



Lathrop Gage Wins \$13.492 Million Jury Verdict for Munchkin Inc.

July 26, 2012

California jury finds that Playtex deliberately deceived consumers regarding odor control abilities of its Diaper Genie Elite

KANSAS CITY, Mo. (July 26, 2012) -Lathrop Gage LLP today announced that it won a significant jury verdict on behalf of its client, baby products maker Munchkin Inc., in a false advertising dispute with Playtex Products LLC over false and misleading claims that Playtex made regarding the odor-concealing effectiveness of its Diaper Genie Elite diaper pails.

In what has been called a David versus Goliath case, a jury in the U.S. District Court for the Central District of California ruled in favor of Los Angeles-based Munchkin, awarding the company \$13.492 million in damages. The jury found that Playtex's advertising of its Diaper Genie Elite as "Proven #1 In Odor Control" was literally false, and that Playtex deliberately sought to deceive consumers. The jury further found that Playtex's false advertising had deceived a "substantial number of consumers," and that its statements had likely affected consumers' purchasing decisions. In addition, the jury ruled that Playtex had intentionally sought to deceive consumers in advertising that its Pink Pail diaper pail was "#1 Recommended Among 1st Time Moms."

The jury also issued a defense verdict in favor of Munchkin on all of Playtex's counterclaims, finding that Munchkin's advertising claims stating its ARM & HAMMER™ Diaper Pail by Munchkin is "The New #1 in Odor Control—Proven Better at Odor Control than Diaper Genie II and Diaper Genie II Elite in a Laboratory Test" and "Preferred by Moms 2 to 1 over Diaper Genie II in an independent, national in-home study with 100 moms" were neither false nor misleading.

"Playtex deliberately and continuously deceived consumers by making false and misleading claims about the superiority of its products, even though its own internal testing failed to support such claims," said Cameron Garrison (IP Litigation - Kansas City), a partner with Lathrop Gage and co-lead counsel to Munchkin in the case. "We are gratified the jury found that notwithstanding Playtex's size and the large sums of money it devotes to advertising its products, it must still compete fairly in the market."



The Lathrop Gage team included partner David Barnard (IP Litigation - Kansas City) as co-lead counsel with Garrison, and partner Travis McCallon (IP Litigation - Kansas City). All three are based in the firm's Kansas City office. The Lathrop Gage attorneys teamed with Munchkin's in-house counsel Petty Rader in trying the case.

The case is *Munchkin, Inc. v. Playtex Products, LLC*, U.S. District Court for the Central District of California, Case No. 11-0503.

About Lathrop Gage LLP

A full-service law firm, Lathrop Gage LLP has more than 315 attorneys in 11 offices nationwide - from Los Angeles to New York. In 2012, *Chambers USA* ranked Lathrop Gage's corporate, environmental, intellectual property, labor and employment, litigation, real estate and transportation teams among the best in their regions. For more information, visit www.lathropgage.com.