

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

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

v.

**Boss Pet Products Inc.,**  
16485 Rockside Road, Ste. 200  
Maple Heights, Ohio 44137,

and,

**Innovative Design & Sourcing LLC,**  
43 Bradley Road  
Weston, CT 06883,

Defendants.

)  
) 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 Defendants hereby alleges and avers 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 located in Fairport Harbor, Ohio, which is in Lake County.
2. The Defendant, Boss Pet Products, Inc., is a corporation organized under the laws of Ohio, and has its principal place of business located in Cuyahoga County, Ohio.
3. The Defendant, Innovative Design & Sourcing, LLC, is a corporation organized under the laws of Connecticut, and has its principal place of business located in Connecticut.

1 **JURISDICTION AND VENUE**

- 2 4. This is an action for patent infringement. The patent claims arise under the patent laws of the  
3 United States, specifically 35 U.S.C. § 281 et al. This Court has subject matter jurisdiction in  
4 this matter pursuant to at least 28 U.S.C. §§ 1331, 1338, and 35 U.S.C. § 281 because this  
5 action arises under the patent laws of the United States.  
6  
7 5. This Court has personal jurisdiction over the Defendants by virtue of their sale of products,  
8 transaction of business, and solicitation of business within the State of Ohio, within this  
9 judicial district and elsewhere.  
10 6. Venue is proper in the Northern District of Ohio pursuant to 28 U.S.C. § 1391(b)(2) and/or  
11 28 U.S.C. § 1400(b) because a substantial part of the events giving rise to the claims  
12 occurred in this judicial district, the Defendants are subject to personal jurisdiction in this  
13 district, and the infringement occurred within this judicial district.  
14

15 **FACTUAL ALLEGATIONS**

- 16 7. Since its founding in 1995, the Plaintiff has designed, produced, and marketed a broad line of  
17 innovative, high-quality accessory and consumable pet products in the United States and  
18 overseas.  
19 8. The Plaintiff has dedicated extensive time to the understanding of pet aging and its critical  
20 link to nature.  
21 9. Along with proper nutrition, mental stimulation, physical exercise, and veterinary care, the  
22 Plaintiff's products help to maintain the health and wellness of pets.  
23  
24 10. The Plaintiff strives to develop truly unique and innovative products. In fact, almost all of  
25 the Plaintiff's products are patented and are the only ones of their kind in the marketplace.  
26

1 11. The Plaintiff has become a leader in feeding systems to improve the health and comfort of  
2 pets. It has also developed interactive toys that provide fun, rewarding mental and physical  
3 challenges to pets. It has also developed healthy consumables for achieving and maintaining  
4 high mental, physical, and immune levels for pets.

5 12. Dr. Steve Tsengas is the founder and CEO of the Plaintiff corporation.  
6

7 13. On April 16, 2002, United States Utility Patent No. 6,371,053, entitled “Simulated mouse toy  
8 having a prerecorded sound chip therein” (hereinafter referred to as the ‘053 patent) duly and  
9 legally issued to Steven Tsengas, as inventor, for the aforementioned simulated mouse toy  
10 having a prerecorded sound chip therein. (A true and accurate copy of the ‘053 patent as  
11 issued is attached hereto as “Exhibit 1,” and is incorporated herein.)

12 14. All rights to the ‘053 patent, including but not limited to, the right to recover for  
13 infringement thereunder, have been assigned to the Plaintiff, OurPet’s Company. (A true and  
14 accurate copy of the Patent Assignment Abstract is attached hereto as “Exhibit 2,” and is  
15 incorporated herein.)  
16

17 15. The ‘053 patent (the Play-N-Squeak® mouse patent) is essentially a patent teaching a pet  
18 mouse toy having a sound device that senses motion and plays a sound to encourage the pet  
19 to continue to play with the toy.

20 16. The Plaintiff has widely and continuously promoted and sold Play-N-Squeak® products. To  
21 date, the Plaintiff has invested considerable money in marketing and advertising.  
22

23 17. Play-N-Squeak® toys are interactive toys that stimulate and reward positive mental and  
24 physical activity through real mouse sounds, tactile feel, catnip aroma, and movement.  
25  
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1 18. The Defendants have been and are currently making, using, offering for sale, selling, and/or  
2 importing pet toys that infringe the '053 patent.

3 19. The Defendants have infringed the Plaintiff's patent by, including but not limited to, making,  
4 using, offering for sale, selling, and importing their "CHOMPER® Kylie's" pet mouse toys.  
5 (See photos of the Defendants' allegedly infringing product, and a copy of a sales receipt  
6 showing a sale of the Defendants' product, attached hereto as "Exhibit 3," and incorporated  
7 herein.)

8  
9 20. The Defendants' product infringes at least Claim Nos. 1, 2, 7, and 8 of the '053 patent.

10 21. The aforementioned activities of patent infringement have injured and threaten future injury  
11 to the Plaintiff. More specifically, the Defendants' activities have diminished the Plaintiff's  
12 goodwill and caused the Plaintiff to lose sales that it otherwise would have made but for the  
13 sales of the Defendants.

14 22. The Defendants are not authorized in any way to sell their infringing products or to use the  
15 patent owned by the Plaintiff.

16 23. The Plaintiff is entitled to an award of damages against Defendants for patent infringement.

17  
18 **CLAIM NO. 1**

19 *(Patent Infringement 35 U.S.C. § 271)*

20 24. The Plaintiff hereby incorporates by reference each statement, whether written above or  
21 below, as if each is fully re-written herein.

22 25. The Defendants have been and are currently making, using, offering for sale, selling, and/or  
23 importing pet toys that infringe the '053 patent. (Ex. 1 & 3.)

24 26. The Defendants' product infringes at least Claim Nos. 1, 2, 7, and 8 of the '053 patent.  
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1 27. The Defendants' conduct is an infringement of the '053 patent, and in violation of 35 U.S.C.  
2 § 271 within this judicial district and elsewhere.

3 28. The Defendants will continue to make, use, offer for sale, sell, and import their infringing  
4 products unless enjoined by this Court.

5 29. The Defendants have been, and are, actively inducing infringement of the '053 patent, by  
6 offering for sale and selling their infringing products to dealers at wholesale prices who have,  
7 and will continue to, offer them for sale and sell them to end users.

8 30. The Defendants' infringement is, and at all times has been, deliberate, willful, with full  
9 knowledge of the Plaintiff's patent rights, and wanton, and as a result, the Plaintiff is entitled  
10 to treble damages pursuant to 35 U.S.C. § 284.

11 31. This is an exceptional case within the meaning of 35 U.S.C. § 285, and the award of  
12 appropriate attorney's fees for the Plaintiff is justified.  
13

14 **PRAYER FOR RELIEF / REQUEST FOR REMEDIES**

15 WHEREFORE, the Plaintiff prays that this Court enter an Order and Judgment in the  
16 Plaintiff's favor comprising:

- 17
- 18 A) A preliminary injunction enjoining the Defendants from making, using, or selling any  
19 product that infringes upon the '053 patent;
  - 20 B) A permanent injunction enjoining the Defendants from making, using, or selling any product  
21 that infringes upon the '053 patent;
  - 22 C) An accounting for damages resulting from Defendants' patent infringement and contributory  
23 infringement and the trebling of such damages because of the knowing, willful, and wanton  
24 nature of the Defendants' conduct;  
25  
26

- 1 D) An assessment of interest on the damages so computed;
- 2 E) An award of attorney's fees and costs in this action under 35 U.S.C. § 285;
- 3 F) Judgment against Defendants indemnifying the Plaintiff from any claims brought against the
- 4 Plaintiff for negligence, debts, malpractice, product liability, or other breaches of any duty
- 5 owed by the Defendants to any person who was confused as to some association between the
- 6 Plaintiff and Defendants as alleged in this Complaint;
- 7
- 8 G) Judgment against Defendants for an accounting and monetary award in an amount to be
- 9 determined at trial;
- 10 H) Requiring Defendants to account to the Plaintiff for all sales and purchases that have
- 11 occurred to date, and requiring the Defendants to disgorge any and all profits derived by
- 12 Defendants for selling infringing product.
- 13
- 14 I) Requiring Defendants to provide full disclosure of any and all information relating to its
- 15 supplier or suppliers of infringing product;
- 16 J) Requiring Defendants to provide the location of any and all manufacturing equipment,
- 17 including but not limited to, molds used to manufacture infringing product;
- 18 K) Requiring Defendants to destroy any and all manufacturing equipment used to manufacture
- 19 infringing product or to deliver said equipment to the Plaintiff;
- 20
- 21 L) Ordering a product recall of infringing product for destruction;
- 22 M) Requiring Defendants to file with this Court and serve on the Plaintiff within thirty (30) days
- 23 of this Court's order a report setting forth the manner in which they complied with the order;
- 24 N) Requiring Defendants to provide to Plaintiff all sales records, including but not limited to,
- 25 email, mail, and advertising lists;
- 26

- 1 O) Damages according to each cause of action herein; and
- 2 P) Prejudgment interest.

3 **JURY DEMAND**

4 WHEREFORE, the Plaintiff further requests a trial by jury on all issues so triable by the  
5 maximum number of jurors permitted by law.  
6

7  
8 Most Respectfully Submitted,

9  
10 /s/ David A. Welling

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

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