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**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

LUCKY BREAK WISHBONE
CORPORATION,

Plaintiff,

v.

SEARS ROEBUCK AND CO., a New York
corporation, and YOUNG & RUBICAM, INC.,
a Delaware corporation,

Defendants.

Civil Case No. CV-06-0312Z

**SECOND AMENDED
COMPLAINT FOR COPYRIGHT
INFRINGEMENT**

JURY TRIAL REQUESTED

I. PARTIES

1. Plaintiff, Lucky Break Wishbone Corporation ("Lucky Break Wishbone"), is a Washington corporation with a principal place of business at 4400 S.W. Roxbury Place, Seattle, Washington 98136-2738.

2. Upon information and belief, Defendant, Sears, Roebuck and Co. ("Sears"), is a New York corporation with its principal place of business at 3333 Beverly Road, B-5 317A, Hoffman Estates, Illinois 60179.

3. Upon information and belief, Defendant, Young & Rubicam Inc. ("Y&R"), is a Delaware corporation with its principal place of business at 285 Madison Avenue, New York, New York 10017.

1 Copyright Registration protecting the Lucky Break Wishbone sculpture is attached to this
2 Complaint as **Exhibit A**.

3 11. Plaintiff, Lucky Break Wishbone, is the owner of U.S. Copyright
4 Registration No. VA 1,325,348 by assignment. The Lucky Break Wishbone sculpture was
5 completed in 2004 and first published November 6, 2004, in the United States.

6 12. In connection with Lucky Break Wishbone's copyrighted wishbone
7 sculpture, Lucky Break Wishbone created an original product warning. Lucky Break's
8 original product warning is as follows:

9 This product is not intended for children. It is not a toy. There is a choking
10 hazard. Use under adult supervision only. Dispose of all parts after
breaking. Keep away from eyes.

11 Lucky Break's original product warning was granted copyright protection as
12 reflected in U.S. Copyright Registration TX 6,594,959. A true and accurate copy of this
13 United States Copyright Registration including deposit materials is attached to this
14 complaint as **Exhibit C**.

15 **B. Acts Giving Rise to Defendants' Infringement**

16 13. Defendant Sears is one of the United States' largest retailers, selling a variety
17 of goods and providing a variety of services.

18 14. Defendant Y&R is a major advertising, marketing, and public relations firm
19 specializing in creating and carrying out promotional and marketing events on a variety of
20 scales.

21 15. Y&R had a contract with Sears to create and carry out a promotion, which
22 was to take place at Sears stores across the United States during the week prior to the 2005
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1 Thanksgiving Day Holiday, from Saturday, November 19, 2005, through Wednesday,
2 November 23, 2005 ("the Sears promotion").

3 16. In June 2005, representatives from Y&R contacted Lucky Break Wishbone in
4 connection with the Sears promotion.

5 17. In June 2005, representatives of Y&R purchased a sample of the Lucky
6 Break Wishbone sculpture with the intent to inspect said wishbone sculpture for its
7 suitability for use and distribution in connection with the Sears promotion.

8 18. In June 2005, Lucky Break Wishbone sent several Lucky Break Wishbone
9 sculptures to Y&R by overnight delivery.

10 **C. Defendants' Infringing Activities**

11 19. On information and belief, Y&R sent samples of the Lucky Break Wishbone
12 sculpture to Sears.

13 20. On information and belief, Sears made at least one copy of the Lucky Break
14 Wishbone sculpture and sent the Lucky Break Wishbone sculpture to a third party named
15 Apex Products L.L.C. ("Apex"), with the intent or knowledge that Apex would make a copy
16 of the Lucky Break Wishbone sculpture and use that copy to produce over 1 million plastic
17 wishbones substantially similar or virtually identical to the Lucky Break Wishbone
18 sculpture.

19 21. In response to Sears' instructions or orders, Apex made a copy of the Lucky
20 Break Wishbone sculpture or sent the Lucky Break Wishbone sculpture to a manufacturer
21 who made a copy of the Lucky Break Wishbone sculpture, and used that copy (or copies) to
22 produce at least one million plastic wishbones substantially similar or virtually identical to
23 the Lucky Break Wishbone sculpture.
24

1 22. Both Sears and Y&R knew or should have known of the infringing activities
2 of Apex or its manufacturer.

3 23. Sears distributed over 1 million infringing plastic wishbone sculptures
4 substantially similar or virtually identical to the Lucky Break Wishbone sculpture or created
5 through the use of at least one infringing copy of the Lucky Break Wishbone sculpture.

6 24. On information and belief, Y&R knowingly aided Sears' unauthorized
7 distribution of over 1 million plastic wishbone sculptures substantially similar or virtually
8 identical to the Lucky Break Wishbone sculpture or created through the use of at least one
9 infringing copy of the Lucky Break Wishbone sculpture.

10 25. Y&R and Sears provided a Lucky Break Wishbone sculpture (or a copy
11 thereof) with the intent or knowledge that said Wishbone sculpture would be photographed
12 and incorporated into newspaper promotional materials distributed nationwide in connection
13 with the Sears promotion. A sample of the newspaper promotional materials utilizing a
14 photograph or image of the Lucky Break Wishbone sculpture or a copy thereof is attached to
15 this complaint as **Exhibit B**.

16 26. Defendants were not authorized to make copies of the Lucky Break
17 Wishbone sculpture or to provide the Lucky Break Wishbone sculpture to third parties,
18 knowing or intending those third parties to make copies of the Lucky Break Wishbone
19 sculpture.

20 27. Defendants were not authorized to photograph the Lucky Break Wishbone
21 sculpture or to cause photographs of the Lucky Break Wishbone sculpture to be made, used,
22 or incorporated into advertising or promotional literature for distribution in the Sears
23 promotion.

1 exclusive rights having been perfected by U.S. Copyright Registration No. TX 6,594,959 for
2 Lucky Break Wishbone's product warning.

3
4 **V. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Lucky Break Wishbone prays for the following relief:

5 A. An order entering judgment in favor of Lucky Break Wishbone and awarding
6 damages to Lucky Break Wishbone in the amount of Lucky Break Wishbone's actual
7 damages and any profits of the Defendants attributable to the infringing acts alleged herein,
8 consistent with 17 U.S.C. §§ 504(a)(1) and (b).

9 B. An order entering judgment in favor of Lucky Break Wishbone and enjoining
10 any further acts of infringement of the copyrights in the Lucky Break Wishbone sculpture or
11 in Lucky Break's Product Warning, and further ordering the destruction of all articles used
12 (such as molds or data models) in the acts of infringement, consistent with remedies
13 available under 17 U.S.C. § 503 and 15 U.S.C. § 1118.

14 C. Any other relief the Court deems just and proper.

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16 **VI. JURY DEMAND**

17 Plaintiff Lucky Break Wishbone demands a trial by jury of all issues so triable.
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DATED: November 2, 2007

By s/ Mark P. Walters
David K. Tellekson, WSBA No. 33523
Mark P. Walters, WSBA No. 30819
Paul H. Beattie, WSBA No. 30277
Robert L. Jacobson, WSBA No. 30838
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mwalters@darbylaw.com

Attorneys for Plaintiff Lucky Break Wishbone Corporation

1 **CERTIFICATE OF SERVICE**

2 I, Sharie L. Parks, hereby certify that on November 2, 2007, I caused the foregoing
3 **SECOND AMENDED COMPLAINT FOR COPYRIGHT INFRINGEMENT** to be
4 served on the following parties as indicated below:

<p>5 Marc J. Rachman, Esq. David S. Greenberg, Esq. Davis & Gilbert LLP 1740 Broadway New York, NY 10019 <i>Attorneys for Defendant Sears Roebuck & Co. and Young & Rubicam, Inc.</i></p>	<p>[] By United States Mail [] By Legal Messenger [X] By Electronic CM/ECF [] By Overnight Express Mail [] By Facsimile [] By Email [by agreement of counsel] mrachman@dglaw.com dgreenberg@dglaw.com</p>
<p>10 Richard C. Yarmuth, Esq. Jeremy E. Roller, Esq. Yarmuth Wilsdon Calfo PLLC The IDX Tower 925 Fourth Avenue, Suite 2500 Seattle, WA 98104 <i>(Local Counsel)</i> <i>Attorneys for Defendant Sears Roebuck & Co. and Young & Rubicam, Inc.</i></p>	<p>[] By United States Mail [] By Legal Messenger [X] By Electronic CM/ECF [] By Overnight Express Mail [] By Facsimile [] By Email [by agreement of counsel] yarmuth@yarmuth.com</p>

15 DATED: November 2, 2007

16 s/ Sharie L. Parks
17 For David K. Tellekson, WSBA No. 33523
18 Mark P. Walters, WSBA No. 30819
19 Paul H. Beattie, WSBA No. 30277
20 Robert L. Jacobson, WSBA No. 30838
21 DARBY & DARBY P.C.