

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. \_\_\_\_\_

K&H MANUFACTURING, LLC,  
a Colorado limited liability company,

Plaintiff,

v.

MILLIARD ENTERPRISES, LLC,  
a New Jersey limited liability company,

Defendant.

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**COMPLAINT WITH JURY DEMAND**

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Plaintiff K&H Manufacturing, LLC ("K&H"), for its Complaint against Defendant Milliard Enterprises, LLC ("Milliard"), alleges as follows:

**I. PARTIES**

1. K&H is a Colorado limited liability company having its principal place of business 2520 Aviation Way, Suite G, Colorado Springs, Colorado 80916.

2. Upon information and belief, Milliard is a New Jersey limited liability company doing business as "Milliard Brands" with a principal place of business at 1980 Swarthmore Avenue, #3, Lakewood, New Jersey 08701.

**II. JURISDICTION AND VENUE**

3. This is an action for patent infringement under the patent laws of the United States 35 U.S.C. §1, *et seq.*

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§1331 and 1338(a).

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c).

6. The Court has personal jurisdiction over Milliard because K&H's claims arise from Milliard's transactions of business in this judicial district, because K&H's claims arise from Milliard's commission of tortious acts in this judicial district, including the offering for sale and sale of infringing products in this judicial district, and because K&H is being damaged in this judicial district by Milliard's tortious conduct.

### **III. GENERAL ALLEGATIONS**

#### **A. K&H And Its '942 Patent**

7. On September 13, 2011, the USPTO duly and legally issued United States Patent No. 8,015,942 entitled "Heated Pet Bed" to James D. Koskey, Jr. ("the '942 Patent"). A true and correct copy of the '942 Patent is attached as Exhibit A to this Complaint.

8. K&H is the owner of all right, title, and interest in and to the '942 Patent, including the right to sue and collect damages for past infringement thereof.

9. K&H has continuously and consistently marked substantially all of its heated pet bed products that are covered by one or more claims of the '942 Patent with Patented or Patents Pending or similar language since issuance of the '942 Patent.

#### **B. Milliard's Infringement Of K&H's '942 Patent**

10. The '942 Patent claims patent eligible subject matter under 35 U.S.C. § 101.

11. The Abstract of the '942 Patent relevantly provides that it is directed to:

An outdoor heated pet bed has a low wattage heating wire. A foil packet encloses the low wattage heating wire. A foam layer is placed adjacent to one side of the foil packet. A weather resistant cover encloses the foam layer and the foil packet.

12. Without limitation as to the claims to be asserted in this action, Claim 1 of the '942 Patent reads:

1. An outdoor heated pet bed, comprising:  
a low wattage heating wire;  
a foil packet enclosing the low wattage heating wire;  
a foam layer adjacent to one side of the foil packet wherein the foil packet is electrically grounded and the foam layer is fire retardant and is glued to one side of the foil packet;  
a weather resistant cover enclosing the foam layer and the foil packet, wherein the weather resistant cover is waterproof and the outdoor heated pet bed is collapsible and forms a sandwich between the low wattage heating wire, the foil packet, the foam layer and both a top and a bottom portion of the weather resistant cover wherein the low wattage heating wire, the foil pack, the foam layer and the top and the bottom portion of the weather resistant cover are in direct contact when a pet lies on the outdoor heated pet bed;  
a thermostat controlling a current to the low wattage heating wire; and  
an electrical cord covered by a metal spring that is electrically coupled to the low wattage heating wire.

13. Upon information and belief, Milliard has made, used, offered for sale, and/or sold products in the United States, and/or imported products into the United States, that infringe one or more claims of the '942 Patent, and/or Milliard has induced the infringement of one or more of the claims of the '942 Patent by others in the United States.

14. By way of example only, Milliard has made, used, imported, sold, and offered for sale in the United States products known as the Milliard 23in. x 23in. Heated Pet Cushion and Milliard 17in. x 13in. Heated Pet Cushion. True and correct copies of the information pages for these products located at Milliard's and its distributors websites are attached hereto as Exhibit B. Milliard has also made, used, offered for sale, and/or sold in the United States a product known

as the Milliard Portable Heated Outdoor Pet House. A true and correct copy of a listing for this product at Amazon.com is attached hereto as Exhibit C. Upon information and belief, the heated cushions in these three foregoing products are essentially identical in structure and are hereafter referred to as the "Exemplary Infringing Products."

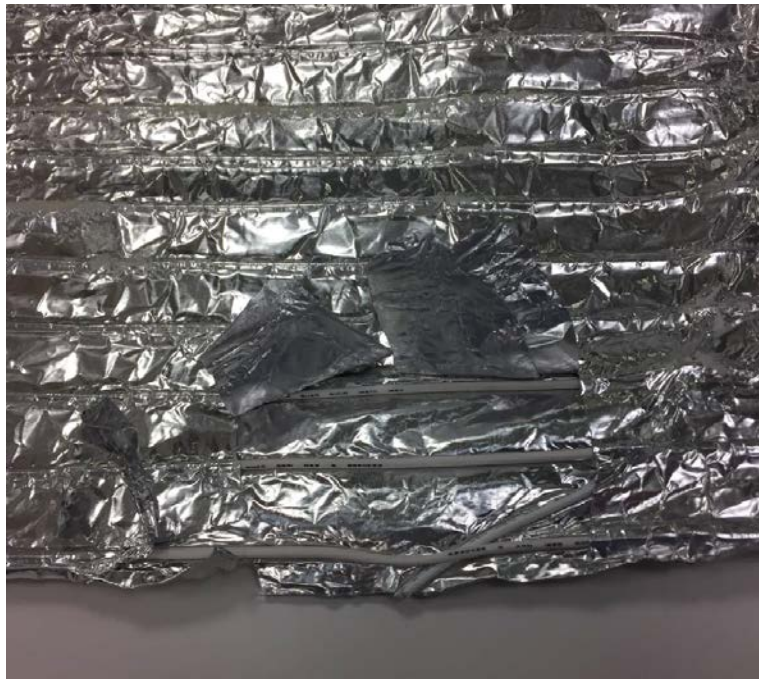
15. The Exemplary Infringing Products infringe the elements of at least Claim 1 of the '942 Patent as follows:

Element a: An outdoor heated pet bed, comprising:

The Exemplary Infringing Products are provided with User Guide & Care Instructions stating the product "is designed to provide a comfortably warm haven for your pet, and its vinyl heater core is safe to use either indoors or outdoors." A true and correct copy of the User Guide & Care Instructions is attached hereto as Exhibit D.

Element b: a low wattage heating wire; a foil packet enclosing the low wattage heating wire;

The Exemplary Infringing Products utilize low-wattage heating wire. According to the User Guide & Care Instructions, "low-wattage current provides plenty of warmth for your pet without depleting your energy savings." Below is a photograph of the low-wattage heating wires of the Exemplary Infringing Products enclosed within a foil packet.



Element c: a foam layer adjacent to one side of the foil packet wherein the foil packet is electrically grounded and the foam layer is fire retardant and is glued to one side of the foil packet;

As shown in the photos below, the foil packet enclosing the low voltage heating wires is sandwiched between foam layers, at least one of the foam layers is glued to the foil packet, and the foil packet is grounded through the electrical cord.





Element d: a weather resistant cover enclosing the foam layer and the foil packet, wherein the weather resistant cover is waterproof and the outdoor heated pet bed is collapsible and forms a sandwich between the low wattage heating wire, the foil packet, the foam layer and both a top and a bottom portion of the weather resistant cover wherein the low wattage heating wire, the foil pack, the foam layer and the top and the bottom portion of the weather resistant cover are in direct contact when a pet lies on the outdoor heated pet bed;

The User Guide & Care Instructions for the Exemplary Infringing Products provide that "vinyl plastic construction of the heating cushion provides a flexible, but durable seal against outdoor wear." As shown in the cross section photo above, this vinyl cover encloses the foam layers, foil packet and heating wires within. Under weight from a pet lying on the bed, these layers collapse together and are in direct contact.

Element e: a thermostat controlling a current to the low wattage heating wire;  
and

The User Guide & Care Instructions for the Exemplary Infringing Products provide "internal thermostat automatically regulates the cushion's temperature for optimal comfort for your pet." The photograph below shows the thermostat within the Exemplary Infringing Products.



Element f: an electrical cord covered by a metal spring that is electrically coupled to the low wattage heating wire.

The Exemplary Infringing Products include an electrical cord covered by a metal spring that is electrically coupled to the low wattage heating wire within the bed. The photograph above in paragraph 15(c) shows these features.



16. Upon information and belief, Milliard had actual knowledge of the '942 Patent during times relevant to this action as a result of at least its research, development, due diligence, product sourcing, and/or its knowledge of K&H as a competitor.

**IV. FIRST CLAIM FOR RELIEF  
(Infringement of U.S. Patent No. 8,015,942)**

17. K&H incorporates by reference each and every allegation in paragraphs 1-16 as though fully set forth herein.

18. By manufacturing, importing, using, offering for sale, and/or selling heated pet bed products in the United States that infringe, either literally or under the Doctrine of Equivalents, the '942 Patent, Milliard has been and is currently in violation of 35 U.S.C. §271(a).

19. Milliard has also encouraged and assisted others to offer for sale and sell infringing heated pet bed products in the United States at least by listing those infringing products for sale on Amazon.com. Upon information and belief, Milliard was aware of and encouraged others in a manner that infringed the '942 Patent, and intended to cause that infringement. Alternatively, Milliard willfully blinded itself to the infringing nature of its heated pet bed products. Milliard has thus induced direct infringement of the '942 Patent by others by actively instructing, assisting, and/or encouraging others to practice one or more of the inventions claimed in the '942 Patent in violation of 35 U.S.C. § 271(b).

20. K&H has been damaged as a result of Milliards infringing conduct. Milliard is thus liable to K&H in the amount that adequately compensates K&H for such infringement which cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

21. Milliard's actions infringing the '942 Patent have been, and are, willful, deliberate, and/or in conscious disregard of K&H's rights, making this an exceptional case within the meaning of 35 U.S.C. § 285 and entitling K&H the award of its attorney's fees.

**V. DEMAND FOR JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, K&H demands a trial by jury on all issues so triable.

**VI. PRAYER FOR RELIEF**

WHEREFORE, K&H prays for the following relief:

A. Judgment that K&H's '942 Patent is valid and enforceable and the exclusive property of K&H.

B. Judgment that one or more claims of the '942 Patent have been infringed, either literally and/or under the Doctrine of Equivalents, by Milliard and/or by others whose direct infringement has been induced by Milliard in violation of 35 U.S.C. §271.

C. Judgment that Milliard account for and pay to K&H all damages to and costs incurred by K&H and resulting from Milliard's infringing activities in the amount not less than reasonable royalty.

D. That Milliard, and its agents, servants, employees, attorneys, successors, and assigns, and all person in active concert or participation with Milliard, be enjoined and restrained, preliminarily, perpetually, and permanently from making, using, offering for sale, selling, or importing any article that infringes the '942 Patent, or assisting or encouraging any third parties from offering for sale or selling any article that infringes the '942 Patent, including at Amazon.com.

E. That Milliard, within thirty (30) days after service of judgment with notice of entry thereof upon Milliard, be required to file with the Court and serve upon K&H's attorneys a written report under oath setting forth in detail the manner in which Milliard has complied with the paragraph above.

F. That the Court declare this an exceptional case and award to K&H and against Milliard treble damages in view of Milliard's willful infringement pursuant to 35 U.S.C. § 284, and all of K&H's costs, disbursements, and reasonable attorney's fees pursuant to 35 U.S.C. § 285.

G. An award to K&H and against Milliard of interest, including prejudgment interest, for any monetary award of damages and/or profits.

H. An award to K&H and against Milliard of such further relief as this Court deems just and proper.

Respectfully submitted,

Dated: December 3, 2015

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