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Maker of Silly Bandz Sues Wal-Mart Over Alleged Knockoffs

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BCP Imports LLC is suing Wal-Mart Stores Inc. for selling products that allegedly infringe its copyright for Silly Bandz, the popular children's elastic bands typically worn as bracelets. Represented by a pair of Toledo, Ohio, law firms, the company has brought suit against Crimzon Rose International LLC, which it claims manufactures the knockoffs, as well as Wal-Mart, which sells them.

MacMillan, Sobanski & Todd and Spengler Nathanson filed the lawsuit, *BCP Imports LLC v. Wal-Mart Stores Inc.*, on Oct. 22 in the Northern District of Ohio. MacMillan Sobanski is BCP's intellectual property counsel and Spengler Nathanson is co-counsel for the case.

The case accuses Wal-Mart and co-defendant Crimzon Rose of selling shaped colored elastic bands that infringe BCP's copyright for Silly Bandz. The company also claims it owns the trademark Silly Bandz. The legal claims also include trade dress infringement, for the packaging, and unfair competition.

Silly Bandz are made in shapes that resemble animals, objects, numbers, and letters.

BCP claims the defendants sell bands packaged under styles that closely mimic its own Princess, Rainforest and Rockbandz styles. A few of the defendants' products are named Princess, Rain Forest and Rocker, for example.

BCP also claims that the defendants substantially copied its packages, which are clear plastic and "pillow-shaped," with a label containing a wave design in the background.

Wal-Mart did not respond to a request for comment. Executives at Crimzon Rose could not be immediately reached for comment.

Richard MacMillan of MacMillan Sobanski said BCP wanted to "include all of the parties that might have some responsibility in the lawsuit." Wal-Mart has indicated that Crimzon Rose is its supplier for the competing product, he added.

"We're still hoping to resolve this through settlement prior to court," MacMillan said.

Bringing in a retailer certainly adds some leverage to the copyright holder's claim, said Craig Smith, a partner at Cambridge, Mass.-based intellectual property boutique Lando & Anastasi, who isn't involved in the case.

"The retailer could be both the largest competitor for the copyright holder and also might represent much deeper pockets than the supplier of the infringing products," Smith said.

In addition, retailers often have contractual agreements with suppliers to indemnify them from any potential infringement claims, he said.

"I would think that there are certain pressures a retailer would put on a supplier [in this kind of case], but I cannot say whether or not adding a retailer to the complaint improves the chances of successfully resolving it," Smith said.