

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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SPHERO, INC.,	:	
	:	
Plaintiff,	:	Case No.: 17-cv-5428
	:	
- against -	:	
	:	<b>JURY TRIAL DEMANDED</b>
	:	
SPIN MASTER LTD. and	:	
SPIN MASTER INC.,	:	
	:	
Defendants.	:	
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**COMPLAINT**

Plaintiff Sphero, Inc. (“Sphero”) brings this action for patent infringement against defendant Spin Master Ltd. and Spin Master Inc. (collectively, “Spin Master”), and on information and belief alleges as follows:

**NATURE OF THE ACTION**

1. Colorado-based robotics start-up Sphero is the world’s leading innovator and manufacturer of user-controlled, self-propelled robotic spheres, which it has developed, marketed, and sold since 2011.<sup>1</sup> After years of dedicated effort to expand its product line and introduce its robotics into consumers’ homes and classrooms, Sphero reached its breakout moment through the launch of its Star Wars themed BB-8 robot in connection with the 2015 movie release of Star Wars *Episode VII: The Force Awakens*.

2. In April 2014, Sphero realized that it could couple a magnetic accessory to its

<sup>1</sup> Sphero was initially known as GearBox, Inc. and then Orbotix, Inc. Unless otherwise indicated, this complaint will use “Sphero” to refer to both Sphero and its predecessors interchangeably, depending on the relevant date. The company’s name was changed from Orbotix to Sphero in June 2015.

robotic sphere, which would ride on top of the ball as it rolled. Just months later, Sphero spoke with the creators of Star Wars concerning the heroic droid being featured in its then-upcoming Star Wars movie, *The Force Awakens*. This droid, “BB-8,” has a spherical body with a head that appears to float above its body as it rolls. After seeing the first images of BB-8, Sphero recognized that its technology was uniquely suited to bring BB-8 to life as an authentic and highly-functioning robot to be enjoyed by Star Wars fans of all ages. Sphero’s BB-8 achieved this objective, instantly garnering countless positive reviews from the media and grabbing the attention of moviegoers and Star Wars enthusiasts throughout the world.

3. Spin Master is a Toronto-based multinational toy and game manufacturer. Its product line is diverse and features numerous successful toy brands, such as Air Hogs®, Paw Patrol® and Hatchimals®.

4. Spin Master seeks to exploit Sphero’s success by launching a competing BB-8 robot, just as the retail market and moviegoers ready themselves for the much anticipated blockbuster release of the next new Star Wars movie, *Episode VIII: The Last Jedi*, which is set to hit theatres on December 15, 2017. As shown in the movie trailers for *The Last Jedi*, BB-8 will be a central character in the upcoming movie.

5. Spin Master’s BB-8 utilizes Sphero’s patented technology to replicate BB-8’s core characteristics and movements. Both Spin Master’s and Sphero’s BB-8 products consist of a spherical ball body which houses an internal drive system and a mechanism that magnetically couples BB-8’s head to its body. These technologies are critical for creating the appearance that BB-8’s head is floating above its spherical body.

6. Sphero has commenced this action in an attempt to ensure that its strategic path to becoming a household name in the consumer electronics market is not usurped by Spin Master

through Spin Master's unauthorized use of Sphero's patented technologies. This action is necessary to ensure that this revolutionary new toy is properly attributed to Sphero, and that Sphero is able to fully realize the return its patented innovation warrants.

### **THE PARTIES**

7. Plaintiff Sphero, Inc. is a corporation organized and existing under the laws of Delaware, with its principal place of business at 4772 Walnut Street, Suite 206, Boulder, Colorado 80301.

8. Defendant Spin Master Ltd. is a Canadian corporation, which purports to have its principal place of business at 450 Front Street West, Toronto, Ontario MSV 1B6 Canada and/or 121 Bloor St E, Toronto, ON M4W 1A9, Canada.

9. Defendant Spin Master Inc. is a Delaware corporation, which purports to have a principal place of business at 200 5th Avenue, New York, New York 10010. Spin Master Inc. is believed to be a wholly owned subsidiary of Spin Master Ltd.

### **JURISDICTION AND VENUE**

10. This action arises under the patent laws of the United States, 35 U.S.C. § 1, *et seq.*

11. This Court has original jurisdiction over this patent infringement action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

12. This Court has personal jurisdiction over Spin Master because it, directly or through intermediaries, has continuous and systematic marketing, sales, and distribution contacts within the State of New York and has purposefully availed itself by committing acts of patent infringement within New York that give rise to this action. For example, Michael Tillman, Senior Brand Manager at Spin Master Inc., and Johnny O'Neal, Marketing Manager at Spin Master Inc., conducted live product demonstrations of fully assembled and operational infringing Spin Master

BB-8s at the 2017 New York Toy Fair.

13. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and 1400(b) because Spin Master has committed acts of patent infringement in this District, Spin Master is subject to personal jurisdiction in this District, and, upon information and belief, Spin Master, directly or indirectly, has an established place of business in this District. In particular, Spin Master Inc. is believed to have offices in this District at the address 500 5th Avenue, New York, New York 10010.

14. Furthermore, Spin Master Ltd. and Spin Master Inc. are believed to work in active concert and participation with each other. On information and belief, Spin Master Ltd. and Spin Master Inc. actively cooperated with one another in orchestrating the events of the 2017 New York Toy Fair. Mr. Tillman (who wore a Spin Master Inc. badge at the Toy Fair) has a LinkedIn profile that has listed him as a Brand Manager for Spin Master Ltd. And Mr. O’Neal (who likewise wore a Spin Master Inc. badge at the Toy Fair) has a ZoomInfo profile that currently lists him as Senior Director, Boys Global Business Unit for Spin Master Ltd. Spin Master Ltd. is believed to be the corporate entity primarily responsible for directing and controlling the importation of these products into the United States and their sale (including in this judicial District).

#### **FACTUAL BACKGROUND**

15. Sphero released its first user-controlled robotic ball, Sphero 1.0, in 2011, followed by Sphero 2.0 in 2013. Sphero’s robotic balls are powered by an internal drive system and are controlled by a smartphone or tablet software application (or “app”). All Sphero robotic balls are noted for their speed, agility, and ease of control.

16. In January 2014, Sphero expanded its product line through its launch of “Ollie.” Ollie has a cylindrically-shaped body with treaded wheels at each end of the cylinder. Like Sphero

1.0 and 2.0, Ollie is controlled through a smartphone or tablet application, and is capable of moving at high rates of speed, jumping and crashing into everyday objects as it zooms around. Sphero sells accessories for Ollie, including ramps, a terrain park, and different textured and colored tires, all of which expand the ways users enjoy and interact with the product.

17. In April 2014, Sphero introduced another facet to its rapidly expanding brand through its launch of the SPRK (“Schools Parents Robots Kids”) educational robotic ball. The SPRK Edition provides an innovative, entertaining way for teaching students concepts in math, computer programming, and robotics, while also engaging students’ imaginations in areas such as critical thinking and storytelling. Sphero states that “[t]he passionate objective of SPRK is to inspire and teach tomorrow’s inventors and innovators.” The SPRK platform has been a huge success and is now utilized in over 10,000 schools worldwide.

18. In September 2016, Sphero launched its Force Band, a novel watchband controller that allows users to control the Sphero BB-8 through a variety of hand motions. Force Band technology is also being integrated into other Sphero products to provide consumers with an enhanced experience by enabling users to push, pull, and control their Sphero robots through hand and arm movements.

19. In 2017, Sphero introduced a robot model of Lightning McQueen from the movie *Cars*, as well as an interactive Spiderman product.

20. Through all of these products, Sphero has achieved an extraordinarily sophisticated merger of hardware and software, powered by the computing power of mobile computing devices.

#### **SPHERO’S BB-8 OPPORTUNITY**

21. In April 2014, Sphero recognized that adding a magnetic accessory to the top of the Sphero ball could extend its product line. Sphero’s initial design for an accessory device featured

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