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 8 Silverlit Toys Manufactory Ltd. and Spin Master Ltd.

9 **UNITED STATES DISTRICT COURT**
 10 **CENTRAL DISTRICT OF CALIFORNIA**
 11 **SOUTHERN DIVISION**

12 INNOVAGE LLC, a Delaware
 13 corporation,

14 Plaintiffs,

15 vs.

16 SILVERLIT TOYS MANUFACTORY
 17 LTD., a Hong Kong company, and SPIN
 MASTER LTD., a Canadian corporation.

18 Defendants.

CASE NO. SACV07-1334 DOC (ANx)

**PERMANENT INJUNCTION AND
 FINAL JUDGMENT ON CONSENT**

[Complaint Filed: November 13, 2007]
 [Counterclaim Filed: December 3, 2007]
 [Trial: May 20, 2008]

JUDGE: Hon. David O. Carter

19 SILVERLIT TOYS MANUFACTORY
 20 LTD., a Hong Kong company, and SPIN
 21 MASTER LTD., a Canadian corporation,

22 Counterclaimants,

23 vs.

24 INNOVAGE LLC, a Delaware
 25 corporation, and MERCHSOURCE LLC,
 a California limited liability company.

26 Counterclaim-Defendants.

27 **PERMANENT INJUNCTION AND FINAL JUDGMENT ON CONSENT**
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1 Plaintiff and Counterclaim Defendant, Innovage LLC (“Innovage”), Counterclaim
2 Defendant MerchSource LLC (“MerchSource”) (collectively, “Counterclaim
3 Defendants”), and Defendants and Counterclaimants, Silverlit Toys Manufactory Ltd.
4 (“Silverlit”) and Spin Master Ltd. (“Spin Master”) (collectively, “Counterclaimants”),
5 (altogether the “Parties”) stipulate to this Permanent Injunction and Judgment on Consent
6 as follows:

7 **Jurisdiction and Venue**

8 1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, §
9 1338(a), and § 1367(a).

10 2. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(b) and §
11 1400(b).

12 3. This Court has personal jurisdiction over the Parties in connection with the
13 allegations set forth in the Complaint and Counterclaim.

14 **Findings of Fact and Conclusions of Law**

15 4. Silverlit, a Hong Kong company, designs and manufactures toy products
16 including the PicooZ™ and Air Hogs® Havoc Heli™ micro remote controlled toy
17 helicopters.

18 5. Spin Master, a Canadian corporation, owns the Air Hogs® brand of flying
19 toys and is the exclusive North American licensee and distributor of the Air Hogs®
20 Havoc Heli™.

21 6. Innovage LLC is a Delaware corporation with its principal place of business
22 in California.

23 7. MerchSource LLC is a California limited liability company.

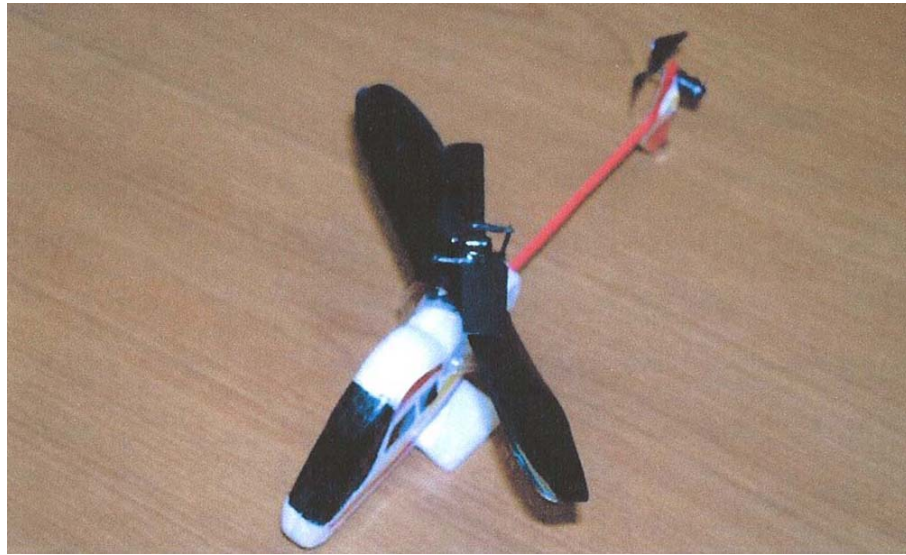
24 8. The Parties agree that Silverlit is the owner of all right, title and interest in
25 the following design patents issued by the United States Patent and Trademark Office:
26 Patent No. D544,825, Patent No. D546,269, Patent No. D552,531, and Patent No.
27 D554,040 (collectively, the “Patents-in-Suit”).

1 9. The Parties agree that Patent Nos. D544,825, D546,269, D552,531, and
2 D554,040 are valid and enforceable.

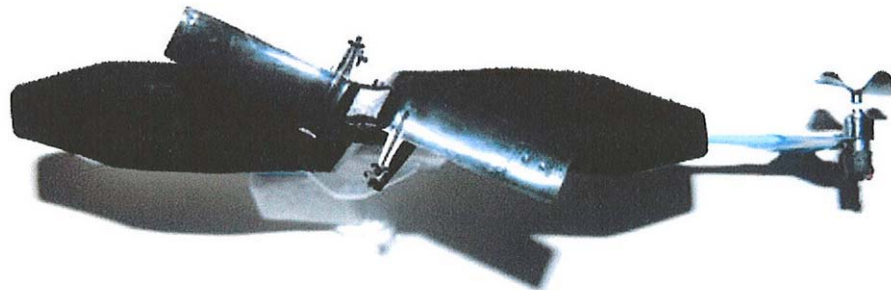
3 10. Innovage has designed, sold, offered for sale, and imported into the United
4 States micro remote controlled toy helicopters known as the Sky Scrambler and Sky
5 Champion which are sold under the Blue Hat Toy Company brand, as well as toy
6 helicopters with designs that are virtually identical to that of the Sky Scrambler which are
7 made and sold under private labels. There are two generations of the Sky Scrambler,
8 Generation One and Generation Two. The overall designs of the Sky Scrambler
9 Generation One, Sky Scrambler Generation Two, Sky Champion, and private label micro
10 helicopters made and offered for sale by Innovage, which included the same primary and
11 auxiliary rotors designs, collectively will be referred to as the "Sky Scrambler".
12 Photographs of the Generation One Sky Scrambler and Generation Two Sky Scrambler
13 are depicted below.

14 Sky Scrambler Generation One





Sky Scrambler Generation Two



1 12. The Parties agree that MerchSource has purchased the Sky Scrambler from
2 Innovage for re-sale in the United States.

3 13. Innovage admits that the Sky Scrambler falls within the scope of the claims
4 of Patent No. D544,825, Patent No. D546,269, Patent No. D552,531, and Patent No.
5 D554,040.

6 14. The Parties agree that there has been no willful conduct on the part of
7 Innovage or MerchSource in connection with the design, manufacture, sale, offer for sale,
8 or importation into the United States of the Sky Scrambler.

9 15. The Parties waive any further findings of fact and conclusions of law and
10 further waive all rights to appeal this Judgment unless material changes are made to this
11 Judgment by the Court.

12 IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

13 1. Innovage, its directors, officers, agents, servants, employees, attorneys, and
14 all persons in active concert or participation with any of them are permanently enjoined
15 and restrained from making, using, selling, offering for sale, distributing, importing into
16 the United States, promoting or marketing the Sky Scrambler or any colorable imitations
17 thereof.

18 2. MerchSource, its directors, officers, agents, servants, employees, attorneys,
19 and all persons in active concert or participation with any of them are permanently
20 enjoined and restrained from selling, offering for sale, distributing, promoting, or
21 marketing the Sky Scrambler or any colorable imitations thereof

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1 3. Innovage shall accumulate and destroy approximately 95,000 units or less of
2 the Sky Scrambler which include a) Innovage's existing inventory of approximately
3 47,000 units; and b) up to but most likely less than approximately 47,000 units currently
4 in Walgreens' inventory, the return of which has been requested (collectively, the
5 "inventory"). Innovage may destroy the inventory in different batches, at different times,
6 and locations as it is accumulated provided that the first destruction takes place within 30
7 days of entry of this Order. Innovage shall provide to Counterclaimants certifications
8 under oath identifying the dates and locations of the destructions and the approximate
9 quantity of inventory destroyed. Innovage shall provide to Counterclaimants ten (10)
10 days prior notice regarding each destruction so that Counterclaimants may have an
11 opportunity to make arrangements at Counterclaimants' own expense to witness and/or
12 document the destruction or to notify Innovage to proceed independently with the
13 destruction. Innovage shall bear the costs associated with the destructions of the
14 inventory.

15 4. Judgment is hereby entered for Silverlit and Spin Master on their First,
16 Second, Third, and Fourth Claims for Relief as set forth in the Amended Counterclaim
17 ("the Silverlit Lawsuit") and against Innovage on its First, Third, Fourth, and Fifth
18 Claims for Relief as set forth in the Complaint ("the Innovage Lawsuit").

19 5. This Court shall retain jurisdiction to interpret, construe and enforce this
20 Permanent Injunction and Final Judgment on Consent and a confidential Settlement
21 Agreement between the Parties.

22 6. The Parties agree that all remaining claims and counterclaims are dismissed
23 with prejudice unless material changes are made to this Judgment by the Court.

24
25 DATED: February 12, 2008



_____ Honorable David O. Carter
United States District Court Judge

1 WE CONSENT TO THE ENTRY OF THE FOREGOING PERMANENT
2 INJUNCTION AND FINAL JUDGMENT ON CONSENT:

3 INNOVAGE LLC

4
5 DATED: February 4, 2008

6 By: _____/S/_____
7 Name: Martin Tenebaum
8 Title: President

9 MERCHSOURCE LLC

10 DATED: February 4, 2008

11 By: _____/S/_____
12 Name: Johann Clapp
13 Title: Partner

14 SILVERLIT TOYS MANUFACTORY LTD.

15 DATED: February 6, 2008

16 By: _____/S/_____
17 Name: Kei Fung "Kevin" Choi
18 Title: President

19 SPIN MASTER LTD.

20 DATED: February 4, 2008

21 By: _____/S/_____
22 Name: Christopher Harrs
23 Title: Vice President and General Counsel

24 APPROVED AS TO FORM:

25 DATED: February 6, 2008

26 GREENBERG TRAUIG, LLP

27 By: _____/S/_____
28 VALERIE W. HO
Attorneys for Defendants and Counterclaimants
Silverlit Toys Manufactory Ltd.
and Spin Master Ltd.

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DATED: February 6, 2008

O'CONNOR CHRISTENSEN & MCLAUGHLIN

By: _____
CRAIG MCLAUGHLIN
Attorneys for Plaintiff and Counterclaim
Defendant Innovage LLC

DATED: February 5, 2008

STETINA BRUNDA GARRED & BRUCKER

By: _____
LOWELL ANDERSON
Attorneys for Counterclaim Defendant
MerchSource LLC

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PERMANENT INJUNCTION AND FINAL JUDGMENT ON CONSENT