
**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

PetAware, LLC, a Texas limited liability company,

Plaintiff,

v.

DOG’S PLAY AND TRAINING CENTER, INC., a Texas Corporation; RADIO SYSTEMS CORPORATION, a Delaware corporation; PREMIER PET PRODUCTS, LLC, a Virginia limited liability company; PETSMART, INC., a Delaware corporation; PETSSENSE, INC., an Arizona corporation; and DOES 1-10.

Defendants.

Civil Action No. 2:14-cv-656

(JURY TRIAL DEMANDED)

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, PetAware, LLC (“*PetAware*” or “*Plaintiff*”), by and through its attorneys, makes and files this Complaint against Defendants Dog’s Play and Training Center, Inc., a Texas Corporation; Radio Systems Corporation, a Delaware corporation; Premier Pet Products, LLC, a Virginia limited liability company; Petsmart, Inc., a Delaware corporation; Petsense, Inc., an Arizona corporation; and Does 1-10 (collectively, “*Defendants*”). In support of this Complaint, PetAware alleges and complains as follows:

PARTIES

1. PetAware, LLC, is a Texas limited liability company with its principal place of business in Dallas Texas, Collin County.

2. Dog's Play and Training Center, Inc. ("***Dog's Play***") is a Texas corporation with its principal place of business in Plano, Texas, and sells one or more Infringing Products (defined below) in its store.

3. Upon information and belief, Radio Systems Corporation d/b/a PetSafe ("***Radio Systems***") is a Delaware corporation with its principal place of business in Knoxville, Tennessee.

4. Upon information and belief, Radio Systems owns Premier Pet Products, LLC as set forth below.

5. Upon information and belief, Premier Pet Products, LLC ("***Premier***") is a Virginia limited liability company with its principal place of business in Midlothian, Virginia.

6. Upon information and belief, Premier is in the business of manufacturing and selling a variety of pet-related products, including the Infringing Products (as defined below) in this judicial district.

7. Upon information and belief, Premier is a wholly owned division of Radio Systems.

8. Upon information and belief, Petsmart, Inc. ("***Petsmart***") is incorporated under the laws of the state of Delaware with its principal place of business in Phoenix, Arizona.

9. Petsmart is a pet retailer that owns and operates store fronts throughout the United States and in this judicial district, including, but not limited to, locations at 5610 South Broadway, Tyler Texas 75703; 3096 N Eastman Road, Longview, Texas 75605; 3300 N Central Expressway, Plano Texas 75074; 170 E Stacy Road, Allen, Texas 75002; 1751 N Central Expressway, Mckinney, Texas 75070; 3333 Preston Road, Frisco, Texas 75034; 1441 S Loop 288, Denton, Texas 76205; and 1905 Tulane Dr. Suite 101, Lufkin, Texas 75901.

10. Upon information and belief, Petmart also sells the Infringing Products on its online, interactive store at www.petsmart.com to residents of the state of Texas and in this judicial district.

11. Upon information and belief, Petsense, Inc. (“*Petsense*”) is incorporated under the laws of the state of Arizona with its principal place of business in Arizona.

12. Upon information and belief, Petsense owns and operates store fronts throughout the United States and in this judicial district, including locations at 190 North East End Boulevard, Marshall, Texas 75670, 1602 South Broadway Street, Sulphur Springs, Texas 75482; 8110 Wesley St. Suite 190, Greenville, Texas 75402; 4909 North Street North Loop 224 Suite 211, Nacogdoches, Texas 75965; and 2000 “C” Crocket Road, Palestine, Texas 75801.

13. Upon information and belief, Premier and Radio Systems have one or more affiliates or shell companies, referred to herein as Does 1-10.

JURISDICTION AND VENUE

14. This is a claim for patent infringement that arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. § 271.

15. This Court has exclusive subject matter jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 1338, and applicable principles of supplemental jurisdiction.

16. On information and belief, Defendants transacted business, contracted to supply goods or services, and caused injury to Plaintiff within Texas and this judicial district, and have otherwise purposefully availed themselves of the privileges and benefits of the laws of Texas and are therefore subject to the jurisdiction of this Court.

17. On information and belief, Defendants Dog's Play, Radio Systems, Premier, Petsmart, Petsense, and Does 1-10 own property in this judicial district, operate physical retail shops in this judicial district, distribute products in this judicial district, or otherwise place products for sale on interactive online stores to be used, shipped, offered for sale, and sold in this judicial district.

18. On information and belief, Dog's Play offers for sale and sells the Infringing Products in its store within this judicial district.

19. On information and belief, Radio Systems, as the owner of its division, Premier, is liable for Premier's infringing activities.

20. On information and belief, Premier placed the Infringing Products in the stream of commerce with the expectation that they would be purchased by consumers in this judicial district, which products and services have been offered for sale, sold, and used in this judicial district.

21. Premier is subject to personal jurisdiction in the State and this judicial district, consistent with the principles of due process and the Texas Long Arm Statute, because Premier has offered and continues to offer their products for sale in this State, has transacted business and continue to transact business in this State, has committed and/or induced acts of patent infringement in this State, and/or has placed the Infringing Products into the stream of commerce through established distribution channels with the expectation that such products will be purchased by residents of this State.

22. On information and belief, Petsmart placed the Infringing Products in the stream of commerce with the expectation that they would be bought and sold in its retail stores within this judicial district.

23. Petsmart is subject to personal jurisdiction in the State of Texas (this “*State*”) and this judicial district, consistent with the principles of due process and the Texas Long Arm Statute, because Petsmart has offered and continues to offer its products for sale in this State, has transacted business and continues to transact business in this State, has committed and/or induced acts of patent infringement in this State, and/or has placed infringing products into the stream of commerce through established distribution channels with the expectation that such products will be purchased by residents of this State.

24. Such Infringing Products have been offered for sale and sold in this State and in this judicial district through various retail stores. Upon information and belief, Petsmart has authorized retail outlets within the judicial district, including locations in Longview, Tyler, Texarkana, Plano, Lewisville, Flower Mound, McKinney, and Denton. Petsmart also sells its products directly to Texas residents and consumers via various websites, including: www.petsmart.com.

25. On information and belief, Petsense placed one or more of the Infringing Products in the stream of commerce with the expectation that they would be bought and sold in its retail stores within this judicial district.

26. Petsense is subject to personal jurisdiction in the State and this judicial district, consistent with the principles of due process and the Texas Long Arm Statute, because it has offered and continues to offer their products for sale in this State, has transacted business and

continue to transact business in this State, has committed and/or induced acts of patent infringement in this State, and/or has placed infringing products into the stream of commerce through established distribution channels with the expectation that such products will be purchased by residents of this State.

27. Such infringing products have been offered for sale and sold in this State through various retail stores. Upon information and belief, Petsense has retail outlets within the judicial district, including locations in Marshall, Greenville, Nacogdoches, Palestine, and Sulphur Springs. Petsense also sells its products directly to Texas residents and consumers via the website www.petsensellc.com.

28. Such infringing products have been offered for sale and sold in this State through various retail stores. Upon information and belief, Premier has retail outlets within the judicial district, including providers in the Eastern District of Texas. Premier also sells its products directly to Texas residents and consumers via various websites, including: www.petsafe.net.

29. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400 because Dog's Play, Radio Systems, Premier, Petsmart, Petsense, and Does 1-10 have done business, have infringed, and continue to infringe PetAware's patent rights within this District as stated more fully above, and this action arises from transactions of that business and that infringement.

GENERAL ALLEGATIONS

30. PetAware has the exclusive right under the patents set forth below to develop products and processes in the pet and domesticated animals market ("*Pet Market*") including, without limitation, product marketing and branding through the use of the Patent Rights (defined

below) in a labeling system, apparatus, and/or method in the market pertaining to products made, used, sold, offered for sale, or imported relative to domesticated or tamed animals.

31. For example, without limitation, PetAware's exclusive patent rights in the Pet Market, include such pet products as harnesses, leashes, collars, head collars, training devices like clickers, food and treat dispensers, toys, pet clothing and apparel, pet care products vitamins and wellness products, bedding and blankets, bowls and feeders, crates and carriers, doors and gates, fence systems, grooming supplies, houses and kennels, ramps and steps, stain and odor removers, training and behavior products, travel products, furniture and scratchers, litter and waste disposal, repellants, bowls and feeders, cages and stands, coops and stands, filters and pumps, heating and lighting, food and water accessories, reading materials, training guides, bark control, batteries, chews, digestive aids, care, food storage, and grooming products.

32. Use of the patented labeling system creates unique marketing opportunities for vendors and manufacturers of goods.

33. The patented labeling system is used as a means of differentiating products in the marketplace and creating extended marketing relationships with customers.

34. The 8,249,919 B2 Patent (the "**'919 Patent**"), a copy of which is attached hereto as Exhibit A, was duly and legally issued by the United States Patent and Trademark Office. PetAware is the exclusive licensee of all right, title and interest in and to the '919 Patent in the Pet Market, including standing to sue and recover for all past, present, and future damages for infringement of the '919 Patent in the Pet Market.

35. The 8,050,964 Patent (the "**'964 Patent**"), a copy of which is attached hereto as Exhibit B, was duly and legally issued by the United States Patent and Trademark Office.

PetAware is the exclusive licensee of all right, title and interest in and to the '964 Patent in the Pet Market, including standing to sue and recover for all past, present, and future damages for infringement of the '964 Patent in the Pet Market.

36. The '919 Patent and the '964 Patent are collectively referred to as the “*PetAware Patents.*”

37. The PetAware Patents involve product marketing and branding through the use of a patented digital labeling system, apparatus, and/or method.

38. The patented digital labeling system can include a CD, DVD, CD-ROM, memory card, USB flash drive or other digital communication device attached to a product or other merchandise.

39. Use of the patented digital labeling system creates unique marketing opportunities for vendors and manufacturers of goods.

40. Information about the manufacturer such as branding, product lines, instruction or application of the product, corollary products, testimonials, interviews, multi-media presentations, and interactivity with purchasers are just some of the benefits that can be obtained by employing the patented digital labeling system.

41. The patented digital labeling system is used as a means of differentiating products in the marketplace and creating extended marketing relationships with consumers.

PATENT INFRINGEMENT

42. PetAware realleges and incorporates by reference as if fully set forth herein the preceding paragraphs.

43. PetAware has complied with the provisions of 35 U.S.C. § 287.

44. Defendants, either alone or in conjunction with others, have in the past and continue to infringe, contribute to infringement, and/or induce infringement of the PetAware Patents by making, using, selling, and/or offering to sell, and/or causing others to use, methods and systems, which infringe one or more claims of the of the PetAware Patents.

45. Defendants are liable for infringement of one or more claims of the PetAware Patents pursuant to 35 U.S.C. § 271 as set forth therein and incorporated by this reference, by making, using, selling, offering for sale, and/or importing numerous infringing products, including, as examples: the Gentle Leader Headcollar, the Gentle Leader Deluxe Headcollar, the Eco Headcollar, and other products that are likely to be identified during discovery (the “*Infringing Products*”).

46. Dog’s Play is liable for direct and indirect infringement of the PetAware Patents by offering for sale, selling, and either inducing and/or contributing to direct infringement of the PetAware Patents committed by end users of the Infringing Products.

47. From at least the time of filing this Complaint by which it was given actual notice of the PetAware Patents, Dog’s Play induced infringement because it knew, or should have known, that its acts would cause patent infringement, and possessed the intent to encourage another’s infringement of the Patents.

48. On information belief, such acts include communicating with one or more infringers of the Patents.

49. From at least the time of filing this Complaint, Dog’s Play contributed to direct infringement by its end users as described above by knowing that the Infringing Products and methods would be implemented by its end users; that its methods, components, system, and

Infringing Products were especially made or especially adapted for a combination covered by one or more claims of the PetAware Patents; that there are no substantial non-infringing uses; and that the Infringing Products are a material part of the infringement.

50. Radio Systems is liable for the infringing activities of its division, Premier Pet, which directly and indirectly infringes the PetAware Patents by manufacturing, offering for sale, selling, and either inducing and/or contributing to direct infringement of the PetAware Patents committed by end users of the Infringing Products.

51. On information and belief, from a time prior to Radio Systems receiving this Complaint, Radio Systems was on actual notice of the PetAware Patents and contributed to direct infringement by its end users as described above by knowing that the Infringing Products and methods would be implemented by its end users; that its methods, components, system and Infringing Products were designed for a combination covered by one or more claims of the PetAware Patents; that there are no substantial non-infringing uses; and that the Infringing Products are a material part of the infringement.

52. Premier is liable for direct and indirect infringement of the PetAware Patents by either inducing and/or contributing to direct infringement of the PetAware Patents committed by end users of the Infringing Products.

53. From a time prior to Premier receiving this Complaint, Premier contributed to direct infringement by its end users as described above by knowing that the Infringing Products and methods would be implemented by its end users; that its methods, components, system and Infringing Products were designed for a combination covered by one or more claims of the

PetAware Patents; that there are no substantial non-infringing uses; and that the Infringing Products are a material part of the infringement.

54. Petsmart is liable for infringement of the PetAware Patents by either inducing and/or contributing to direct infringement of the PetAware Patents committed by end users of the Infringing Products.

55. From at least the time of filing this Complaint, Petsmart contributed to direct infringement by its end users as described above by knowing that the Infringing Products and methods would be implemented by its end users; that its methods, components, system and Infringing Products were designed for a combination covered by one or more claims of the PetAware Patents; that there are no substantial non-infringing uses; and that the Infringing Products are a material part of the infringement.

56. Petsense is liable for infringement of the PetAware Patents by either inducing and/or contributing to direct infringement of the PetAware Patents committed by end users of the Infringing Products.

57. From at least the time of filing this Complaint, Petsense contributed to direct infringement by its end users as described above by knowing that the Infringing Products and methods would be implemented by its end users; that its methods, components, system and Infringing Products were designed for a combination covered by one or more claims of the PetAware Patents; that there are no substantial non-infringing uses; and the Infringing Products are a material part of the infringement.

58. Dog's Play has infringed at least claims 1 and 4 of the '919 Patent, claim 24 of the '964 Patent, and applicable dependent claims of each of the foregoing, and additional claims as may be determined in the course of discovery.

59. Dog's Play has knowledge of the '919 Patent and the '964 Patent and is infringing despite such knowledge. The infringement has been and continues to be willful and deliberate.

60. Dog's Play's acts of infringement have caused damage to Plaintiffs, and Plaintiff is entitled to recover from Dog's Play the damages sustained as a result of Dog's Play's wrongful acts in an amount subject to proof at trial, but in no event less than a reasonable royalty.

61. Dog's Play's infringing activities have injured and will continue to injure PetAware unless and until this Court enters an injunction prohibiting further infringement of the '919 Patent and the '964 Patent.

62. Radio Systems has infringed at least claims 1 and 4 of the '919 Patent, claim 24 of the '964 Patent, and applicable dependent claims of each of the foregoing, and additional claims as may be determined in the course of discovery.

63. Radio Systems has knowledge of the '919 Patent and the '964 Patent and is infringing despite such knowledge. The infringement has been and continues to be willful and deliberate.

64. Radio Systems' acts of infringement have caused damage to Plaintiffs, and Plaintiff is entitled to recover from Radio Systems the damages sustained as a result Radio System's wrongful acts in an amount subject to proof at trial, but in no event less than a reasonable royalty.

65. Radio System's infringing activities have injured and will continue to injure PetAware unless and until this Court enters an injunction prohibiting further infringement of the '919 Patent and the '964 Patent.

66. Premier has infringed at least claims 1 and 4 of the '919 Patent, claim 24 of the '964 Patent, and applicable dependent claims of each of the foregoing, and additional claims as may be determined in the course of discovery.

67. Premier has knowledge of the '919 Patent and the '964 Patent and is infringing despite such knowledge. The infringement has been and continues to be willful and deliberate.

68. Premier's acts of infringement have caused damage to Plaintiffs, and Plaintiff is entitled to recover from Premier the damages sustained as a result of Premier's wrongful acts in an amount subject to proof at trial, but in no event less than a reasonable royalty.

69. Premier's infringing activities have injured and will continue to injure PetAware unless and until this Court enters an injunction prohibiting further infringement of the '919 Patent and the '964 Patent.

70. Petsmart has infringed at least claims 1 and 4 of the '919 Patent, claim 24 of the '964 Patent, and applicable dependent claims of each of the foregoing, and additional claims as may be determined in the course of discovery.

71. Petsmart has knowledge of the '919 Patent and the '964 Patent and is infringing despite such knowledge. The infringement has been and continues to be willful and deliberate.

72. Petsmart's acts of infringement have caused damage to Plaintiffs, and Plaintiff is entitled to recover from Petsmart the damages sustained as a result of Petsmart's wrongful acts in an amount subject to proof at trial, but in no event less than a reasonable royalty.

73. Petsmart's infringing activities have injured and will continue to injure PetAware unless and until this Court enters an injunction prohibiting further infringement of the '919 Patent and the '964 Patent.

74. Petsense has infringed at least claims 1 and 4 of the '919 Patent, claim 24 of the '964 Patent, and applicable dependent claims of each of the foregoing, and additional claims as may be determined in the course of discovery.

75. Petsense has knowledge of the '919 Patent and the '964 Patent and is infringing despite such knowledge. The infringement has been and continues to be willful and deliberate.

76. Petsense's acts of infringement have caused damage to Plaintiffs, and Plaintiff is entitled to recover from Petsense the damages sustained as a result of Petsense's wrongful acts in an amount subject to proof at trial, but in no event less than a reasonable royalty.

77. Petsense's infringing activities have injured and will continue to injure PetAware unless and until this Court enters an injunction prohibiting further infringement of the '919 Patent and the '964 Patent.

78. Does 1-10 have infringed at least claims 1 and 4 of the '919 Patent, claim 24 of the '964 Patent, and applicable dependent claims of each of the foregoing, and additional claims as may be determined in the course of discovery.

79. Does 1-10 have knowledge of the '919 Patent and the '964 Patent and is infringing despite such knowledge. The infringement has been and continues to be willful and deliberate.

80. The acts of infringement by Does 1-10 have caused damage to Plaintiffs, and Plaintiff is entitled to recover from Does 1-10 the damages sustained as a result of Does 1-10's

wrongful acts in an amount subject to proof at trial, but in no event less than a reasonable royalty.

81. The infringing activities of Does 1-10 have injured and will continue to injure PetAware unless and until this Court enters an injunction prohibiting further infringement of the '919 Patent and the '964 Patent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff PetAware respectfully requests that, after a trial, this Court enter judgment against Defendants, their divisions, subsidiaries, affiliates and all persons in active concert or participation with them as Does 1-10, as follows:

- A. An entry of final judgment in favor of PetAware and against Defendants;
- B. An award of damages adequate to compensate PetAware for the infringement that has occurred, but in no event less than a reasonable royalty as permitted by 35 U.S.C. § 284, together with prejudgment interest from the date the infringement began;
- C. An injunction permanently prohibiting Defendants and Does 1-10 and all persons in active concert or participation with any of them from further acts of infringement of the '919 Patent and the '964 Patent;
- D. Treble damages as provided for under 35 U.S.C. § 284 in view of the knowing, willful, and intentional nature of Defendants' acts;
- E. Awarding PetAware its costs and expenses of this litigation, including its reasonable attorneys' fees and disbursements, pursuant to 35 U.S.C. § 285; and

- F. Such other further relief that PetAware is entitled to under the law, and any other and further relief that this Court or a jury may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury on all claims and issues so triable.

Respectfully Submitted,

Dated: June 2, 2014

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