trampoline, Inc. to bring suit in its own name based on infringement of the ’174 patent. Springfree Trampoline, Inc. has sub-licensed the right to practice the ’174 patent to Spring Free Limited Partnership. No other licensees or sub-licensees possess any rights under the ’174 patent. A certified copy of the assignment documents for the ’174 patent is attached as Exhibit 2. Springfree’s exclusive license agreement and amendment with Board & Batten International Inc. is attached as Confidential Exhibit 3.

4.3 Pursuant to Rule 210.12(c) of the Commission’s Rules of Practice and Procedure, this Complaint is accompanied by: (1) a certified copy and three additional copies of the prosecution history of the ’174 patent (Appendix A); and (2) four copies of each patent and applicable pages of each technical reference mentioned in the prosecution history (Appendix B).

B. Non-Technical Description of the Patented Invention¹

4.4 Conventional trampolines incorporate a peripheral exterior metal frame connected horizontally to a flexible mat by a plurality of coiled extension springs. However, such a configuration creates a risk that the user of the trampoline will land on the frame or springs, potentially resulting in personal injury. The innovative trampoline covered by the '174 patent eliminates that risk by using flexible elongated rods to connect the trampoline mat to the frame, which is located below, rather than adjacent to, the mat. When a user jumps on the patented trampoline, the flexible elongated rods flex and then snap back into their original positions, producing the same bouncing effect found in conventional trampolines. Furthermore, because neither the rods nor the frame are situated adjacent to the mat, this design eliminates the risk of the user inadvertently landing on the frame or springs as could occur in the use of a conventional trampoline.

C. Foreign Counterparts to the '174 Patent

4.5 No foreign patents or patent applications corresponding to the '174 patent have been issued, filed, withdrawn, abandoned, rejected, or remain pending.

V. UNLAWFUL AND UNFAIR ACTS OF RESPONDENT

5.1 On information and belief, respondent has engaged in unlawful and unfair acts including the importation into the United States, sale for importation, and/or sale within the United States after importation of products that infringe, literally and/or under the doctrine of equivalents, at least claims 1 and 13 of the '174 patent. Discovery may reveal that respondent's products infringe additional claims of the '174 patent.

5.2 On information and belief, respondent's infringing products include at least its "Thunder" trampolines. Photographs of respondent's Thunder trampoline are attached to this

¹ The content of this Complaint, including the non-technical description of the patented invention, are not intended interpret, nor to be used for the purposes of interpreting, the claims or specification of the '174 patent.

Complaint as Exhibit 4. A copy of the product manual for respondent's Thunder trampolines is attached as Exhibit 5. Claim charts demonstrating how respondent's Thunder trampolines infringe independent claims 1 and 13 of the '174 patent are attached as Exhibit 6. Discovery may reveal additional infringing products.

5.3 On information and belief, respondent and/or others manufacture infringing products abroad, import those products into the United States, sell them for importation into the United States, and/or sell them after importation into the United States.

VI. SPECIFIC INSTANCES OF UNFAIR IMPORTATION AND SALE

6.1 Respondent sells for importation, imports, and/or sells after importation certain trampolines and components thereof that infringe the '174 patent. On information and belief, respondent's accused products are manufactured in abroad and imported into the United States. For example, the back cover of the assembly manual for respondent's "Vuly Thunder" trampoline indicates that the trampolines are made in China. *See* Exhibit 5. Additionally, an article published by The Australian on June 15, 2013 states that respondent has "a factory in Qingdao, China." The article further states that respondent "demonstrated [its] trampoline to the chief executive of giant U[nited]S[tates] chain Toys 'R' Us at the Hong Kong Toy Fair" and that "[t]he resulting deal means [respondent] is exporting to . . . the U[nited]S[tates]." An electronic copy of the article from The Australian, as retrieved from The Australian's website on November 18, 2013, is attached as Exhibit 12. On information and belief, respondent manufactures trampolines that infringe the '174 patent at its Qingdao, China factory and sells for importation, imports, and/or sells after importation into the United States such infringing trampolines.

6.2 Respondent is presently engaged in the sale for importation, importation, and/or sale after importation of products that infringe the '174 patent. For example, respondent is currently offering its accused products for sale at a retail store in Alden, New York called Alden

Pools & Play. On information and belief, respondent has imported at least one infringing trampoline for use as a demonstration unit at Alden Pools & Play, and is importing additional infringing trampolines to fulfill ongoing sales. A print out of relevant pages from the website for Alden Pools & Play, illustrating that the accused products are being offered for sale in the United States as of October 31, 2013, is attached as Exhibit 10.

6.3 Additionally, on November 19, 2013, a representative of Alden Pools & Play confirmed by e-mail a sale of respondent's infringing trampoline. An e-mail invoice and further correspondence documenting the sale is attached as Exhibit 13. Confirming that the accused products are manufactured abroad, the e-mail correspondence indicates that according to the "latest on the shipping schedule" the accused products are expected to arrive at Alden Pools & Play on December 19, 2013, "pending it goes through customs at normal speed." See Exhibit 13. A Vuly Thunder trampoline was then obtained from Alden Pools & Play on December 23, 2013, as shown in Exhibit 4. The trampoline's packaging indicates that it was made in China. See Exhibit 4.

6.4 Additionally, on information and belief, respondent imports accused products into the United States for product demonstrations. On information and belief, respondent has registered the internet domain name www.trampolinesamerica.com for the purpose of selling its accused products in the United States. Respondent's website at that domain prominently advertises its accused products as "coming soon to Toys R Us." Additionally, its "store locator" page indicates that its accused products are being stocked at a Toys R Us location in San Diego, California. A screen capture of respondent's website at www.trampolinesamerica.com, as it appeared on October 31, 2013, is attached as Exhibit 11.

VII. HTSUS CLASSIFICATION OF THE INFRINGING PRODUCTS

7.1 Respondent's infringing products are believed to fall within at least the following headings and subheadings of the Harmonized Tariff Schedule of the United States: HTSUS No. 9503.00.00. This classification is intended for illustration only and is not intended to restrict the scope or type of accused products, or to encompass all HTSUS headings and subheadings under which the accused products may be imported.

VIII. THE DOMESTIC INDUSTRY

8.1 A domestic industry relating to the '174 patent and articles protected by the '174 patent, as defined by 19 U.S.C. §§ 1337(a)(2)-(3), exists in the United States. Although Springfree's domestic industry products are manufactured abroad, Springfree's activities in the United States with respect to those products constitute a domestic industry for the purposes of Section 337. As detailed in Confidential Exhibit 7, Springfree has already made substantial investments in exploiting the technology covered by the '174 patent within the United States, including, for example, investment in physical facilities, labor, and/or capital for the purpose of carrying out service, support, installation, warranty, returns, sales, marketing, repairs, distribution, and warehousing activities within the United States related to products protected by the '174 patent and related accessories. Furthermore, Springfree is presently in the process of expanding these domestic industry activities by opening additional facilities in the United States. In addition to these operations, Springfree maintains an extensive network of dealers throughout the United States which perform domestic industry activities relating to products protected by the '174 patent such as service, support, installation, repairs, warranty, returns, sales, and marketing.

A. Technical Prong

8.2 Springfree's entire business is dedicated to exploiting the technology covered by the '174 patent. Springfree sells several trampolines in different sizes and shapes that practice

the '174 patent. For example, Springfree's S155 Jumbo Square Trampoline practices at least independent claims 1 and 13 of the '174 patent. A copy of the Springfree S155 Jumbo Square Trampoline user manual is attached as Exhibit 8. A claim chart demonstrating that the Springfree S155 Jumbo Square Trampoline practices the '174 patent is attached as Exhibit 9. Aside from trampolines practicing the '174 patent, Springfree's other products are accessories specifically designed and marketed for use with its patented trampolines.

B. Economic Prong

8.3 Springfree conducts significant economic activity in the United States relating to the technology protected by the '174 patent, including service, support, installation, warranty, returns, sales, marketing, repairs, distribution, and warehousing activities relating to products covered by the '174 patent. Springfree has made a significant investment in labor in the United States, having employees who are engaged in domestic industry activities such as the service, support, installation, warranty, returns, sales, marketing, and warehousing of products covered by the '174 patent. Springfree has also made and continues to make significant investment in facilities and equipment in the United States, with facilities in Issaquah, Washington and Plano, Texas that are dedicated to domestic industry activities such as the repair, service, support, installation, sale, and marketing of products protected by the '174 patent. For example, Springfree provides its customers in the United States with local access to telephone support based out of these facilities. Additionally, Springfree dispatches parts and service to customers in the United States from warehouse facilities in New Jersey, Minnesota, Washington, and Texas. Springfree makes substantial investments in labor in the United States to operate its facilities and carry out its support, installation, warranty and returns, and related activities. These domestic industry activities are further described in Confidential Exhibit 7.

8.4 Furthermore, as described in Confidential Exhibit 7, Springfree is presently expanding these domestic industry operations and has made concrete steps toward opening additional facilities in Texas for the purpose of carrying out service, support, installation, warranty, returns, repairs, and sales activities pertaining to products covered by the '174 patent and accessories designed specifically for use with those products. For example, Springfree has signed a lease for space in Frisco, Texas and has a letter of intent for space in the South Lakes, Texas area. Springfree has already made substantial investments in leasehold improvements with respect to these additional facilities.

8.5 In addition to its domestic investments in labor and physical facilities, Springfree has made substantial investments in the development of an exclusive nationwide network of dealers of its trampolines covered by the '174 patent. Springfree's dealers in the United States also carry out significant domestic industry activities on Springfree's behalf, including servicing, support, installation, warranty, returns, sales, marketing, repairs, and distribution activities relating to products protected by the '174 patent. *See Confidential Exhibit 7.*

IX. RELATED LITIGATION

9.1 In August of 2013, the owner of the '174 patent, Board & Batten International Inc., together with Springfree's affiliates in Australia and New Zealand, initiated a complaint in the Federal Court of Australia against several defendants, including the respondent. The complaint, as amended on October 11, 2013, alleges that respondent's accused products infringe a copyright in a design drawing of a product covered by the '174 patent. The complaint further contends that other defendants obtained confidential information relating to products covered by the '174 patent while working for Springfree's Australian affiliate and subsequently disclosed that information to respondent in breach of their contractual and equitable confidentiality

obligations. *See Board & Batten Int'l, Inc. v. Vuly Pty. Ltd.*, NSD 1771/2013 (Federal Court of Australia 2013).

9.2 Additionally, on November 22, 2013, Board & Batten International Inc. filed another complaint against respondent in the Federal Court of Australia alleging that respondent's "Vuly Thunder" trampolines infringe its Australian Innovation Patent Nos. 2012101859, 2013100616, and 2012101860. The asserted patents are not counterparts to the '174 patent. The complaint further alleges that respondent has made false and/or misleading representations regarding the safety and fitness of its "Vuly Thunder" trampolines within the meaning of an Australian consumer protection statute. *See Board & Batten Int'l, Inc. v. Vuly Pty. Ltd.*, NSD 2373/2013 (Federal Court of Australia 2013).

9.3 There has been no other foreign or domestic court or agency litigation involving the '174 patent or the subject matter thereof.

X. REQUESTED RELIEF

10.1 WHEREFORE, by reason of the foregoing, Springfree requests that the United States International Trade Commission:

- (a) Institute an investigation pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, with respect to the respondent's violations of that section as a result of its unlawful importation into the United States, sale for importation, and/or sale within the United States after importation of certain trampolines and components thereof that infringe United States Patent No. 6,319,174;
- (b) Schedule and conduct a hearing on the unlawful acts and, following the hearing, determine that there has been a violation of Section 337;

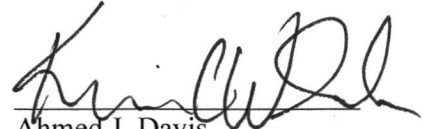
- (c) Issue a permanent limited exclusion order, pursuant to Section 337(d) of the Tariff Act of 1930, as amended, excluding from entry into the United States the respondent's trampolines that infringe one or more claims of United States Patent No. 6,319,174;
- (d) Issue a permanent cease and desist order, pursuant to Section 337(f) of the Tariff Act of 1930, as amended, prohibiting the respondent, its subsidiaries, affiliates, successors, assigns, or agents from importing, marketing, advertising, demonstrating, distributing, selling, offering for sale, using after importation, selling after importation, or otherwise transferring within the United States certain trampolines and components thereof that infringe one or more claims of United States Patent No. 6,319,174; and
- (e) Grant such further relief as the Commission deems just and proper under the law, based on the facts determined by the investigation and the authority of the Commission.

Respectfully submitted,

FISH & RICHARDSON P.C.

Dated: December 24, 2013

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