

# Universal City Studios, Inc. v. J.A.R. Sales, Inc.

C.D.Cal. 1982.

October 20, 1982 (Approx. 6 pages)

F.Supp., 1982 WL 1279 (C.D.Cal.), 216 U.S.P.Q. 679, 1982 Copr.L.Dec. P 25,460

United States District Court; C.D. California.

No. 82-4892-AAH (Bx)

Dated October 20, 1982

HAUK, *District Judge*.

## Findings of Fact and Conclusions

### of Law Re Preliminary Injunction

\*1 The Order to Show Cause re plaintiffs' application for issuance of a preliminary injunction came on regularly for hearing before this Court on Friday, October 15, 1982. The Court having considered the application, the oral testimony on October 15, 1982, October 19, 1982 and October 20, 1982, the depositions, declarations, documents, and other evidence filed by the parties in support of and in opposition thereto, having viewed the motion picture "E.T. The Extra-Terrestrial," and having heard argument of counsel, makes the following findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure:

### Findings of Fact

1. This is a civil action brought under the Copyright Act (17 U.S.C. § 1) and the Lanham Act (15 U.S.C. § 1051). The civil action included Counts III and IV, certain pendent State claims which were dismissed without prejudice to being pursued in State court, and which therefore are not at issue in this proceeding. The court has jurisdiction over the subject matter of this civil action pursuant to 28 U.S.C. § 1338. This preliminary injunction proceeding involves plaintiffs' claim that defendants have infringed plaintiffs' copyrights in the motion picture "E.T. The Extra-Terrestrial" and the soft-sculpture dolls in the likeness of the character "E.T." from the motion picture, and plaintiffs' claim that defendants have violated Section 43(a) of the Lanham Act. Plaintiffs are Universal City Studios, Inc. ("Universal"); Merchandising Corporation of America, Inc. ("Merchandising"); and Kamar International, Inc. ("Kamar"). Defendants are J.A.R. Sales, Inc. ("J.A.R."); Jerry Berger ("Berger"); I.C.I. Company; and Toysellers, Inc.

2. Universal is a Delaware corporation having its principal place of business at 100 Universal City Plaza, Universal City, California. It is engaged in the business of producing and distributing feature-length motion pictures. Merchandising is a California corporation having its principal place of business at 100 Universal City Plaza, Universal City, California. It is an affiliate of Universal and licenses companies to exploit commercially the copyrights, trademarks and

characters in the motion pictures and television series produced or distributed by Universal. Kamar is a California corporation with its principal place of business at 23639 Hawthorne Boulevard, Torrance, California. It is a manufacturer and distributor of soft toys and dolls and is a licensee of Universal and Merchandising.

3. J.A.R. is a Nevada corporation doing business in the State of California with its principal place of business located at 17891 Sky Park Circle, Irvine, California. J.A.R. manufactures, imports and sells toys. Berger is president of J.A.R. and is a resident of Santa Monica, California. I.C.I. Company is engaged in business selling toys in Los Angeles, California. Toysellers, Inc. is engaged in business selling toys in Woodland Hills, California.

4. Universal produces and distributes motion pictures and television programs to the public throughout the world. Extra-Terrestrial Productions, Inc. is the author of an original motion picture entitled "E.T. The Extra-Terrestrial" and has assigned to Universal its copyright in that motion picture. Universal owns the copyright in the motion picture, and has received from the U.S. Copyright Office a Certificate of Registration identified as No. PA 140-557, dated June 25, 1982. The motion picture is copyrightable subject matter. Since about May 21, 1982, Universal has exhibited the motion picture with proper notice of copyright throughout the United States to millions of people. The general release of the motion picture occurred in June 1982.

\*2 5. Since its release, "E.T. The Extra-Terrestrial" has become one of the most financially successful and popular motion pictures of all time. As a result of its enormous and extraordinary success, "E.T. The Extra-Terrestrial" and its central character "E.T." have become widely known to the general public and have acquired great and valuable popularity and good will. The character "E.T." has become identified with Universal and its motion picture.

6. Through its licensing agent, Merchandising, Universal has entered into numerous merchandising licenses over the years based upon its property rights in various copyrights, trademarks, service marks and characters, and has developed a large and valuable business in such licensing which has produced substantial income for Universal. Merchandising has granted licenses for the manufacture and sale of a variety of items, including toys, games, and dolls in a variety of materials and sizes using the copyright, trademarks and characters in "E.T. The Extra-Terrestrial".

7. Merchandising has granted to Kamar a license to manufacture and sell softsculpture dolls in the likeness of the character "E.T.". Kamar has, in consequence, produced designs for two dolls, to which it holds its own derivative copyrights (the "Kamar dolls"). Kamar has received from the U.S. Copyright Office Certificates of Registration for the Kamar dolls identified as No. VA 98-928, dated May 3, 1982, and No. VA 98-929, dated May 3, 1982, and is the exclusive owner of said copyrights in the Kamar dolls. Notice of Kamar's copyright and Universal's copyright is affixed to the Kamar dolls. The Kamar dolls were designed and created in about January 1982 and February 1982 on the basis of black-and-white photographs of the motion picture character "E.T.", and were first offered for sale in mid-February, 1982 at the New York Toy Fair. The designs for the Kamar dolls were specifically approved by Universal and Merchandising. The Kamar dolls are protected both as derivative works and as copyrightable subject matter in their own right, including and without limitation new elements added in the transformation of the character "E.T." into three-dimensional form. Kamar currently has sold or has received orders for millions of Kamar dolls worth over \$30,000,000.

8. Defendants are manufacturing, importing, selling, advertising, distributing, marketing, promoting, displaying and offering for sale molded-plastic dolls and softsculpture dolls under the marketing labels “The Visitor from Outer Space” or “The Creature from Outer Space” (the “defendants’ dolls”). The defendants’ dolls were designed and manufactured after Berger had seen the motion picture “E.T. The Extra-Terrestrial.” Defendants have registered the designs with the U.S. Copyright Office (identified as numbers VAu 36-503, dated August 5, 1982, and VA 104-388, dated August 5, 1982) and have filed those registrations with the Commissioner of the U.S. Customs Service. The defendants have actively promoted the sale of the defendants’ dolls, contacting potential buyers throughout the United States and taking orders for millions of dollars worth of merchandise. The defendants have already sold over \$500,000 worth of defendants’ dolls and have taken over \$10,000,000 worth of orders in the United States for defendants’ dolls. The defendants’ activities are without the consent, license or permission of the plaintiffs.

\*3 9. On September 9, 1982, Universal and Merchandising notified defendant J.A.R. that defendants’ dolls were infringing the plaintiffs’ copyrights and trademarks. However, the defendants did not cease and desist but instead continued in their activities.

10. Defendants J.A.R. and Berger have admitted that they had access to Universal’s motion picture “E.T. The Extra-Terrestrial.” Berger viewed the motion picture in mid-June 1982. The defendants also had access to the Kamar dolls. The opportunities available to defendants to view the Kamar dolls included without limitation the New York Toy Fair, where the Kamar dolls were displayed beginning in mid-February, 1982, available for viewing by persons engaged in the toy trade. The Kamar dolls were subsequently shown to buyers throughout the United States and orders were taken before the general release of the motion picture “E.T. The Extra-Terrestrial.” The Kamar dolls also were displayed publicly at the New York Stationery Show in mid-May 1982. Following the motion picture’s general release to the public in June, 1982, Kamar engaged in an extensive advertising, promotional, and marketing campaign. The Kamar dolls were featured in numerous television appearances and newspaper articles, and thousands of photographic brochures depicting the Kamar dolls were mailed to Kamar’s customers and to media representatives throughout the United States. The Kamar dolls were shipped to customers throughout the United States. The Kamar dolls also were prominently displayed in Kamar showrooms, located in 10 cities throughout the United States, including Los Angeles.

11. The idea of the motion picture character “E.T.”, the Kamar dolls, and the defendants’ dolls is substantially similar, *i.e.*, a creature from outer space. Thus, the first prong of the bifurcated substantial similarity test set forth in *Sid & Marty Krofft Television Productions, Inc. v. McDonald’s Corp., et al.*, 562 F.2d 1157, 1164 (9th Cir. 1977), has been satisfied.

12. The character “E.T.” in the motion picture “E.T. The Extra-Terrestrial” contains unique elements of expression and is protectible under the Copyright Act. *Walt Disney Productions v. Air Pirates*, 581 F.2d 751, 755 (9th Cir. 1978). The expression of the idea of the character “E.T.” in the motion picture “E.T. The Extra-Terrestrial”, the Kamar dolls, and the defendants’ dolls is substantially similar under the intrinsic “ordinary observer” test of *Krofft*, 562 F.2d at 1164. In addition, the total concept and feel of defendants’ dolls is the same as the character “E.T.” in the copyrighted motion picture and as the copyrighted Kamar dolls. *Roth Greeting Cards v. United Card Company*, 429 F.2d 1106, 1110 (9th Cir. 1970).

13. The defendants' molded-plastic doll is substantially similar to the physical expression of the motion picture character "E.T." in that the defendants' doll replicates "E.T."s oddly-shaped head and facial features, squat torso, long thin arms, and hunched-over posture. The doll imitates "E.T."s wrinkled skin, blue eyes, and characteristic hand gesture, *i.e.*, a finger outstretched toward the sky. The doll has a red spot on its chest, imitating "E.T."s "heart light" which is a distinctive physical characteristic of "E.T." that plays an important function in the motion picture's story. The defendants' molded-plastic doll and the motion picture character "E.T." also portray the same mood of loveliness.

\*4 14. The defendants' soft-sculpture doll is substantially similar to the motion picture character "E.T.". The doll features the oddly shaped head, elongated neck, squat torso, long thin arms, and hunched-over posture of "E.T.". The defendants' doll has the distinctive shape and posture of "E.T." as well as "E.T."s disproportionately large head, flat face, wide mouth, pug nose, knobby forehead, and large blue eyes. The defendants' soft-sculpture doll and the motion picture character "E.T." also portray the same mood of loveliness.

15. The defendants' soft-sculpture doll is substantially and strikingly similar to the Kamar dolls. As with the character "E.T.", the defendants' doll imitates the Kamar dolls' large head, somewhat flat face, elongated neck, long thin arms, squat torso, and short legs. Defendants' doll and the Kamar dolls have very large eyes with large pupils, a pug nose, a knobby forehead created by material gathered along the seams, and a smile made of thread riveted into place at two points underneath the chin. The patterns of the defendants' doll and the Kamar dolls are virtually identical, as is the soft brown vinyl skin, the hunched-over posture, and the construction and seaming.

16. Defendants J.A.R. and Berger admitted that they originally began marketing the defendants' dolls using the name "I.T.". The defendants' use of a name so similar to the name "E.T." is evidence of their intent to copy both the idea and the expression of that idea in plaintiffs' work and not just the general idea of a creature from outer space. *Walt Disney Productions v. Air Pirates*, 345 F.Supp. 108, 110 (N.D. Cal. 1972), *aff'd.*, 581 F.2d 751 (9th Cir. 1978).

17. There is a significant likelihood that a jury, applying the intrinsic "ordinary observer" test, would find the defendants' dolls to be substantially similar to the protectible expression of the character "E.T." in the motion picture "E.T. The Extra-Terrestrial" and the soft-sculpture dolls produced under license by Kamar. That is, there is a significant likelihood that a jury would find that defendants' dolls were taken from the motion picture and the Kamar dolls.

18. The defendants' dolls were copied from the character "E.T." in the motion picture "E.T. The Extra-Terrestrial" and the Kamar dolls and constitute a reproduction of the protectible expression of the general ideas in the plaintiffs' works.

19. There is a probability and a likelihood that the plaintiffs will succeed at trial on the merits of their copyright infringement claims.

20. For the purposes of section 43(a) of the Lanham Act, the "trademark" at issue is the physical appearance of the character "E.T.", and is protectible subject matter. *Warner Bros., Inc. v. Gay Toys*, 658 F.2d 76 (2d Cir. 1981). Because of the character "E.T."s notoriety and highly original appearance, it is a strong mark.

21. The physical appearance of the character “E.T.” has acquired “secondary meaning” and is understood by the public as meaning and referring to Universal and the motion picture “E.T. The Extra-Terrestrial,” and as having some connection with or sponsorship by Universal and the motion picture.

\*5 22. It is common practice in the entertainment industry to exploit commercially the popularity of well-known motion picture and television personalities and characters in connection with a wide range of merchandise, and the public has come to expect such exploitation. The motion picture “E.T. The Extra-Terrestrial” and the Kamar dolls are closely related to each other as a matter of entertainment industry practice and public expectations. Kamar’s marketing activities relating to the sale of the Kamar dolls, including all trademark rights and goodwill resulting from those activities, accrue to the benefit of Universal pursuant to the license agreement between Merchandising and Kamar.

23. As discussed in paragraphs 13 and 14, *supra*, the defendants’ dolls are substantially similar to the motion picture character “E.T.”, who has come to symbolize both Universal and the motion picture “E.T. The Extra-Terrestrial”.

24. The marketing channels used by Kamar and the defendants are similar. Defendants’ dolls and the Kamar dolls are being marketed to the public through the same types of retail stores.

25. The buying public for the defendants’ dolls includes children making purchases for themselves and adults purchasing the product for themselves or at the request of a child. Any and all of these purchasers are unlikely to exercise care as to the source and sponsorship of the dolls. Indeed, they are likely to make quick purchases based on a visual impression that the dolls are representations of the motion picture character “E.T.” and to assume that the dolls are authorized or made by Universal.

26. The original marketing name “I.T.” selected by defendants and the choice of doll designs that looks substantially like Universal’s motion picture character “E.T.” are evidence both of defendants’ intent to manufacture and market products that would be mistaken and purchased as Universal’s authorized products, and of defendants’ intent to take advantage of Universal’s goodwill, good name, and good reputation.

27. The buying public is likely to be confused as to the source and/or sponsorship of the defendants’ dolls. Because the defendants’ dolls so strongly resemble the character “E.T.”, consumers are likely to believe that the defendants’ dolls are either connected with or sponsored by Universal.

28. There is a probability and a likelihood that the plaintiffs will succeed at trial on the merits of their Lanham Act section 43(a) claim.

29. Unless restrained, defendants’ activities will irreparably injure and damage the plaintiffs. For example, and without limitation, defendants’ activities will adversely affect the business reputation and goodwill of the plaintiffs and the plaintiffs’ ability to control the market for their works. Universal will be hurt in its efforts to produce and distribute future motion pictures if it is unable to fully protect its copyright and Lanham Act rights. Merchandising will suffer serious damage to its reputation with potential licensees of other types of merchandise bearing the name and likeness of “E.T.” as well as the names and likenesses of other well-known characters, actors, and actresses from other Universal productions. Kamar is experiencing difficulties

obtaining the material to produce the Kamar dolls since J.A.R.'s suppliers and manufacturers are purchasing the same material. Kamar's relations with its customers and sales representatives will be irreparably harmed if Kamar is unable to protect itself against cheaply made replicas of the Kamar dolls. The plaintiffs' control over the quality and presentation of their products will be destroyed, and the market thrown into confusion by the potential flood of defendants' dolls. The plaintiffs are threatened with millions of lost sales.

\*6 30. Having established a *prima facie* case of copyright infringement, the plaintiffs also may be presumed to suffer irreparable harm when their rights to the exclusive use of their copyrighted works are invaded, as they have been by defendants.

31. Having made a strong showing on the merits of their trademark infringement claim, irreparable harm to plaintiffs may be inferred from the likelihood of confusion and the well-known difficulty of proving the amount of damages from lost sales, damaged reputation, and loss of uniqueness of the mark. *Helene Curtis Industries, Inc. v. Church & Dwight Co.*, 560 F.2d 1325 (7th Cir. 1977), *cert. denied* 434 U.S. 1070 (1978); *Omega Importing Corp. v. Petri-Kine Camera Co.*, 451 F.2d 1190, 1195 (2d Cir. 1971).

32. The balance of hardships tips sharply in favor of plaintiffs and the public, and against defendants, in connection with plaintiffs' request for the issuance of a preliminary injunction.

33. Defendants were at all times on notice of plaintiffs' copyrights and plaintiffs' intention to enforce their copyrights.

34. The plaintiffs did not conduct themselves in a way to mislead defendants.

35. The plaintiffs acted to enforce their rights in a timely fashion.

36. Defendants have not been prejudiced by the plaintiffs' conduct.

Any Finding of Fact herein which may be deemed a Conclusion of Law is hereby adopted as a Conclusion of Law. To the extent that any of the following Conclusions of Law are deemed to be Findings of Fact, they are incorporated in these Findings of Fact as though set forth in full herein.

## Conclusions of Law

1. The Court has jurisdiction over the entire subject matter of this civil action and over plaintiffs and defendants pursuant to 15 U.S.C. Section 1121 and 28 U.S.C. Section 1338.

2. The defendants, and each of them, are within the territorial jurisdiction of the Court, in that each of them resides or transacts business within this district. All of the defendants have appeared in the action through counsel.

3. Universal is the exclusive holder of all copyrights in the motion picture "E.T. The Extra-Terrestrial." Kamar is the exclusive holder of the copyrights to the designs of the Kamar dolls, which are derivative works based on the motion picture "E.T. The Extra-Terrestrial."

4. Defendants had access both to the motion picture "E.T. The Extra-Terrestrial" and to the Kamar dolls. Defendants' access to the Kamar dolls also is established by the striking similarity between the Kamar dolls and the defendants' dolls. *De Acosta v. Brown*, 146 F.2d 408 (2d Cir. 1944).

5. As an element of the copyrighted motion picture “E.T. The Extra-Terrestrial,” the character “E.T.” is protected subject matter. Protection extends to expressions of that character not only in motion pictures, but in other media as well, including three-dimensional expressions such as dolls and other forms of sculpture.

6. Under the “extrinsic test” set forth in *Krofft*, 562 F.2d at 1164, the idea of the character “E.T.” from the motion picture “E.T. The Extra-Terrestrial”, of the Kamar dolls, and of the defendants’ dolls is substantially similar.

\*7 7. An “ordinary observer” would find the motion picture character “E.T.” and the defendants’ dolls to be substantially similar in both expression and idea. *Krofft*, 562 F.2d at 1164. The “essential characteristics” of the character “E.T.” are reproduced in both the defendants’ dolls. *Fleischer Studios, Inc. v. Ralph A. Freundlich, Inc.*, 73 F.2d 276, 278 (2d Cir. 1934), *cert. denied*, 294 U.S. 717 (1935).

8. An “ordinary observer” would find the Kamar dolls and the defendants’ softsculpture doll to be substantially similar in both expression and idea. *Krofft*, 562 F.2d at 1164.

9. There is a probability and a likelihood that the plaintiffs will succeed at trial on the merits of their claims that the defendants’ dolls infringe plaintiffs’ registered copyrights in the motion picture and the Kamar dolls. In this determination, the court has considered all defenses and arguments raised by defendants.

10. In view of the extraordinary success and popularity of the motion picture “E.T. The Extra-Terrestrial”, the extensive merchandising campaign to promote licensed “E.T.” products, including toys and dolls, and the substantial similarity in appearance between the character “E.T.” and the defendants’ dolls, there is a likelihood of confusion as to source and/or sponsorship of the defendants’ dolls. *Warner Bros., Inc. v. Gay Toys*, 658 F.2d 76 (2nd Cir. 1981).

11. There is a probability and a likelihood that Universal and Merchandising will succeed at trial on the merits of their claim under Section 43(a) of the Lanham Act, regarding the likelihood of confusion as to source and/or sponsorship of the defendants’ dolls. In this determination, the court has considered all defenses and arguments raised by defendants.

12. The plaintiffs have suffered and will continue to suffer irreparable harm, and will not have an adequate remedy at law, if the Court does not issue the preliminary injunction sought by plaintiffs.

13. In addition, the plaintiffs have made a prima facie showing of copyright infringement, and therefore irreparable injury may be presumed. *Walt Disney Productions v. Air Pirates*, 345 F.Supp. 108 (N.D. Cal.), *aff’d.*, 581 F.2d 751 (9th Cir. 1978). Defendants have failed to rebut the presumption of irreparable injury arising from their infringement of plaintiff’s copyrights.

14. Plaintiffs also have made a strong showing on the merits of their trademark infringement claim, and therefore irreparable injury may be inferred from the likelihood of confusion. *Helene Curtis Industries, Inc. v. Church & Dwight Co.*, 560 F.2d 1325 (7th Cir. 1977), *cert. denied* 434 U.S. 1070 (1978); *Omega Importing Corp. v. Petri-Kine Camera Co.*, 451 F.2d 1190, 1195 (2d Cir. 1971).

15. The balance of hardships and equities tips sharply in favor of the plaintiffs and the public, and against defendants, in connection with plaintiffs’ request for a preliminary injunction.

16. The plaintiffs have raised serious questions in this action.

17. The plaintiffs are not barred from obtaining preliminary injunctive relief by the doctrine of laches.

\*8 18. The plaintiffs are not barred from obtaining preliminary injunctive relief by the doctrine of unclean hands.

19. Issuance of a preliminary injunction is within the Court's discretion and is recognized as an appropriate remedy in both Copyright Act and Lanham Act actions. *See, e.g.*, 17 U.S.C. Section 502(a); *Warner Bros., Inc. v. Gay Toys*, 658 F.2d 76, 79 (2d Cir. 1981); *Miss Universe, Inc. v. Flescher*, 433 F.Supp. 271 (C.D. Cal. 1977); *Disney v. Air Pirates, supra*. The Court does not find in the facts and law relevant to this action any "doubtful and difficult questions of law or disputed questions of fact" that would encourage the Court to refrain from granting a preliminary injunction. *Dymo Industries, Inc. v. Tapeprinter, Inc.*, 326 F.2d 141, 143 (9th Cir. 1964).

20. The plaintiffs have been irreparably harmed by the activities of defendants, and the harm cannot be adequately calculated or compensated in money damages. The reasons include, but are not limited to, the adverse effects on plaintiffs' marketing strategy, business relationships and goodwill, and relations with the public.

21. The plaintiffs have complied in all respects with Rule 65 of the Federal Rules of Civil Procedure in moving for this preliminary injunction, the issuance of which has been conditioned upon the posting of a \$500,000 bond by the plaintiffs.

22. Plaintiffs are entitled to a preliminary injunction during the pendency of this action restraining and enjoining defendants and all their representatives, agents, servants, employees, officers, directors, partners, attorneys, subsidiaries, and all persons under their control or acting in active concert or participation with them, from manufacturing, selling, advertising, distributing, marketing, promoting, licensing, displaying, importing, exporting, transporting through interstate commerce, or offering for sale any toys (including without limitation stuffed dolls, molded dolls or other merchandise) bearing the name "E.T." or "I.T." or bearing or in the likeness of any of the characters in the motion picture "E.T. The Extra-Terrestrial"; including but not limited to that motion picture and those items resembling or made according to the motion picture character "E.T." and designs registered with the U.S. Copyright Office under numbers PA 140-557, VA 98-928, VA 98-929, VAu 36-503, and VA 104-388.

23. Defendants should be required forthwith to deliver to Universal to be impounded under trust during the pendency of this action all toys (including without limitations stuffed dolls, molded dolls or other merchandise) bearing the name "E.T." or "I.T." or bearing or in the likeness of any of the characters in the motion picture "E.T. The Extra-Terrestrial", including but not be limited to those items resembling or made according to the aforesaid designs so registered with the U.S. Copyright Office.

24. Defendants J.A.R. and Berger should be required to inform the Commissioner of the U.S. Customs Service immediately in writing that J.A.R. Sales, Inc. applied for copyright registrations Nos. VAu 36-503 and VA 104-388 and recorded those registrations with the U.S. Customs Service without authorization or approval of plaintiffs.



\*9 To the extent that any of the Findings of Fact set forth above are deemed to be Conclusions of Law, they are incorporated in these Conclusions of Law as though set forth in full herein.

Let judgment be entered accordingly.

Dated: October 28, 1982, *nunc pro tunc* as of the date of filing the preliminary injunction, 10/20/82.

## **Preliminary Injunction Order**

On October 15, 1982, this matter came on for hearing on the Court's order to show cause re the request for issuance of a preliminary injunction filed herein by plaintiffs Universal City Studios, Inc., a Delaware corporation, Merchandising Corporation of America, Inc., a California corporation and Kamar International, Inc., a California corporation. The matter having been fully briefed and argued and the Court being fully advised in the premises, the Court finds that plaintiffs will suffer irreparable injury unless a preliminary injunction issues, that plaintiffs have demonstrated a probability and a likelihood of success on the merits of their copyright infringement and Lanham Act claims at trial, that plaintiffs have raised serious questions and that the balance of hardships tips sharply in plaintiffs' favor. The Court having made its Findings of Fact and Conclusions of Law, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, in accordance with Rule 65 of the Federal Rules of Civil Procedure, defendants J.A.R. Sales, Inc., Jerry Berger, I.C.I. Company and Toysellers, Inc. and all of their representatives, agents, servants, employees, officers, directors, partners, attorneys, subsidiaries, and all persons under their control or acting in active concert or participation with them, are restrained and enjoined during the pendency of this matter from manufacturing, selling, advertising, distributing, marketing, promoting, licensing, displaying, importing, exporting, transporting through interstate commerce, or offering for sale any toys (including without limitation stuffed dolls, molded dolls or other merchandise) bearing the name "E.T." or "I.T.", or bearing or in the likeness of any of the characters in the motion picture "E.T." The Extra-Terrestrial"; including but not be limited to that motion picture and those items resembling or made according to the motion picture and designs registered with the U.S. Copyright Office under numbers PA 140-557, VA 98-928, VA 98-929, VAu 36-503 and VA 104-388.

IT IS FURTHER ORDERED that defendants J.A.R. Sales, Inc., Jerry Berger, I.C.I. Company and Toysellers, Inc. and of their representatives, agents, servants, employees, officers, directors, partners, attorneys, subsidiaries, and all persons under their control or acting in active concert or participation with them forthwith deliver to Mr. John Nuances, 100 Universal Plaza, Universal City, California 91608, to be impounded under trust during the pendency of this action all toys (including without limitation stuffed dolls, molded dolls or other merchandise) bearing the name "E.T." or "I.T." or bearing or in the likeness of any of the characters in the motion picture "E.T. The Extra-Terrestrial", including but not limited to those items resembling or made according to the aforesaid designs so registered with the U.S. Copyright Office.

\*10 IT IS FURTHER ORDERED that defendants J.A.R. Sales Inc. and Jerry Berger shall inform the Commissioner of the U.S. Customs Service immediately in writing that J.A.R. Sales Inc.

applied for copyright registrations Nos. VAu 36-503 and VA 104-388 and recorded those registrations with the U.S. Customs Service without authorization or approval of plaintiffs.

IT IS FURTHER ORDERED that a bond in the amount of \$100,000.00 be filed by plaintiffs herein as security for issuance of this Preliminary Injunction.

C.D.Cal. 1982.