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8 *Attorneys for Plaintiff Shipping and Transit, LLC*

9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 SHIPPING AND TRANSIT LLC, a Florida  
12 Limited Liability Corporation,

13 Plaintiff,

14 vs.

15 GILMORE & CO., INC. dba VETDEPOT,  
16 a California Corporation; and DOES 1  
17 through 10, Inclusive,

18 Defendants.  
19  
20

Case No. 2:15-cv-9539

**COMPLAINT FOR PATENT  
INFRINGEMENT**

**JURY TRIAL DEMANDED**

Complaint Filed: N/A

Trial Date: N/A

1 **COMPLAINT FOR PATENT INFRINGEMENT**

2 For its Complaint, Plaintiff Shipping and Transit, LLC (“Plaintiff”), by and  
3 through the undersigned counsel, alleges as follows:

4 **THE PARTIES**

5 1. Plaintiff is a company organized and existing under the laws of Florida and  
6 having an address at 711 SW 24<sup>th</sup>, Boynton Beach, Florida 33435.

7 2. On information and belief, defendant Gilmore & Co., Inc. dba VetDepot  
8 (“Defendant”) is a corporation existing under the laws of California.

9 3. The true names and capacities of the Defendants sued herein as DOES 1  
10 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such  
11 Defendants by fictitious names. Each of the Defendants designated herein as a DOE is  
12 legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of  
13 Court to amend this Complaint to reflect the true names and capacities of the DOE  
14 Defendants when such identities become known.

15 **JURISDICTION AND VENUE**

16 4. This is a suit for patent infringement arising under the patent laws of the  
17 United States, Title 35 of the United States Code § 1 *et seq.*

18 5. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and  
19 1338(a).

20 6. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(c) and  
21 1400(b).

22 7. Upon information and belief, Defendant conducts substantial business in  
23 this forum, directly or through intermediaries, including: (i) at least a portion of the  
24 infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in  
25 other persistent courses of conduct and/or deriving substantial revenue from goods and  
26 services provided to individuals in this forum.

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**THE PATENT-IN-SUIT**

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2 8. On July 15, 2008, United States Patent No. 7,400,970 (“the ’970 Patent”),  
3 entitled, “System and method for an advance notification system for monitoring and  
4 reporting proximity of a vehicle” was duly and legally issued by the United States  
5 Patent and Trademark Office. A true and correct copy of the ’970 Patent is attached as  
6 Exhibit A to this complaint.

7 9. Plaintiff is the assignee and owner of the right, title and interest in and to  
8 the ’970 Patent including the right to assert all causes of action arising under said  
9 patents and the right to any remedies for infringement of them.

10 **COUNT I – INFRINGEMENT OF U.S. PATENT NO. 7,400,970**

11 10. Plaintiff repeats and realleges the allegations of paragraphs 1 through 9 as  
12 if fully set forth herein.

13 11. Without license or authorization and in violation of 35 U.S.C. § 271(a),  
14 Defendant has infringed and continues to infringe the ’970 Patent by making, using,  
15 offering for sale and/or selling within this district and elsewhere in the United States a  
16 computer based notification system that enables communication with a user that is  
17 designed to receive delivery of a package and provides a means for requesting entry by  
18 user of a package identification number.

19 12. Specifically, Defendant’s ship notice/manifest, sometimes referred to as  
20 the Advanced Shipment Notice (ASN), or the 856 EDI document, is generated when a  
21 user at a computer system elects to purchase an item via Defendant’s website and enters  
22 an email address as part of the purchase process. Defendant explains by purchasing  
23 they will be provided “order confirmation” and more importantly “shipment  
24 confirmation” by selecting to purchase from their website. When a user selects a  
25 method of shipping when purchasing an item from Defendant’s website, a user  
26 necessarily is required to elect a shipping method that allows tracking. Once this  
27 election is made, and as the order is processed, shipment confirmations are sent based  
28 on a tracking input when the package starts its route (likely pick-up, placed on conveyer

belt and/or scanned out to loading dock/out of warehouse, etc.) to its destination (delivery address). As expressly stated on Defendant’s Customer Service web page copied below, “You will receive an order confirmation at the time your order is placed and one or more shipping confirmation emails with tracking information as your order is shipped.”

The screenshot shows the VetDepot website interface. At the top, there is a search bar with the text "Search products, conditions or brands" and a "Search" button. To the right of the search bar, it says "Free Shipping on all Medication" and "other items ship free after \$35\* - see except". Below the search bar is a navigation menu with links for DOGS, CATS, HORSES, FISH, SMALL PETS, LIVESTOCK, PET FOOD, PET SUPPLIES, AQUARIUM, PET MEDICATION, and BRANDS. A customer service banner includes the text "Customer Service | Call us at (800) 710-9770 9:30 - 7 est | Email Us at wecare@vetdepot.com" and "SAVE UP TO 60% SATISFACTION GUARANTEE". On the left side, there is a "Browse by Category" list including Allergy Relief, Antibiotics, Arthritis & Pain Relief, Behavior & Calming Aids, Dental Care & Hygiene, Deworming, Diabetes Care, Digestive Aids, Ear Care, Eye Care, Flea & Tick Control, Food, Grooming, Healthcare & First Aid, Heartworm, Hot Spots, Itchy Skin, Natural & Homeopathic, Other Medications, Pet Pharmacy, Skin & Coat Care, Stain & Odor Removal, Supplements, Supplies, Syringes & Needles, Thyroid Medications, Toys, and Treats. On the right side, there is a "Customer Service" section with a list of links: Ordering, Privacy & Security, Shipping & Delivery, Returns & Replacements, Payment, Pricing & Promotions, Viewing Orders, and Updating Account Information. Below this list are three sections: "Ordering" with a paragraph about placing items in the shopping cart, "Privacy & Security" with a paragraph about protecting information, and "Shipping & Delivery" with a paragraph about shipping offers and a note about nonprescription items.

13. Plaintiff is entitled to recover from Defendant the damages sustained by Plaintiff as a result of Defendant’s infringement of the ’970 Patent in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

1 14. Prior to the filing of this Complaint, Plaintiff, by letter dated November 2,  
2 2015, informed Defendant of Defendant’s infringement of the ’970 Patent.

3 15. Thus, Defendant has been on notice of the ’970 Patent since at least the  
4 date it received Plaintiff’s letter dated November 2, 2015.

5 16. Upon information and belief, Defendant has not altered its infringing  
6 conduct after receiving Plaintiff’s letter dated November 2, 2015.

7 17. Upon information and belief, Defendant’s continued infringement despite  
8 its knowledge of the ’970 Patent and the accusations of infringement has been  
9 objectively reckless and willful.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff requests that this Court enter judgment against  
12 Defendant as follows:

13 A. An adjudication that Defendant has infringed the ’970 patent;

14 B. An award of damages to be paid by Defendant adequate to compensate  
15 Plaintiff for Defendant’s past infringement of the ’970 patents and any continuing or  
16 future infringement through the date such judgment is entered, including interest, costs,  
17 expenses and an accounting of all infringing acts including, but not limited to, those  
18 acts not presented at trial;

19 C. A declaration that this case is exceptional under 35 U.S.C. § 285, and an  
20 award of Plaintiff’s reasonable attorneys’ fees;

21 D. To the extent Defendant’s conduct subsequent to the date of its notice of  
22 the ’970 patent is found to be objectively reckless, enhanced damages pursuant to 35  
23 U.S.C. § 284 for its willful infringement of the ’970 patent; and

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1 E. An award to Plaintiff of such further relief at law or in equity as the Court  
2 deems just and proper.

3 Respectfully submitted this 10th day of December, 2015

4 NEWPORT TRIAL GROUP

5  
6 By: /s/ Tyler J. Woods

7 Tyler J. Woods  
8 Attorney for Plaintiff  
9 Shipping and Transit, LLC  
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**JURY DEMAND**

Plaintiff demands a trial by jury on all issues so triable pursuant to Federal Rule of Civil Procedure 38.

Respectfully submitted this 10th day of December, 2015

NEWPORT TRIAL GROUP

By: /s/ Tyler J. Woods

Tyler J. Woods  
Attorney for Plaintiff  
Shipping and Transit, LLC