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Fire Hazard Recall Prompts Toy Helicopter Patent Suit

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The recall last week of toy helicopters that pose a fire hazard has sparked a copyright infringement suit involving three toy companies and the **Sports Authority** chain.

The Fun2Fly Microcopter, produced by Soft Air USA and sold at Sports Authority and other stores, was recalled Feb. 12 after the company received six reports of the toys catching fire, including one minor injury, the Consumer Product Safety Commission said in a statement. The recall was related to a defect in the rechargeable battery that can cause it to catch fire while charging.

News of the recall came as a surprise to Silverlit Toys and Spin Master Ltd., the toy companies said in a joint lawsuit filed Friday in the U.S. District Court for the Central District of California.

Silverlit and Spin Master produce a toy helicopter that was not subject to the recall, the Air Hogs Havoc Heli, for which they hold several patents.

The publicity surrounding the recall resulted in dozens of calls to Silverlit and Spin Master from customers seeking to return their Havoc Helis or inquire about their safety, the suit states.

Silverlit and Spin Master became aware of the Fun2Fly Microcopter through the calls and decided to sue Soft Air and Sports Authority for infringing on their patents and copyright.

The suit accuses Soft Air and Sports Authority of making and selling "knockoff toy helicopters that are identical to Silverlit's wildly popular Air Hogs Havoc Heli Helicopters" and states that "their illegal conduct has caused substantial damage to Silverlit's and Spin Master's goodwill in the marketplace."

"As creators of original product, we are constantly facing illegal knockoffs being purchased from China by retailers in North America because the knockoffs are cheaper," Spin Master CEO Anton Rabie said in a statement. "The product may look the same, but invariably there are critical differences that consumers should be cautious of."

Although the Havoc Heli was not subject to last week's recall, some of Spin Master's other flying toys have recently been recalled for fire hazards.

The company's Air Hogs RC Skywinder airplane was recalled in 2006 because its rechargeable battery pack could overheat and pose a burn hazard. The CPSC said in a statement that the company had received 15 reports of overheating, including two minor injuries.

Also in 2006, Spin Master's Helix Micro helicopter was recalled due to overheating in its power supply converter. In that case, the company received 11 reports of overheating, including two fires and one report of minor burns, the CPSC said. Both of those toys, like the Fun2Fly Microcopter, are manufactured in China.

In an e-mail message, John S. Steele, president and chief administrative officer of Soft Air, vehemently denied Spin Master's copyright infringement allegations. His company often receives calls from people whose Spin Master products have caught fire, Steele said.

"We plan to fight this suit to the fullest extent of the law," Steele said. "Based on the previous recalls by the CPSC, Spin Master can hardly take the position that we have hurt their reputation."

Representatives of Sports Authority did not respond to a message seeking comment.

At issue in Spin Master's lawsuit against Soft Air are U.S. Patent Numbers D546,269; D552,531; D554,040 (all of which are entitled "helicopter propeller"); and D544,825 ("helicopter propeller rotor").

Silverlit and Spin Master also registered a copyright on a three-dimensional model of the Havoc Heli, the suit states.

According to the suit, Soft Air and Sports Authority were aware of the Havoc Heli when they "willfully embarked on a course of patent and copyright infringement" by making and selling the Fun2Fly Microcopter.

The defendants never sought, and Silverlit and Spin Master never granted, permission to make copies of their helicopter, the suit states.

The suit seeks damages in the form of lost profits or a reasonable royalty, attorneys' fees and court costs. It also asks that the defendants be ordered to pay all costs that Silverlit and Spin Master "will incur to implement a remedial advertising campaign to repair the damage to its goodwill caused by the safety recall."

Silverlit is based in Hong Kong; Spin Master in Toronto; Soft Air in Grapevine, Texas; and Sports Authority in Englewood, Colo.

Greenberg Traurig LLP of Santa Monica, Calif., is representing Spin Master and Silverlit Toys in the case.

The case is Silverlit Toys Manufactory Ltd. and Spin Master Ltd. v. Soft Air USA Inc. and TSA Stores Inc., case number cv08-1053, in U.S. District Court for the Central District of California.

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