

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

OurPet’s Company,
1300 East Street
Fairport Harbor, Ohio 44077,

Plaintiff,

v.

Arjan Impex,
AG-100
Sanjay Gandhi Nagar
Delhi-110042 (India),

Defendant.

)
) Case No. _____

)
) Judge _____

)
) Magistrate _____

)
) **COMPLAINT FOR**
) **PATENT INFRINGEMENT**

)
) *(Jury Demand Endorsed Hereon)*

NOW COMES the Plaintiff, *OurPet’s Company*, and for its Complaint against the Defendant
hereby alleges as follows:

THE PARTIES

1. The Plaintiff, OurPet’s Company, is a corporation organized under the laws of Colorado, and has its principal place of business in Fairport Harbor, Ohio, which is in Lake County.
2. The Defendant, Arjan Impex, upon information and belief, is a business entity located in India, which makes, uses, sells, offers for sale, and/or imports infringing product in the United States.

JURISDICTION AND VENUE

3. This is an action for patent infringement. The patent claims arise under the patent laws of the United States, specifically 35 U.S.C. § 281. This Court has federal question subject matter

1 jurisdiction in this matter pursuant to 28 U.S.C. §§ 1331, 1338, and 35 U.S.C. § 281 because
2 this action arises under the patent laws of the United States.

3 4. In addition or in the alternative to this Court’s federal question jurisdiction, this Court also
4 has subject matter jurisdiction pursuant to diversity of citizenship principles as the parties are
5 from different states and the amount in controversy exceeds \$75,000.

6 5. This Court has personal jurisdiction over the Defendant by virtue of their sale of products,
7 transaction of business, and solicitation of business within the State of Ohio, within this
8 judicial district and elsewhere.

9 6. Ohio’s Long-Arm Statute, RC § 2307.382(A)(1), provides that “A court may exercise
10 personal jurisdiction over a person who acts directly or by an agent, as to a cause of action
11 arising from the person’s: (1) Transacting any business in this state.” In this case, the
12 Defendant transacts business in this state. The Defendant supplies infringing dog bowls that
13 are widely sold throughout the state at big-box retailers including Big Lots.

14 7. Ohio’s Long-Arm Statute, RC § 2307.382(A)(2), provides that “A court may exercise
15 personal jurisdiction over a person who acts directly or by an agent, as to a cause of action
16 arising from the person’s: (2) Contracting to supply services or goods in this state.” In this
17 case, the Defendant contracts to supply goods in this state. The Defendant supplies
18 infringing dog bowls that are widely sold throughout the state at various big-box retailers
19 including Big Lots.

20 8. Venue is proper in the Northern District of Ohio pursuant to 28 U.S.C. § 1391(b)(2) and/or
21 28 U.S.C. § 1400(b) because a substantial part of the events giving rise to the claims
22 occurred in this judicial district, the Defendant is subject to personal jurisdiction in this
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1 district, and infringement occurred within this judicial district. Further, the Plaintiff, its
2 witnesses and evidence, are located in this district. The Plaintiff's patent prosecution
3 counsel, likely a key witness, is also located in this district. Venue is proper here.

4 **FACTUAL ALLEGATIONS**

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6 9. Since its founding in 1995, the Plaintiff has designed, produced, and marketed a broad line of
7 innovative, high-quality accessory and consumable pet products in the United States and
8 overseas.

9 10. The Plaintiff has dedicated extensive time to the understanding of pet aging and its critical
10 link to nature.

11 11. Along with proper nutrition, mental stimulation, physical exercise, and veterinary care, the
12 Plaintiff's products help to maintain the health and wellness of pets.

13 12. The Plaintiff strives to develop truly unique and innovative products. In fact, almost all of
14 the Plaintiff's products are patented and are the only ones of their kind in the marketplace.

15 13. The Plaintiff has become a leader in feeding systems to improve the health and comfort of
16 pets. It has also developed interactive toys that provide fun, rewarding mental and physical
17 challenges to pets. It has also developed healthy consumables for achieving and maintaining
18 high mental, physical, and immune levels for pets.

19 20 14. The Plaintiff sells products under various brand names, such as Smart Scoop®, Pet Zone®,
21 Durapet® stainless steel bowls, Flappy® dog toys, Cosmic Catnip™, ecoPure® naturals, and
22 Play-n-Squeak®, among others.

23 24 15. The Plaintiff is a publicly-traded company.

25 26 16. Dr. Steven Tsengas, PhD is the founder and CEO of the Plaintiff corporation.

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17. On October 16, 2012, United States Utility Patent No. 8,286,589, entitled “Covered Bowls Such as Pet Food and Water Bowls” (hereinafter referred to as the ‘589 patent) duly and legally issued to Steven Tsengas, as inventor, for the aforementioned invention. (A true and accurate copy of the ‘589 patent as issued is attached hereto as “Exhibit 1.”)

18. All rights to the ‘589 patent, including but not limited to, the right to recover for infringement thereunder, have been assigned to the Plaintiff, OurPet’s Company.

19. The ‘589 patent teaches a pet bowl with a rubber or plastic cover that is permanently or removeably secured to the outer surface of the bowl, to make the bowl skid resistant, among other things.

20. On March 25, 2008, United States Design Patent No. D565,253, entitled “Pet Feeder with Non-Skid Lower Surface” (hereinafter referred to as the ‘253 patent) duly and legally issued to Siddarth Modi and Steven Tsengas, as inventors, for the aforementioned invention. (A true and accurate copy of the ‘253 patent as issued is attached hereto as “Exhibit 2.”)

21. All rights to the ‘253 patent, including but not limited to, the right to recover for infringement thereunder, have been assigned to the Plaintiff, OurPet’s Company.

22. The Plaintiff has widely and continuously promoted and sold its patented products under the PetZone® brand, which products embody the ‘589 and/or ‘253 patents, and are marked patented with the ‘589 patent number.

23. The Plaintiff has invested considerable time and resources in marketing and advertising their patented products.

1 24. The Defendant has had actual knowledge of the Plaintiff's intellectual property rights in the
2 Plaintiff's PetZone® product line by virtue of the Plaintiff's marking of its products as
3 patented and/or patent pending.

4 25. The parties are competitors in that they both manufacture, source, market, and/or sell dog
5 bowls to the pet industry.

6 26. The Defendant has been and is currently making, using, offering for sale, selling, and/or
7 importing product that infringes the '589 utility patent and the '253 design patent.
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9 27. The Defendant's products infringe the '589 utility patent, as evidenced by the attached claims
10 chart. (A claims chart comparing the Defendant's product to the noted claims in the
11 Plaintiff's '589 utility patent is attached hereto as "Exhibit 3.") (The inclusion of the
12 attached claims chart is for illustrative purposes only, and the Plaintiff reserves the right to
13 amend and modify its claim assertions, allegations, and construction pursuant to the local
14 patent rules.)
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16 28. The Defendants' products infringe the '253 design patent, as evidenced by the attached
17 claims chart. (A claims chart comparing the Defendant's product to the noted claims in the
18 Plaintiff's '253 design patent is attached hereto as "Exhibit 4.") (The inclusion of the
19 attached claims chart is for illustrative purposes only, and the Plaintiff reserves the right to
20 amend and modify its claim assertions, allegations, and construction pursuant to the local
21 patent rules.)
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23 29. The Defendant has sold its infringing product in this judicial district in Ohio and elsewhere.

24 30. The aforementioned activities of the Defendant have also injured and threaten future injury to
25 the Plaintiff. More specifically, the Defendant's activities have diminished the Plaintiff's
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1 goodwill and caused the Plaintiff to lose sales that it otherwise would have made but for the
2 sales of the Defendants.

3 31. The Defendant is not authorized in any way to sell their infringing products or to use the
4 patents owned by the Plaintiff.

5 32. The Plaintiff is entitled to an award of damages against Defendant, and is entitled to
6 injunctive relief.

7 33. The Defendant has further has engaged in contributory infringement of the patents in suit.

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9 **CLAIM NO. 1**

10 *(Patent Infringement 35 U.S.C. § 271 et seq.)*

11 34. The Plaintiff hereby incorporates by reference each statement, whether written above or
12 below, as if each is fully re-written herein.

13 35. The Defendant has been and is currently making, using, offering for sale, selling, and/or
14 importing products that infringe the '589 utility patent. (See Exs. 1 & 3.)

15 36. The Defendant's conduct is an infringement of the '589 patent, and in violation of 35 U.S.C.
16 § 271 within this judicial district and elsewhere.

17 37. The Defendant will continue to make, use, offer for sale, sell, and import their infringing
18 products unless enjoined by this Court.

19 38. The Defendant has been, and is, actively inducing infringement of the '589 patent, by
20 offering for sale and selling their infringing products to dealers at wholesale prices who have,
21 and will continue to, offer them for sale and sell them to end users.

22 39. The Defendant's infringement is, and at all times has been, deliberate, willful, with full
23 knowledge of the Plaintiff's rights, and wanton, and as a result, the Plaintiff is entitled to
24 treble damages pursuant to 35 U.S.C. § 284.
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1 40. This is an exceptional case within the meaning of 35 U.S.C. § 285, and the award of
2 appropriate attorney's fees is justified

3 **CLAIM NO. 2**

4 *(Patent Infringement 35 U.S.C. § 271 et seq.)*

5 41. The Plaintiff hereby incorporates by reference each statement, whether written above or
6 below, as if each is fully re-written herein.

7 42. The Defendant has been and is currently making, using, offering for sale, selling, and/or
8 importing products that infringe the '253 design patent. (See Exs. 2 & 4.)

9 43. The Defendant's conduct is an infringement of the '253 patent, and in violation of 35 U.S.C.
10 § 271 within this judicial district and elsewhere.

11 44. The Defendant will continue to make, use, offer for sale, sell, and import their infringing
12 products unless enjoined by this Court.

13 45. The Defendant has been, and is, actively inducing infringement of the '253 patent, by
14 offering for sale and selling their infringing products to dealers at wholesale prices who have,
15 and will continue to, offer them for sale and sell them to end users.

16 46. The Defendant's infringement is, and at all times has been, deliberate, willful, with full
17 knowledge of the Plaintiff's rights, and wanton, and as a result, the Plaintiff is entitled to
18 treble damages pursuant to 35 U.S.C. § 284.

19 47. This is an exceptional case within the meaning of 35 U.S.C. § 285, and the award of
20 appropriate attorney's fees is justified.

21 **PRAYER FOR RELIEF / REQUEST FOR REMEDIES**

22 WHEREFORE, the Plaintiff prays that this Court enter an Order against the Defendant as
23 follows:
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- 1 A) A preliminary injunction enjoining the Defendant from making, using, selling, or importing
2 any product that infringes upon the '589 and '253 patents;
- 3 B) A permanent injunction enjoining the Defendant from making, using, selling, or importing
4 any product that infringes upon the '589 and '253 patents;
- 5 C) An accounting for damages resulting from Defendant's patent infringement and the trebling
6 of such damages because of the knowing, willful, and wanton nature of the Defendant's
7 conduct;
- 8 D) An assessment of interest on the damages so computed;
- 9 E) An award of attorney's fees and costs in this action under 35 U.S.C. § 285;
- 10 F) Judgment against Defendant indemnifying the Plaintiff from any claims brought against the
11 Plaintiff for negligence, debts, malpractice, product liability, or other breaches of any duty
12 owed by the Defendant to any person who was confused as to some association between the
13 Plaintiff and Defendant as alleged in this Complaint;
- 14 G) Judgment against Defendant for an accounting and monetary award in an amount to be
15 determined at trial;
- 16 H) Requiring Defendant to account to the Plaintiff for all sales and purchases that have occurred
17 to date, and requiring the Defendant to disgorge any and all profits derived by Defendant for
18 selling infringing product;
- 19 I) Requiring Defendant to provide full disclosure of any and all information relating to its
20 supplier or suppliers of infringing product;
- 21 J) Requiring Defendant to provide the location of any and all manufacturing equipment,
22 including but not limited to, molds used to manufacture infringing product;
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- 1 K) Requiring Defendant to destroy any and all manufacturing equipment used to manufacture
2 infringing product or to deliver said equipment to the Plaintiff;
3 L) Ordering a product recall of infringing product for destruction;
4 M) Requiring Defendant to file with this Court and serve on the Plaintiff within thirty (30) days
5 of this Court's order a report setting forth the manner in which they complied with the order;
6 N) Requiring Defendant to provide to Plaintiff all sales records, including but not limited to,
7 email, mail, and advertising lists;
8 O) Damages according to each cause of action herein;
9 P) Prejudgment interest; and
10 Q) Any such other relief in law or equity that this honorable Court deems just.
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12 **JURY DEMAND**

13 WHEREFORE, the Plaintiff requests a trial by jury on all issues so triable.
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16 Most Respectfully Submitted,

17 /s/ David A. Welling

18 **DAVID A. WELLING (0075934) (lead counsel)**

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