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

OURPET’S COMPANY,)	
1300 East Street)	Case No.
Fairport Harbor, Ohio 44077,)	
)	Judge
Plaintiff,)	
)	Magistrate
v.)	
)	
DEXAS INTERNATIONAL LTD.,)	<u>COMPLAINT FOR DESIGN</u>
585 S. Royal Lane, Ste. 200)	<u>PATENT INFRINGEMENT</u>
Coppell, Texas 75019-3807,)	
)	(<i>Jury Demand Endorsed Hereon</i>)
Defendant.)	

NOW COMES the Plaintiff, *OurPet’s Company*, and for its Complaint against the Defendant 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 Lake County, Ohio.
2. The Defendant, Dexas International Ltd., is a corporation, and has its principal place of business in Texas.

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 subject matter jurisdiction in this

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

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

6 5. Ohio's Long-Arm Statute, RC § 2307.382(A)(1), provides that "A court may exercise
7 personal jurisdiction over a person who acts directly or by an agent, as to a cause of action
8 arising from the person's: (1) Transacting any business in this state." In this case, the
9 Defendant transacts business in this state. The Defendant supplies infringing products that
10 are widely sold throughout the state.

11 6. Ohio's Long-Arm Statute, RC § 2307.382(A)(2), provides that "A court may exercise
12 personal jurisdiction over a person who acts directly or by an agent, as to a cause of action
13 arising from the person's: (2) Contracting to supply services or goods in this state." In this
14 case, the Defendant contracts to supply goods in this state. The Defendant supplies
15 infringing products that are widely sold throughout the state.

16 7. Venue is proper in the Northern District of Ohio pursuant to 28 U.S.C. § 1391(b)(2) and/or
17 28 U.S.C. § 1400(b) because a substantial part of the events giving rise to the claims
18 occurred in this judicial district, the Defendant is subject to personal jurisdiction in this
19 district, and infringement occurred within this judicial district. Further, the Plaintiff chose
20 filing in this district, is located in this district, and has its key evidence including witnesses
21 and exhibits located within this district.
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- 1 8. The Defendant's website in this case is an active rather than a passive website, meaning, the
2 website permits Ohio users to place orders, to store personal account information, to register
3 a username and password, to access customer service, and to ship products to different states,
4 including Ohio. (See <http://store.dexas.com/home>.)
5
6 9. Websites with similar features have been found to satisfy the 'purposeful availment'
7 requirement of the "minimum contacts" analysis satisfying due process. See, e.g., *Solar X*
8 *Eyewear, LLC v. Bowyer*, 2011 WL 3418306 (N.D. Ohio Aug. 4, 2011); *Wood v. 1-800-Got-*
9 *Junk?, LLC*, 2007 WL 895008 (S.D. Ohio March 22, 2007); *V Secret Catalogue v. Zdrok*,
10 2003 WL 22136303 (S.D. Ohio Aug. 29, 2003); *Bath and Body Works, Inc. v. Wal-Mart*
11 *Stores, Inc.*, 2000 WL 1810478 (S.D. Ohio Sept. 12, 2000).

12 **FACTUAL ALLEGATIONS**

- 13
14 10. Since its founding in 1995, the Plaintiff has designed, produced, and marketed a broad line of
15 innovative, high-quality accessory and consumable pet products in the United States and
16 overseas.
17
18 11. The Plaintiff has dedicated extensive time to the understanding of pet aging and its critical
19 link to nature.
20
21 12. 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 13. 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
14. The Plaintiff has become a leader in feeding systems to improve the health and comfort of
pets.

1 15. Dr. Steve Tsengas is the founder and CEO of the Plaintiff corporation.

2 16. The Plaintiff, OurPet's Company, is a publicly-traded company.

3 17. On Sep. 18, 2007, United States Design Patent No. D551,400 (hereinafter referred to as the
4 '400 patent) duly and legally issued to Steven Tsengas, as inventor, for the aforementioned
5 pet feeder. (A true and accurate copy of the '400 patent as issued is attached hereto as
6 "Exhibit 1.")

7
8 18. All rights to the '400 patent, including but not limited to, the right to recover for
9 infringement thereunder, has been assigned to the Plaintiff, OurPet's Company.

10 19. The Plaintiff has manufactured and marketed marked products in commerce that read on the
11 '400 patent, including Plaintiff's Store-N-Feed™ feeders.

12 20. Upon information and belief, the Defendant, at times relevant, had actual knowledge of the
13 existence of the '400 patent. The Plaintiff's Store-N-Feed™ products are widely sold in big
14 box retailers and are marked as patented. Further, Plaintiff complies with the marking statute
15 35 U.S.C. § 287, see: <http://www.ourpets.com/patents-feeding-storage/>.

16
17 21. The Defendant has been and is currently making, using, offering for sale, selling, and/or
18 importing products that infringe the '400 patent. (See the Defendant's product and offer for
19 sale attached hereto as "Exhibit 2.")

20 22. Infringement has occurred in this judicial district and elsewhere.

21
22 23. The Defendant's allegedly infringing products infringe the claims of the '400 patent. (See an
23 infringement chart attached hereto as "Exhibit 3," which compares the allegedly infringing
24 product to the '400 patent. The Plaintiff reserves the right to amend its claims analyses as
25 per the Local Patent Rules and as discovery progresses.)
26

1 24. The aforementioned activities of the Defendant have injured and threaten future injury to the
2 Plaintiff.

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

5 26. The Plaintiff is entitled to an award of damages against the Defendant for patent
6 infringement, including lost profits, and in no event less than a reasonable royalty, together
7 with attorney's fees and costs. The Plaintiff is further entitled to injunctive relief.
8

9 **CLAIM NO. 1**

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

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

13 28. The Defendant has been and is currently making, using, offering for sale, selling, and/or
14 importing products that infringe the '400 patent.

15 29. The Defendant has infringed the '400 patent because the Defendant's accused article (Doc. 2)
16 embodies the patented design of the '400 patent or any colorable imitation thereof.
17

18 30. The Defendant's product is substantially similar to the '400 design patent under the "ordinary
19 observer" test as enunciated in *Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665 (Fed. Cir.
20 2008); Citing *Gorham Co. v. White*, 81 U.S. 511 (1871).

21 31. The Defendant's conduct is an infringement of the '400 patent, and in violation of 35 U.S.C.
22 § 271 within this judicial district and elsewhere.

23 32. The Defendant will continue to make, use, offer for sale, sell, and import their infringing
24 products unless enjoined by this Court.
25

26 33. The Defendant has been, and is, actively inducing infringement of the '400 patent.

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

4 35. This is an exceptional case within the meaning of 35 U.S.C. § 285, and the award of
5 appropriate attorney's fees is justified.
6

7 **PRAYER FOR RELIEF / REQUEST FOR REMEDIES**

8 WHEREFORE, the Plaintiff prays that this Court to enter an Order in favor of the Plaintiff
9 and against the Defendant as follows:

- 10 A) A preliminary and permanent injunction enjoining the Defendant from making, using,
11 selling, offering for sale, and importing any product that infringes upon the '400 patent;
12 B) An accounting for damages resulting from Defendant's patent infringement and contributory
13 infringement and the trebling of such damages because of the knowing, willful, and wanton
14 nature of the Defendant's conduct;
15 C) An assessment of interest on the damages so computed;
16 D) An award of attorney's fees and costs in this action under 35 U.S.C. § 285;
17 E) Judgment against Defendant for an accounting and monetary award in an amount to be
18 determined at trial, including reasonable royalties;
19 F) Requiring Defendant to provide full disclosure of any and all information relating to its
20 supplier or suppliers of infringing product;
21 G) 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 H) Requiring Defendant to destroy any and all manufacturing equipment used to manufacture
2 infringing product or to deliver said equipment to the Plaintiff;
3
4 D) Ordering a product recall of infringing product for destruction;
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6 J) Requiring Defendant to file with this Court and serve on the Plaintiff within thirty (30) days
7 of this Court's order a report setting forth the manner in which they complied with the order;
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9 K) Requiring Defendant to provide to Plaintiff all sales records, including but not limited to,
10 email, mail, and advertising lists;
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12 L) Damages according to each cause of action herein; and prejudgment interest.

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15 **JURY DEMAND**

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

20 /s/ David A. Welling

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