

## Client Challenge

### Aggressive Patent Infringement in the Consumer Marketplace of a Toy Product.

ZURU is an award-winning company that designs, develops, manufactures, and markets innovative toys.

TINNUSEnterprises LLC is a product development company. Individual inventor Josh Malone, was the original inventor of Bunch of Balloons. Tinnus licensed Bunch O Balloons to ZURU.

TELEBRANDS is an American direct response (infomercial) company that was founded in 1983 and the original creator of the “As Seen On TV” logo.

Tinnus produced and licensed through ZURU, a toy for filling water balloons covered by two U.S. patents, which it calls “Bunch O Balloons.” Bunch O Balloons is protected by numerous US patents. Before Tinnus/ZURU could get a commercial version to the market, Telebrands copied the product and released an infomercial style blitzing the United States consumer market.

Tinnus and ZURU sued Telebrands, Bulbhead, Inc., Bed Bath & Beyond, Inc. and other retailers for infringement of the ‘282 and ‘749 patents ([click here to see the complaint](#)). During the case Telebrands sought to invalidate both patents by filing for a Post Grant Review (PGR) with the Patent Trial & Appeal Board (PTAB).



## IP Patent Infringement

Related industry: Toys & Gaming



## Our Role

Represented Plaintiffs ZURU Ltd. and Tinnus Enterprises Inc. in Federal Court (PTAB) for Patent Infringement in the Consumer Marketplace of a Toy Product

## Testimonial

“ [Pre-Verdict] ZURU works diligently to bring innovation to market and to stand by its inventors. We are committed to continuously fighting what we believe are knock-off companies like Telebrands who try to undercut inventors and claim innovations as their own. We are confident that the U.S. legal system will help us continue to send this message. Moreover, we are looking forward to an award of enhanced damages above and beyond the \$12,317,500 based on findings of Telebrands’ willful misconduct.”

**Anna Mowbray**  
ZURU | Chief Operating Officer

## Our Approach

### Aggressive Enforcement of Issued Patents through Preliminary Injunction and Trial

Patents give the holder twenty years of exclusivity in the market, to exclude others from making, using, or selling the patented item and thus allowing a successful patent to help a company reap the rewards of inventive genius. While the patent is presumed valid when it is granted, this does not automatically stop competitors from entering the marketplace with a copy-cat infringing product. Generally, the more commercially successful the product, the more likely another company will swoop in and make a market play, risking an infringement lawsuit in an effort to reap commercial reward. Infringing competitors hope that either the original patent owner will not have the funds or ability to pursue a lawsuit, or that the owner will be forced, due to the cost and time involved in patent cases, to settle for minimal compensation. This is where enforcement of a patent rights becomes a very important strategic decision.

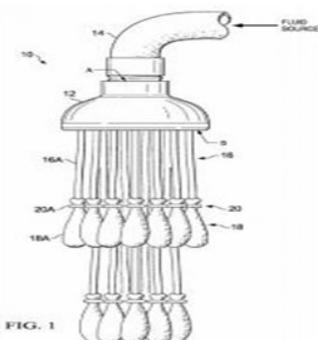
The PTAB is an administrative body that has the ability to review patents in post-patent grant proceedings (PGR). Very often an accused infringer will file for a PGR when accused of infringement in the hopes that the patent asserted against the infringer will be invalidated.

In the instant case, ZURU alleged in its pleadings that before ZURU/Tinnus could get a commercial version of Bunch O Balloons to the market at scale, Telebrands copied the product, and began an aggressive marketing campaign selling the infringing product. Both balloon products attach to a hose and fill multiple water balloons at once by channeling the water into the balloons through a set of hollow tubes. In the face of this opposition, ZURU and Tinnus sued Telebrands for patent infringement. Telebrands in turn filed with the PTAB to invalidate both patents in two separate proceedings.

Specifically, ZURU positioned that Telebrands had willfully infringed on two patents for Bunch O Balloons:

#### U.S. Patent No. 9315282

U.S. Patent No. 9315282, titled System and Method for Filling Containers with Fluids. It covers an apparatus having a housing comprising an inlet and a plurality of outlets to which a plurality of hollow tubes are attached for filling a substantial amount of inflatable containers in a short period of time.



#### U.S. Patent No. 9242749

U.S. Patent No. 9242749, same title as the '82 patent. Claim 1 of this patent, which was upheld as valid in the jury verdict, covers generally the same apparatus and housing with a plurality of hollow tubes extending through a common face of the housing.

## Result and Impact

### DBL Wins the Jury Trial in the Eastern District of Texas Federal Court

The matter at issue involved a preliminary injunction to prevent the distribution of the infringing product (the Telebrands product) from distribution in the marketplace. ZURU/Tinnus, with the help of Dunlap Bennett & Ludwig, prevailed first in the preliminary injunction hearing, and then at a seven-day jury trial in a patent infringement action against Telebrands, subsidiary Bulbhead.com, LLC, and various infringing retail distributors. Additionally, during the case Dunlap Bennett & Ludwig prevailed in both defending the two patents at the PTAB and defending the mandamus action filed by Telebrands with the Federal Circuit alleging the Eastern District of Texas did not have jurisdiction.

A jury verdict in favor of plaintiffs ZURU and Tinnus found that Telebrands Battle Balloon product line, including Balloon Bonanza HD, Battle Balloon Color Burst and Balloon Bonanza willfully infringed U.S. patents 9,315,282 and 9,242,749 covering the ZURU Bunch O Balloons, awarding lost profits and reasonable royalty damages in the amount of \$12,317,500 (click here to see news story) against Telebrands and a number of retailers (Sears, Kroeger, Bed Bath & Beyond and others). Telebrands appealed the PTAB rulings – which found the patents valid, and Dunlap Bennett & Ludwig successfully defended the appeal on brief and in oral argument before the Federal Circuit.

## Doing Better Law.

# Summary

## Our Role

Represented Plaintiffs ZURU Ltd. and Tinnus Enterprises Inc. in Federal Court (PTAB) for Patent Infringement in the Consumer Marketplace of a Toy Product



## Practice Area

IP: Patent Infringement  
Related Industry: Toys & Gaming



Victory with preliminary injunction in the Eastern District of Texas Federal Court, enjoining the sale of the competing product pending the outcome of the trial



Defeated the appeal of the preliminary injunction to the Federal Circuit  
&  
Defeated the mandamus action alleging a jurisdictional fault in the Federal Circuit



Victory in both PTAB trials (Regarding U.S. Patent No. 9315282/U.S. Patent No. 9242749) and decisions before the Federal Circuit



Victory in Multi-day jury trial in the Eastern District of Texas Federal Court resulted in obtaining a \$12.3 million verdict.

## Testimonial

“Tom is the charismatic helmsman of a very talented team of attorneys at Dunlap Bennett Ludwig. He is attentive, knowledgeable over a broad range of IP issues, and (importantly) able to manage legal costs. A clever tactician with the gift of the gab in the courtroom, Tom is absolutely the sort of attorney that you want on your team for contentious IP matters.”

**Nikki Kahn**  
ZURU | IP Manager & In House Counsel